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Japanese Employment Practice: Limits On When An Employer Can Transfer An Employee To Another Job Responsibility

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Japanese employment practice is generally focused on cross-training across various sections of a company. This is done without reference to an employee's specific skill development in the belief that, to be a good manager, the employee needs a wide range of experiences within the company. Thus, most Japanese employment agreements do not include a job description. The company also has the authority to assign an employee to various job assignments, including different work locations and responsibilities, without the need to secure the employee's consent. Such a model is often referred to as the "membership model" of employment, contrasted with the "job-description model." For a discussion of these models, please refer [here](#).

In recent years, however, courts have put more emphasis on employees expectations to develop special skills within the company. This is true even where the company engages employees pursuant to employment agreements without job descriptions.

New Developments

A significant new case on this issue involves an employee hired to perform transportation scheduling of goods and coordinating truck dispatch based on his national qualification. [Nagoya High Court](#), January 20, 2021, Jurist 1556-4. The employee had eight years of experience as a transportation specialist prior to accepting a job with the company. His employment agreement had no job description, but the company was aware of his work experience. After one year and seven months, the company moved him to a different assignment in a warehouse, claiming his work style created operational issues with the transportation administration. The employee sued for reinstatement based on abuse of employer's rights.

The court observed the following in ruling in favor of the employee:

1. There is no agreement binding the company to assign the employee only to transportation-related positions. However, under the law, his expectation to be assigned to such responsibility should be respected.
2. The company had only weak reasons to transfer him to the warehouse. The problems that the employee developed with the transportation section were multi-faceted, and many were not results of his own doing, for which he should not be held responsible.

3. The company shows no record of examining the possibility of running transportation-related tasks from other sections, even assuming there was a genuine need to fill different positions.
4. While the employee suffered no economic detriment by the transfer, his expectation for growing his expertise was breached. In addition, he now has responsibilities for developing business in his new position and physical demands for moving products in the warehouse. These tasks come with additional burdens.
5. In light of these circumstances, particularly the weak reasons exhibited by the company to transfer him to the warehouse, the order to do so is found to be an abuse of management rights.

Significance

Abuse of managerial rights in the transfer of job responsibility was addressed by the Supreme Court July 14, 1986, Rohan 477-6 as the leading case. There are three criteria to see if abuse existed: (a) absence of operational needs for the transfer; (b) inappropriate nature of purpose/motive; and (c) detriment suffered by the employee. Until recently, the central issue was the transfer to an unexpected work location, often involving health conditions of the employee or his/her family member.

However, since about 2010, the issue of skill-building has appeared as a significant consideration in lawsuits. Initially, it was a highly technical skill set that was reviewed and addressed: a system engineer, an assistant professor, and a surgeon. These cases generally found in favor of the employee, citing the expectation of the employee to contribute in a way that he/she is well trained to do. To place them in a position that has no relation to such training would be abusive compared with assigning them to a well-suited task.

Now courts take a step further to lower the level of skill set required. While courts generally do not go into details, the ulterior motive in the transfer usually plays a major role in the review. In this case, several operational issues arose in the employee's transportation-related responsibility, however the court disposed of them citing exterior circumstances. The period of his specialist position was also short, i.e., less than two years. Finally, no job description existed that bound the company to keep him in a certain function, but despite such circumstances, the court held that his expectation of being a specialist had to be given weight.

Takeaway:

It is no longer possible for the employer to transfer an employee liberally in a situation similar to this case when a legitimate expectation to develop skills is justified.

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