

## Commentary

# Illegality of a Transfer Order Following Business Abolition with Job Category Limitation Agreements

*The Shiga Prefecture Council of Social Welfare Case*  
Supreme Court (Apr. 26, 2024) 1308 Rodo Hanrei 5

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## I. Facts

Welfare equipment centers operated by prefectures, municipalities, and private organizations are intended to exhibit and promote welfare equipment, modify and manufacture such equipment based on consultation with users, and develop technologies, etc. There are more than 1,000 welfare equipment centers across Japan. Regarding the welfare equipment center involved in this case (hereinafter referred to as “the Welfare Equipment Center”), from the time of its establishment until March 2003, the operations were carried out by Foundation R. Since April 2003, the Shiga Prefecture Council of Social Welfare (hereinafter referred to as “Y”), which succeeded to the rights and obligations of R, has performed the above operations as the designated manager.

In March 2001, Worker X was hired by R as a technician responsible for equipment modification, production, and technological development at the Welfare Equipment Center (hereinafter collectively referred to as “X’s duties”).

Y ordered X to be transferred to a position in charge of facility management in the General Affairs Division as of April 1, 2019, without obtaining his consent (this order is hereinafter referred to as the “Transfer Order”). X filed a lawsuit against Y for damages based on breach of contract or tort, alleging that there was an implied agreement limiting X’s job category to the above-mentioned technical position, that the Transfer Order violated the agreement, or

constituted an abuse of rights, and that X had suffered mental distress.

## II. Lower Court Judgments

### 1. District Court Decision

**Kyoto District Court (Apr. 27, 2022) 1308 Rohan 20**

There is no written agreement between X and Y to the effect that X’s job category is limited to that of a technician. However, X was solicited by R because of his numerous technical qualifications, especially his welding skills, and was hired by R in response to a job opening for a technician position. He then continued to work as a technician for 18 years, including after R was replaced by Y, engaging in modifying and manufacturing welfare equipment as well as conducting technical development. In addition, it was not originally expected that Y would outsource the modification and manufacturing of welfare equipment, and X remained the only technician who could weld at the Welfare Equipment Center throughout the 18 years. Therefore, it is reasonable to find that there was an implied agreement between X and Y (hereinafter referred to as the “Agreement”) to the effect that Y would have X work as a technician to modify and manufacture welfare equipment and to develop techniques.

Given that the demand for the modification of welfare equipment has dramatically decreased to a few cases per year, it cannot be said that the fact that Y stopped modifying and manufacturing welfare

equipment is unreasonable. In addition, at the time when the Transfer Order was issued, there was a pressing need to fill a vacancy in the General Affairs Division. In this way, although an implied agreement between X and Y to limit X's job category to that of a technician is recognized, there was a legitimate business necessity to reassign X to a facility management position in the General Affairs Division in order to avoid dismissing him when he stopped modifying and manufacturing welfare equipment. This did not cause a disadvantage to X beyond the extent that he should be able to accept, and it cannot be considered an abuse of rights.

The work content of the facility management position is not considered to require special skills or experience, and the workload is not heavy; therefore, the Transfer Order is not considered to cause disadvantages to X that exceed the extent that he should be able to accept. There is no evidence sufficient to support a finding that the Transfer Order has any improper motive or purpose. The Transfer Order cannot be said to be illegal or invalid.

## 2. High Court Decision

### **Osaka High Court (Nov. 24, 2022) 1308 Rohan 16**

It can be said that the Transfer Order in this case was issued to avoid the dismissal of X, who had been hired as a technician under a limited job category, due to the discontinuation of welfare equipment modification and manufacturing operations at Y. It can also be said that there was a reasonable basis for X to be transferred to the General Affairs Section, considering the fact that the position of General Affairs Section of the Welfare Equipment Center was vacant at that time and that X had been performing duties such as handling visitors until then. Therefore, it is difficult to say that the Transfer Order has an improper purpose. Considering the various circumstances claimed by X, such as the mental distress from being transferred to a clerical position despite having consistently worked in a technical position, it cannot be said that the Transfer Order is illegal or invalid.

## III. Judgment

The judgement was partially quashed and remanded.

The above decision of the court of second instance cannot be approved. The reasons are as follows.

If there is an agreement between a worker and employer to limit the job category and duties of the worker to a specific one, it is understood that the employer should not have the authority to unilaterally order the worker to be reassigned contrary to such an agreement. According to the above facts and circumstances, there was an implied agreement between X and Y (the Agreement) to the effect that X's job category and duties would be limited to technical work related to X's duties; therefore, Y did not have the authority to order X to be reassigned to the General Affairs Section in charge of facilities management without his consent.

Accordingly, there is a clear violation of the law that affects the judgment in the decision by the court of second instance that the Transfer Order given by Y to X without his consent was not abusive, based on the premise that Y had the authority to issue the Transfer Order.

The part of the judgment of the second instance concerning the claim for damages is hereby reversed, and the case is remanded to that court for further proceedings to determine whether or not there are sufficient circumstances to find that the Transfer Order constitutes a tort, the nature of Y's employment contractual obligations to X regarding X's transfer, and whether or not Y has breached those obligations.

## IV. Commentary

### 1. Significance and Characteristics of this Decision

A transfer (*haiten*) refers to a change in work location or duties under the same employer over a considerable period of time. In Japan, the validity of an employer's transfer order has been judged in two stages: (1) whether the employer possesses the right to order a transfer (the examination of authority), and (2) even if the existence of the right to order a transfer

is affirmed, whether the exercise of the right constitutes an abuse of rights (the examination of abuse). With regard to the first stage, it is generally understood that if there is an agreement to limit the job category or duties, the employer does not have the authority to unilaterally order a transfer that exceeds the scope of the said limitation. However, some judgments have held that it is reasonable to recognize the validity of an employer transferring an employee to a different job category even in cases where there is an agreement limiting the job category, because if the job category has to be abolished, it is unrealistic to assume that the employer cannot reassign the employee to a different job category without their consent.<sup>1</sup> Against this background, this case marks the first time the Supreme Court has addressed how the legality of a transfer order should be determined when an employee with a limited job category is ordered to be transferred beyond that scope, in a situation where the existence of an implied limited job category agreement is recognized and the transfer is occasioned by the discontinuation of the relevant job category.

## **2. Grounds for the Employer's Right to Order a Transfer**

In Japan, while long-term employment is typically planned for regular employees, personnel transfers are highly active. This is especially true for white-collar workers, who were often hired without being told where they would work or what they would do. It was generally accepted that they would be promoted through rotational personnel assignments as they experience a variety of duties.

Reflecting this employment practice, it was initially believed that the validity of an employer's transfer order could not be challenged. However, as transfers became more common and disadvantages in workers' private lives became an issue, theories were sought to legally dispute this issue. The *comprehensive agreement theory* posits that a transfer order constitutes a lawful exercise of managerial authority grounded in a broad agreement whereby the employee entrusts the employer with discretion over the location and nature of work, and that the

legitimacy of a transfer order may be evaluated in terms of abuse of rights. By contrast, the *contract theory* holds that a transfer order is valid only within the scope of the labor contractual agreement regarding the job category and work location, and that a transfer order that exceeds the scope of the agreement is merely a factual act of offering a contract, and the worker's consent was necessary for the order to be recognized as effective.

The *comprehensive agreement theory* also recognizes the possibility of limiting the right to order a transfer by a special agreement. Meanwhile, the *contract theory* also recognizes the right to order a transfer by comprehensive agreement and does not deny the application of the abuse of rights doctrine. Therefore, both theories are compatible, with the only difference being the degree of legislative responsibility for the existence of the transfer order.

As a result, the validity of a transfer order is examined in two stages: (1) whether the employer possesses the right to order a transfer (the examination of authority), and (2) even if the existence of the right to order a transfer is affirmed, whether the exercise of the right constitutes an abuse of rights (the examination of abuse).

In order to express that the employer possesses the right to order a transfer, general clauses, such as "the employer may order a business trip, transfer, or job relocation for business reasons" are usually included in the employment regulations. This authority may be limited by the specific contractual relationship, and if there is an express or implied agreement in the individual contract to limit or specify the work location or job category, such changes cannot be ordered by such general clauses. In actual litigation, the employer claims a comprehensive right to order a transfer under the general clauses of the employment regulations, the worker claims the existence of an agreement that limits the job category or work location, and the court determines whether the right to order such transfer exists based on the worker's employment status, the way the labor relationship was established and developed, and other factors.

### 3. Criteria for Recognition of an Implied Job Category Limitation Agreement

In cases where work requires special qualifications or skills, such as for doctors, nurses, and drivers, a labor contract has often been interpreted to be limited to the job category concerned. In other cases, recent court interpretations have shown a marked tendency to not readily recognize the implied agreement of the limitation of job categories. For example, in the case of Nissan Motor Corporation's Murayama Plant,<sup>2</sup> workers who had been engaged in machinist duties at the automaker for 17 to 24 years in response to a call for machinists were ordered to be reassigned from machinists to assembly positions because the axle division in which they were engaged was transferred to another plant as part of a reorganization of production systems. The workers argued that the employer could not order them to be reassigned to a different job without their consent, claiming that their long years of employment as machinists had established their identity as machinists. The court rejected this argument regarding position limitation and ruled that the transfer order was valid because there was no evidence of an express or implied agreement between the workers and the employer that the plaintiff workers would not be assigned to any job other than machinist. It is assumed that the court's decision was based on the consideration that, in order to maintain employment in a long-term employment system, flexible changes in working conditions through transfer must be allowed, and that once the job category and work location are limited, it becomes impossible to change any of these working conditions without the individual consent of the worker, which would not be appropriate.<sup>3</sup>

On this point, the first instance of this decision recognized the implied job category and duty limitation agreement based on a comprehensive judgment, without emphasizing the high degree of specialization of the job category or job duties, etc., by making a finding based on the hiring process and the way the worker was expected to work, and it is significant that the appellate court and the Supreme Court upheld the first instance ruling. Compared to the court's previous stance that emphasized the

maintenance of employment, this decision can be read as a shift in the trend toward placing more emphasis on the job category limitation agreement than on the maintenance of employment.

If one understands that the Supreme Court has decided that the validity of the limited job category agreement should be given priority over the evaluation of efforts to avoid dismissal, it may be thought that it will be easier to dismiss workers who have agreed to a limited job category agreement. However, when a worker with a limited job category is dismissed for refusing to accept transfer, the appropriateness of the dismissal is examined under the doctrine of abuse of the right to dismiss, so it does not necessarily mean that employers are no longer required to make efforts to avoid dismissal.

### 4. Abuse of the Employer's Right to Order a Transfer

Even in cases where an employer's right to order a transfer is affirmed after passing the examination of authority, the right to order a transfer should be exercised in consideration of the interests of the workers and should not be abused. The Supreme Court decision in the *Toa Paint* case established a framework for determining abuse in practice.<sup>4</sup> That is, a transfer order constitutes an abuse of rights "when there is no business necessity for the transfer; or even when there is a business necessity for the transfer, when the transfer order is made with other improper motive or purpose; or when the transfer order causes workers to suffer disadvantages that significantly exceed the extent that he should be able to accept." This means that the existence of an abuse of rights of transfer orders is assessed from the viewpoints of (1) the existence of a business necessity, (2) the existence of improper motive or purpose, and (3) the existence of a disadvantage to the worker that significantly exceeds the extent that he should be able to accept.

On this point, the first-instance and appellate-court decisions acknowledged the existence of an implied agreement to limit job categories, and found that the Transfer Order had a "business necessity" to "avoid a situation in which X would be dismissed,"

and that X would not suffer a “disadvantage that exceeds the extent that he should be able to accept” as a result of this transfer and that there was no improper motive or purpose for the transfer. In other words, at the stage of examining abuse of rights, the first-instance and appellate-court decisions positioned “avoiding the situation of dismissing the employee” as an important factor in determining the “existence of business necessity” and, as a result, the Transfer Order did not constitute an abuse of rights. However, as can be seen from the aforementioned decision framework, it is a prerequisite that the employer “has” the right to order a transfer to enter the stage of examination as to whether the employer’s right to order a transfer constitutes an abuse. In this case, the existence of an implied agreement to limit job categories was recognized by the court of first instance and the appellate court, and it has been generally accepted that the employer lacks the right to unilaterally order a transfer. Therefore, the Supreme Court pointed out a problem with the logical structure of the second-instance judgment in that it ignored this issue, reversed the second-instance judgment, and remanded the case to the court of second instance.

In recent years, Japan has also seen an increase in the number of workers who are employed in limited

job categories or departments without plans for long-term employment until mandatory retirement age. Article 5 of the Enforcement Regulation of the Labor Standards Act, which came into effect on April 1, 2024, added matters to be explicitly indicated concerning workplace and work engaged in (Article 5, Paragraph 1, Item 1-3), while Article 4-2, Paragraph 3 of the Enforcement Regulation of the Employment Security Act was also revised to require, as matters for explicitly indicating working conditions when recruiting workers, the following new items be explicitly indicated: (1) the scope of changes in work to be engaged in, and (2) the scope of change in the place of employment. For workers employed under the new provisions mentioned above, it will be easier to approve agreements that restrict job categories. Similar cases are expected to accumulate in the future.

#### Notes

1. The *Tokio Marine & Nichido Fire Insurance* case, Tokyo District Court (Mar. 26, 2007) 941 *Rohan* 33.
2. The *Nissan Motor Corporation Murayama Plant* case, Supreme Court, First Petty Bench, (Dec. 7, 1989) 554 *Rohan* 6.
3. Takashi Araki, *Rodo ho* [Labor and employment law] 5th ed. (Tokyo: Yuhikaku, 2022), 475.
4. The *Toa Paint* case, Supreme Court, Second Petty Bench, (Jul. 14, 1986) 477 *Rohan* 6.

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