

**Content Analysis of Individual Labor Disputes Resolution Cases II**  
– Quasi-dismissals, Mental Health Problems, Job Transfers, Probationary Periods,  
and Claims for Compensation against Workers –

**Summary**

**Authors**

Keiichiro Hamaguchi

Research Director, Japan Institute for Labor Policy and Training

Makoto Suzuki

Assistant Fellow, Japan Institute for Labor Policy and Training

Ryo Hosokawa

Research Assistant, Japan Institute for Labor Policy and Training

**Objectives of the Surveys and Research**

Nowadays, unionization rate is less than 20%, and this number falls below 1.1% for employees of small and medium sized enterprises (SMEs) with less than 100 employees. Since, in addition, Japanese enterprise-based unions have traditionally not accepted non-regular employees as members, there has been a significant increase in non-unionized employees, even in companies with labor unions. Against this background, the Act on Promoting the Resolution of Individual Labor-Related Disputes came into force in October 2001, and labor bureaus nationwide began engaging in

advice/guidance and conciliation in regard to individual labor disputes. Despite this, the details of these individual labor disputes have only been published in general data issued once per year by the Ministry of Health, Labour and Welfare as “The State of Implementation of the Individual Labor Dispute Resolution System,” and details of specific disputes and dispute resolutions have never been made clear.

For this reason, the Japan Institute for Labor Policy and Training’s Department of Industrial Relations and Human Resource Management implemented a three-year project between fiscal 2009 and 2011, to comprehensively research the cases of individual labor dispute resolution handled by labor bureaus, and to analyze both the overall and the detailed data relating to the state of labor dispute resolutions occurring in the workplace throughout society in contemporary Japan. During the first year, the project focused on analysis of dismissal and other termination cases, bullying/harassment cases, cases of reduced working conditions, and cases involving tripartite labor supply such as agency work, which make up the majority of individual labor disputes. This information was published as JILPT Research Report No. 123.

During the second year, the project focused on analysis of quasi-dismissal cases – non-dismissal type of employment termination, mental health problems, job transfers to another company/within a single company, probationary periods, and claims for compensation against workers by employers, which were compiled into this report.

## **Outline of Report**

### **(1) Quasi-dismissal cases (non-dismissal type of employment termination)**

Chapter 1 implements a uniform clarification and analysis of those cases listed as termination cases during the first year’s report, which were in fact cases of suggestion of termination (termination based on the initiative of the worker in form), or resignations based on the personal reasons, as well as cases that were not recorded as termination on conciliation documents, but which were in fact incidents where the worker claimed that they had been put in a position by their employer where they had no choice but to leave. These cases are often referred to in labor law as “constructive dismissal,” but since they cannot always be said to equate to dismissals, we here refer to them as “quasi-dismissal.” Depending on the categorization of these cases in conciliation documents, they are divided for the purposes of analysis into cases of suggestion of termination,” “resignation for personal reasons,” and “potential constructive dismissal.”

The number of cases of quasi-dismissal rose to 175, of which 84 were dealt with as termination cases in the first year's report (38 cases of suggested termination and 46 cases of resignation for personal reasons), and 91 were cases of potential constructive dismissal, categorized as "other" in the first year's report. When compared with the 599 cases of dismissal (including refusal to renew repeatedly renewed fixed-term contract), interesting phenomena can be observed: full-time, regular employees are more likely to be subjected to suggestion of termination, while directly-hired non-regular employees are more likely to resign for personal reasons. Agency and probationary staff are more likely to be subjected to dismissal. Furthermore, when looking at the state of agreed resolutions, compared with suggestion of termination, 60% of which are closed without participation of the counterparts, most cases of resignation for personal reasons and potential constructive dismissals reach an agreed resolution, with non-participatory resolutions relatively rare. The settlement payment tends to be low in cases of suggestion of termination, but slightly higher in potential constructive dismissal cases.

Categorizing 175 quasi-dismissal cases by the reason for which employment was terminated (with multiple reasons possible) shows that broadly, 64 cases related to working conditions, and 123 related to the workplace environment.

While the 64 cases related to working conditions included unavoidable resignation resulting from reduced working conditions, changes to employment status, job transfers (to another company/within a single company), changes to job description, claims for compensation against workers, poor working conditions, discrimination, personal information issues or disciplinary measures, most cases related to reduction in working conditions (31) and job transfers (21), with changes to employment status (6) being the next most common. Changes to employment status included cases where employees were demoted from full-time, regular employees into non-regular employees, as well as cases where people were to be hired ostensibly to full-time, regular employee posts in job offers, but were in fact hired as non-regular employees. Job transfers included 15 transfers in location of workplace and six transfers of post, with the former being slightly more common.

Of the 123 cases relating to workplace environment, bullying and harassment were cited in 88 cases, followed by 13 cases of "trouble in the workplace," 12 cases of sanctioning of expression (of which six involved the exercise of rights defined in labor law, and six were other cases of sanctioning of expression), 10 cases of physical violence,

and 4 cases of intention to drive out.

Categorizing cases of quasi-dismissal type termination resulting from bullying/harassment according to the views of the employer show four cases of full affirmation of the views of the worker (full affirmation), three cases in which the views of the worker regarding bullying/harassment were partially affirmed (partial affirmation), 39 cases in which the employer felt that there had been a certain level of behavior noted, but that this had not resulted in bullying/harassment (rejection of interpretation), 25 cases in which bullying or harassment was outright rejected (rejection of facts), and 17 cases in which the employer made no comment.

A more specific analysis of the most common cases (those involving “rejection of interpretation”) shows that there are a significant number of cases in which the worker misinterpreted the words of the employer as bullying/harassment, despite the fact that, according to the employer, there was no intention of this, and in which the worker subsequently decided to leave his or her job of their own volition, but claimed that they were forced out of their post. There were also cases that were attributed to “misinterpretation,” but where this expression was considered excessive. Common in these cases were incidents where the employer was of the view that they had merely given appropriate guidance to the worker, and where the employer did not only attribute mistakes at work to problems in the worker, but emphasized that the problem was with the poor attitude of the worker. By extension, there are cases where the employer claims that the person applying for conciliation was not a victim of bullying/harassment, but rather was the perpetrator of bullying, harassment/ violence.

Among cases involving “rejection of facts,” it was interesting to note that in 15 cases in which employers participated in mediation while rejecting the facts of the case completely, eight of these cases – a high number - were settled with a financial resolution. The reason for this appears to be that during negotiations for conciliation, adjustments were made to make the employer pay a certain amount merely to solve the problem, regardless of the truth or otherwise of the facts stated. Including the cases of “rejection of interpretation,” the fact that most (64 out of 88) cases involved a difference of opinion between workers and employers regarding the actual existence of bullying/harassment indicates a significant difference between this type of case and those of termination or reduction of working conditions, in which the facts of the case are usually acknowledged by both parties.

Quasi-dismissal cases both related to working conditions and the workplace environment demonstrate the merits of the coordination-based resolution system provided by conciliation, since it allows some sort of solution to be provided in situations where it would be difficult to reach a resolution under a judgment-based system that exists to establish rights and obligations, such as in court.

In working conditions cases, for example, taking an issue such as the reduction of working conditions or job transfers (to another company/within a single company) to court would require the plaintiff not to resign from the company, but rather strive to see their working conditions reinstated or to be returned to their original place of work. This is difficult for workers who have left of their own volition, even if this was because they felt forced into it. On the other hand, since Japan does not have an established concept of constructive dismissal, such as that which exists in the United Kingdom, there is almost no route via which employees are able to appeal to the court for damages based on the fact that they were effectively forced into resignation as a result of such situations. Since the only litigation available is that of status confirmation, and it is extremely rare to get an appeal for damages acknowledged in termination cases, it is difficult to get a resolution in any such case other than through conciliation.

In contrast to this, while it is equally difficult to bring litigation for constructive dismissal in workplace environment cases such as bullying/harassment, it is in fact possible to sue for damages in response to bullying/harassment itself. Since, however, bullying/harassment are of subjective nature, the fact that it is considered difficult to establish objective proof of their occurrence is a barrier to fighting the case in court. Conciliation, however, often results employers, even those denying the accusations, being prepared to settle for a certain sum regardless of the truth or otherwise of the facts presented. This is made possible because the resolution system is not judgment-based, but rather based on coordination and accommodation.

## **(2) Mental health-related cases**

Chapter 2 looks at 69 cases presented to conciliation, in which it was considered that the worker involved had some form of mental health issue. Labor bureaus have not conventionally created a category for “mental health,” and most of these termination cases tend to be categorized as bullying/harassment. In principle, this report only covers cases where conciliation and other documents mention mental illness or mental disorder

as reasons as clearly alleged by the worker in question. In many other cases, there may be an assumption that the worker in question is suffering from some sort of mental health problem, but since it is impossible to set unambiguous criteria for the definition of mental health, these cases are not treated as mental health related cases. In the 69 cases studied here, 40 – more than half – included the word “depression” as part of the definition of a worker’s mental health issues, so these cases are collectively referred to as “depression-related cases.”

When analyzed according to their employment status, a large proportion of mental health-related cases – more than 70% – involved full-time, regular employees, despite the fact that only around half of the cases overall involved such employees, leading to the conclusion that full-time regular employees are more subject to high levels of mental pressure than non-regular employees. Categorized by the size of the company, many of the cases occur in larger companies, and fewer occur in SMEs. In terms of absolute numbers, more small companies were involved, but relatively speaking, larger companies seem to place their employees under greater mental pressure. The details of applications showed a significant majority (around 3/4) related to bullying/harassment. Just under 40% of these cases reached an agreed settlement, greater than the 30% of cases overall, while only just over 20% were closed without participation of the parties involved, significantly less than the more than 40% of cases overall. The sums paid in resolution were slightly higher than the overall average.

The 40 depression-related cases tend to divide into those in which both workers and employers are in agreement regarding the existence of depression, and those in which the “depression” itself was called into doubt by the employer. Only five cases fell into the latter category. The former involved two cases in which the employer and the worker both agreed that the issues were caused by work itself, five in which the employer and the worker both agreed that the issues were caused by factors outside of work, and 20 in which there was a dispute regarding the cause of the depression. These 20 involved 15 cases in which employees stated that they had not had depression originally, but that they had developed depression since beginning their job, and five cases in which employees admitted that they had originally had depression, but that it had either re-emerged or become worse as a result of them doing the job.

It is thought that cases where the company involved cast doubt on the existence of the “depression,” reflect recent indications within medicine and society itself relating to the

existence of “imitative depression” and “new type depression.” The increase in “imitative depression” in the past few years would indicate it to be likely that companies will increasingly see cases involving these symptoms in the future.

There are far fewer cases of any other type of mental illness. Diagnoses include autonomic ataxia, acute stress reaction, difficulties in interpersonal relationships, anxiety, nervous breakdown, panic attacks, social anxiety, stress, adjustment disorder, environmental personality disorder, insomnia, PTSD, etc., but the difference between symptoms described in conciliation documents is not always clear.

### **(3) Job transfers (to another company/within a single company) cases**

Chapter 3 looks at 53 cases of job transfer within a single company, and 5 cases of transfer to another company. Analysis from the point of view of employment status shows that 2/3 of cases involved full-time, regular employees, with 27.6% involving non-regular employees, roughly the same as the proportion for all cases. It is worth noting, however, that there are frequent incidences of disputes relating to job transfers by directly-hired non-regular employees. Furthermore, relatively large companies and companies with labor unions also face disputes. The rate of resolution is low, and there is a high possibility that cases involving full-time, regular employees will not be resolved, even if both parties participate, while many directly-hired non-regular employees do not participate in conciliation.

The details of individual disputes were categorized, for full-time, regular employees into (1) demands for withdrawal, (2) disadvantageous changes to working conditions, (3) dismissal/suggestion of termination, (4) resignation for personal reason, (5) demands for transfer, and (6) other, while for directly-hired, non-regular employees, they were categorized into (1) dismissal, (2) resignation for personal reason, (3) demands for withdrawal, (4) compensation for reduction in wages, (5) demands for explanation, (6) demands to become a full-time, regular employee, and (7) other. Agency workers were involved only in a small number of cases, most of which related to objections to changes to the place of work to which they were allocated.

This chapter includes a detailed analysis of 12 example cases. A particular characteristic of job transfer cases that emerge here is the desire to return to the employee’s original place of work, resulting in a demand for withdrawal of the transfer order being the basis for a conciliation request. It is extremely rare to see a resolution in

which results in the employee's request being met, however, in cases where an employee requests a return to their original working situation. A certain amount of resolution can be seen in cases where an employee was forced to resign over a job transfer, or where he/she refused to undertake the job transfer and was dismissed as a result, and where the employee demanded compensation for financial loss as a result. There was a wide range of other cases, including requests for transfer, requests for explanation of transfer, requests to be promoted to full-time regular employee status at the time of undertaking a job transfer as a directly-hired non-regular employee, requests for withdrawal of job transfer order by agency worker, etc.

Not only was the number of such conciliated cases resulting in resolution relatively low compared to the overall number of cases, but cases that did reach an agreement mostly consisted not of a return to conditions requested, but rather a financial settlement.

#### **(4) Probationary period cases**

Chapter 4 analyzes disputes during employee probationary periods. There were 75 such disputes – 7% of the overall total – far more than the number going to court. A larger proportion of these cases came from small companies than the proportion overall, and because employment procedures in such companies are simpler than those in larger companies, it is thought that many cases arise because of a different understanding of probationary periods. Most of the disputes comprised termination cases, and in cases that reached resolution, the value of the financial settlements was across a lower distribution than the overall average figure.

Many cases in this category showed a trend towards insufficient explanation on the part of the employer when employment was terminated, which led to dissatisfaction in the worker. It is worth noting that there were a significant number of cases in which the fact that the employee was on probation was given as a rational reason for termination, and that this awareness among employers was a factor in the emergence of disputes.

Furthermore, disputes arising during probationary periods often featured the employer referencing the employee's attendance at work, or physical problems, and decisions made by employers regarding the potential for long-term work subsequent to being hired full-time appear to have been at least one factor in termination.

In addition, from the perspective of the employee, while there were a number of cases

that cited a lack of warning/guidance/education and training by the employer, or no clear instructions regarding what the employee was expected to do, there were also significant numbers of cases in which such warnings and/or guidance were viewed by the employee as forcing them into resignation, or taken as bullying/harassment, thereby leading to disputes. This illustrates the specific difficulties of probationary period cases.

The fact that the status of the probationary period is not always made clear by employers may cause a variance in awareness of the probationary period between employers and workers, and this is considered to be a significant factor that leads to the occurrence of disputes over probationary periods.

#### **(5) Cases involving claims for damage against workers**

Chapter 5 provides an analysis of cases where an employee has, during the course of their work, caused some sort of damage to their employer, and where the employer subsequently seeks damage from the employee. Only 19 such cases were referred to conciliation in this category, but several interesting points can be noted from them.

The most common type of dispute in this category is that of a worker causing a vehicle or traffic accident during the course of their work, and the employer subsequently claiming for damage from the worker to cover the costs of repairs. The majority of these cases involve truck drivers, and in most of these, the worker emphasized that the cause of the accident was overwork, indicating that there are still outstanding problems with the issue of working conditions for truck drivers. In vehicle and traffic accident cases, furthermore, since the employee has acknowledged to a certain extent that he/she had some responsibility for the occurrence of the incident, withholding payment from salary – either unilaterally on behalf of the employer or with the employee’s agreement – was seen in some cases.

Other than vehicle or traffic accidents, cases where compensation was demanded included those citing the employee’s behavior or attendance. These included incidents of clearly inappropriate behavior, equivalent to misappropriation or breach of faith, but in many of them there was no clear indication of actual damage that could be attributed to the employee. It appears that many of these cases involve problems identified by the employers involving the employee’s attitude to work, and that compensation is used as a means to restrict or punish the employee as a result.

In addition to the direct claims for damage, there were also cases where the employer

(company) put in a claim to recover the costs associated with the acquisition of qualifications, licenses or technical development achieved by the employee while they were working, after said employee had left the company.