

An Essay on the Dismissal Regulation in Japan

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1. Introduction (1)

- Basic Research Question
 - Does the Japanese dismissal regulation impede the economic activity ?

1. Introduction (2)

- It is difficult to answer
 - Seemingly contradict casual observations
 - Mass layoffs have often occurred since 1997 without changing legal regulation about dismissal.
 - Journalists and newspapers (some economists too) recognize it is not easy for employers to discharge their workers.
 - No data

1. Introduction (3)

- That research question is our final goal, but...
- Before the research
 - It is necessary to grasp how the regulation works in the actual economy.
 - It is not mere 'firing tax' like Europe...

1. Introduction (4)

- The Japanese legal environment of labor market
 - Statute laws
 - Regulate minimum level of labor conditions
 - Labor Standard Act etc.
 - Case laws
 - the procedure of concluding, changing and terminating labor contract
 - The Doctrine of Abusive Dismissal

1. Introduction (5)

- Regulation of dismissal depends on case laws
 - The Doctrine of Abusive Dismissal
- How do we recognize the economic mechanism behind the case law?
 - Firing tax ?
 - Social norm: As long as they obey the social norm, employers shall adjust the number of workers without any additional payment. In this respect the Doctrine forces an additional cost not in any case but in some case.

1. Introduction (6)

- I will **anecdotally** show
 - How the Doctrine has been constructed.
 - What was the role in actual disputes.
 - This is the purpose of this essay.

2. The Doctrine of Abusive Dismissal (1)

- Statute law regulations about dismissal
 - The Civil Code Article 627
 - only the time-relating pre-dismissal procedure
 - symmetry between the termination by employer (dismissal) and that by employee (resign).
 - Freedom of dismissal
 - Labor Standard Act, etc
 - Protect workers who are in specific states temporarily (job-related illness, maternity, union activity and so on)
 - do not provide a general dismissal rule.

2. The Doctrine of Abusive Dismissal (2)

- Case law regulations about dismissal
 - ‘Normal Dismissal’ (workers are responsible for dismissal)
 - “even when an employer exercises its right of dismissal, it will be void as an abuse of the right if it is not based on objectively reasonable grounds so that it cannot receive general social approval as a proper act.” (in 1975, 1977)
 - Even if the worker is responsible for his own dismissal, the exercise of terminating contract by employers must satisfy additional conditions; that is ‘objectively reasonable and socially appropriate.’

2. The Doctrine of Abusive Dismissal (3)

- 'Economic Dismissal' (no-fault dismissal, layoffs)
 - Four standards to explain 'objectively reasonable and socially appropriate' more concretely. (in 1979)
 - (1) The employer must reasonably explain the necessity of reducing the number of workers to courts.
 - (2) The dismissal must be the last resort to adjust labor inputs.
 - (3) The selection of the persons to be discharged should be proper.
 - (4) The procedure of dismissals should be reasonable.

2. The Doctrine of Abusive Dismissal (4)

- Four Standards are more concrete but still ambiguous
 - For example, (2) standard.
 - How the courts admit 'solicitation of voluntary retirements' as (2) standard.
 - This is a typical method to avoid layoffs.
 - 54 layoffs cases between 1975 and 1984.
 - 16/54 rejected by courts because of (2) standard
 - 8/16: actually solicited voluntary retirements
 - 34/54 did not ask voluntary retirements
 - 15/34: pass (2) standard

2. The Doctrine of Abusive Dismissal (5)

- Ambiguous case law
 - How do ambiguous standards actually work?
 - apparently not a way of tax
- How the cases were actually resolved under the Doctrine?
 - Investigate the contents of actual conflict which produced these case laws.

2. Truth of leading cases (1)

- *Nihon Shokuen Seizo Co. (1975)*
 - The union expelled a worker because of a serious political antagonism.
 - There was a union-shop agreement.
 - The employer dismissed the expelled worker.
 - The courts admitted *the exile from the union* was unfair; therefore, the discharge based on an unfair exile should have been void.

2. Truth of leading cases (2)

- *Kochi Hosono Co. (1977)*
 - A radio announcer missed the news twice within two weeks.
 - The employer dismissed the worker.
 - The courts investigated the other officer who was also responsible but late for the news as well as past cases in the same broadcast.
 - This was the only case in which a worker was dismissed.
 - The courts judged this dismissal was not fair because there was no reason why only the plaintiff should have been discharged compared with other workers.

2. Truth of leading cases (3)

- *Toyo Sanso Co. (1979)*
 - A factory closure of gas industry (because of technological progress).
 - Almost all of the workers who belonged to the factory were discharged.
 - Dismissals are void (the Tokyo District Court)
 - Dismissals are effective (the Tokyo High Court)
 - Dismissals are effective (the Supreme Court)
 - Reconciliation by void dismissals and returning to positions of 6 plaintiffs.

2. Truth of leading cases (4)

- Why the court decision was useless to lead their reconciliation?
 - Revealed by our interviews
 - The main point of this conflict was the split of the union.
 - Because of the union-shop agreement, the minority could not exit the union. (The minority group did not have direct contact with employers)
 - The closed factory was the base of minority group.
 - The minority group thought the purpose of closure was to expel the minority group out of the firm...
 - The court failed to grasp it.

2. Truth of leading cases (5)

- The main conflict of these three cases are
 - “Fairness within firms”
 - behind them, there were political conflicts within the workers.
- When the dismissal can be understood to expel a particular political group (individual) out of the company, this discharge seems to have been “unfair.”
- Behind the legally crystallized Doctrine, the courts may have guided to minimize this kind of misunderstanding.

3. Industrial Relations behind the Cases

- Again 54 layoff cases between 1975 and 1984
 - Average 8.7 plaintiffs per case
 - single-plaintiff case: 39% (21/54)
 - Claim of unfair labor practice: 52% (28/54)
- 55 layoff cases between 2000 and 2004 at the Tokyo District Court
 - Average 2.1 plaintiffs per case
 - single-plaintiff case: 67% (37/55)
 - Claim of unfair labor practice: 15% (8/54)
- The cases during 1970s and 1980s (the growing era of the Doctrine) were substantially collective conflicts.
 - The Doctrine took such a role as resolve the collective conflicts.

4. Curious Cases in the recent Tokyo District Court

- Between 1998 and 2000 the Tokyo District Court had decided several dismissal cases.
- The judgment documents of these seem to have left from the traditional interpretation of the Doctrine of Abusive Dismissal.
- Corresponded with the change of circumstances (from collective conflict to individual conflict)?

5. Legislation of the doctrine (1)

- The Doctrine was legislated as the new Article 18-2 of Labor Standard Act in 2004 (now moved to the Article 16 of Labor Contract Act in 2008).

“A dismissal shall, where the dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as a misuse of that right and invalid.”

5. Legislation of the doctrine (2)

- During the deliberation of Diet, the government confirms that the new article did not alter any practice of case law.
- This discussion could affect the judgment of Tokyo District Court.
 - As matter of fact we cannot find any such curious cases after the discussion of amendment.

6. Summary (1)

- The Japanese regulation of dismissal depends on case laws such as the Doctrine of Abusive Dismissal.
- The Doctrine has come from the collective conflict cases.
 - This is why it is difficult to recognize the firing cost in Japan.

6. Summary (2)

[Discussion 1]

- If there was the cooperative relationship between union and firm, the employer does not have to incur the additional dismissal cost?
 - Of course it is costly to maintain the cooperative relationship, it may be also productive.

[Discussion 2]

- The Doctrine can correspond to the change of circumstances: from the collective conflict to the individual?
 - The capability of union to govern individual conflicts is not so high.
 - The courts may be fixed by the new Article 18-2 of Labor Standard Act.