8. Labor Law

Supreme Court 1st P.B., February 28, 2002
Yamagishi et al. v. Taisei Building Management Co., Ltd.
56(2) MINSHU 361, 1783 HANREI JIHO 150, 1089 HANREI TAIMUZU 72
822 ROHAN 5, 1792 RODO KEIZAI HANREI SOKUHO 28

In the case where a worker is obligated to provide service even during hours for a nap taken by him/her while not being engaged in actual work, such hours fall under working hours stipulated in the Labor Standards Law.

Reference:

Labor Standards Law, Art. 32.

Facts:

Xs (*jokoku* appellant/respondent, *koso* respondent, and plaintiff) were employees in a building management company Y (*jokoku* respondent/appellant, *koso* appellant, and defendant), and were engaged in building management tasks in each building, which Y had entrusted to its management. Xs were involved in 24-hour building management tasks, starting from 9:00 AM, several times a month. The nap time of continuous eight hours besides the rest periods of two hours in total was provided. During the nap time, Xs were obligated to stand by in a napping room and were needed to deal with alarms, telephone calls, etc., but were allowed to take a sleep as long as such a situation did not occur.

In Y, such a nap time was not counted in the regular working hours and was not subject to overtime work allowance and midnight work allowance, which were prescribed in Y's working rules and collective agreements. Xs' salaries were provided on a monthly basis, but only an all-night allowance of 2,300 yen per day was provided for their 24-hour work. Then Xs sued Y for overtime and midnight premiums, contending the nap time counted as hours worked.

Tokyo District Court entirely admitted Xs' claim on Jun. 17, 1993

(44(3) ROMINSHU 542).

On Dec. 5, 1996, Tokyo High Court held that the nap time fell under working hours stipulated in Art. 32 of the Labor Standards Law. However, it amended the District Court's decision and ordered the payment of extra pay only about the part that corresponds to midnight work and that exceeds the legally regulated hours under the variable working hours system, by finding that there was no agreement that Y paid overtime work allowance and midnight work allowance for Xs' nap time (47(5 & 6) ROMINSHU 654).

Then both parties filed *jokoku* appeals to the Supreme Court.

Opinion:

Reversed and remanded.

Working hours under Art. 32 of the Labor Standards Law should mean the period of time when the employee is placed under the direction and supervision of the employer. Whether a nap time, in which employees are not engaged in actual work, is counted among working hours must be decided objectively, depending on whether the employee is placed under the direction and supervision of the employer. (See our decision on Mitsubishi Heavy Industry Case as of Mar. 9, 2000, 54(3) ROMINSHU 801). The fact that the employee is not engaged in actual work during the nap time is not enough to say that he/she is free from the direction and supervision of the employer. It can be said that the employee is not placed under the direction and supervision of the employer, when the employee is guaranteed to be released from work. Therefore, when a release from work is not guaranteed, even a nap time should be regarded as working hours.

As Xs were obligated to provide a service to deal with alarms, telephone calls, etc. during the nap time, they were placed under the direction and supervision of the employer. Hence, the nap time of this case falls under working hours stipulated in the Labor Standards Law.

Although the nap time is regarded as working hours stipulated in the Labor Standards Law, it does not directly mean that the wage claim under a prescribed labor agreement is generated. In this case, it is fair to say that there were no agreements to pay wages other than the all-night allowance for the nap time. Thus, Xs can not claim for the overtime work allowance

and midnight work allowance prescribed in their labor agreements.

However, because the nap time is regarded as working hours in Labor Standards Law, Y must pay for Xs' overtime and midnight work in line with the law. Since the High Court's decision includes an incorrect definition of the calculation base to determine the amount to be paid, it should be reversed.

Editorial Note:

After the District Court of this case held that the nap time was working hours in the Labor Standards Law, lower courts have made similar decisions, e.g., Koto Unso Case (Tokyo District Court, Oct. 14, 1996, 706 RODO HANREI 37), Nihon Kamotsu Tetsudo Case (Tokyo District Court, Jun. 12, 1998, 745 RODO HANREI 16), Toho Gakuen Case (Tokyo District Court Hachioji Branch, Sep. 17, 1998, 752 RODO HANREI 37), Nihon Security System Case (Nagano District Court Saku Branch, Jul. 14, 1999, 770 RODO HANREI 98), Nihon Yubin Teiso Case (Kyoto District Court, Dec. 22, 2000, 806 RODO HANREI 43) and Kansai Keibi Hosho Case (Osaka District Court, Apr. 27, 2001, 1774 RODO KEIZAI HANREI SOKUHO 15). In this Taisei Case, the Supreme Court upheld these lower courts' decisions by clearly stating that such a nap time should be regarded as working hours stipulated in the Labor Standards Law.

> "Working hours" that are regulated by the Labor Standards Law are the hours, "excluding rest periods," that a worker is actually "caused to work" (i.e., actual working hours). "(Actual) working hours" refers not only to the work that is actually performed on a job; it also includes time spent in waiting between jobs (i.e., stand-by time). There is a major distinction between "stand-by time" and a "rest period." In the former a worker is still subject to direction and must immediately resume work when ordered to do so by the employer. By contrast, during a rest period a worker is removed from the employer's direction and supervision of the work (i.e., is released from work) and may use the time freely. From these basic components of "working hours," prevailing academic opinion and administrative interpretations have defined working hours as "the time that a worker is under his or her employer's direction and

supervision. (Kazuo Sugeno, translated by Leo Kanowitz, Japanese Employment and Labor Law, 273, University of Tokyo Press, 2002.)

This decision similarly defines the working hours in the Labor Standards Law, "time that the employee is placed under the direction and supervision of the employer". Although such a definition is sometimes criticized as too abstract, this standard of "employer's direction and supervision" may fit in distinguishing "rest periods" and "working hours". Also, this definition follows that of the Mitsubishi Heavy Industries, Ltd. Case, which held that the time spent for wearing uniforms and protective gear constituted working hours under the Labor Standards Law.

Next, this court holds that the nap time, even when the employee is not engaged in actual work, constitutes working hours by the reason that the employee is not released from the employer's direction and supervision when he/she is not guaranteed to be free from work during such hours. This is also consistent with the existing discussions on stand-by time.

> Certainly, there are problems about the propriety of treating such sleep time the same as working time. Under the current Labor Standards Law, however, the gray zone between working hours and rest periods has not been acknowledged. It provides that when there would be no release from work during the latter time (i.e., nap time), they would still be working time. (Sugeno, id. at 275.)

As the actual working hours in this case are relatively short as compared to the controlled hours, which is the combination of working hours and rest periods, it may be said that the employees in this case are engaged in intermittent labor, which is prescribed in Art. 41 para. 3 of Labor Standards Law. However, because Y did not obtained approval from the administrative office, the exemption defined in this paragraph shall not be applicable to Y.

Another discussion point of this case is how to compensate for the nap time which is regarded as working hours. The Supreme Court upheld the High Court's decision that Y is not obligated to pay wages prescribed in the labor agreements. Then, because of no provision of the extra pay prescribed in Art. 37 of the Labor Standards Law, the employees shall claim for the payment according to Art. 13 of the law. Since this is an

ipso jure claim, it is necessary to calculate the amount accurately. The reversal of High Court's decision, which includes an incorrect definition of the calculation base, is a matter of course.

Later, on Feb. 24, 2003, Y agreed to pay around 2.9 million yen as claimed by Xs, and this case was settled.

9. International Law

Hiroshima High Court, September 20, 2002

Case concerning a refugee who illegally entered Japan from Afghanistan

1814 HANREI JIHO 161

Reference:

(1) Immigration Control and Refugee Recognition Act, 1951 (ICRRA); (2) Convention Relating to the Status of Refugees, 1951 (Refugee Convention).

Facts:

According to the findings of the original court, the Hiroshima District Court, the accused is an Afghan belonging to the Hazara minority. In the early 1990s, he was active as a member of a Shiite Islamic political party in Kabul, including participation in military activities against the Taliban and Tajik groups. After the latter groups expanded their control over Kabul, he escaped to Pakistan in 1995 and moved to the United Arab Emirates (UAE) in 1997. There he started a trading business and visited Japan legally for business eight times between 1995 and 2000. In 1998 the Taliban captured Mazar-i-Sharif, where his family lived, and killed many Hazara people. In 2001 he returned to Afghanistan to meet his family, and found out that the Taliban had arrested his father in lieu of himself. He then decided to seek asylum in Japan. He left the UAR on May 30 and entered Japan on June 10 with a forged passport via Hong Kong and the Republic of Korea.