

Ruling on Withdrawal of Refusal of Enrollment in Social Insurance (*Shakai Hoken*) (translation of abstract)

Judgment Rendered Mar. 20, Heisei 27 (2015).

[Gyo.U.#70] Claim for Cancellation of decision, etc. Heisei 24 (2012)

Plaintiff: S. Andrew. Plaintiff counsel: Nakajima Mitsutaka, Attorney at Law.
Defendants: Disposition authority=Japan Pension Service; National Gov't. (Minister of Justice); Social Insurance Examination Committee

Judgment Text

1. Defendant the Japan Pension Service will withdraw their disposition of Aug. 10, Heisei 22 (2010), to the effect of dismissing the plaintiff's request for confirmation of qualification for coverage by Welfare Pension Insurance (*Kosei Nenkin Hoken*) and Health Insurance (*Kenko Hoken*).
2. Defendant the Japan Pension Service must confirm that the plaintiff was insured under Welfare Pension Insurance and Health Insurance from Apr. 6, Heisei 21(2009), to Mar. 26, Heisei 22(2010).
3. Of the claims made in this case, those dealing with petitions against defendant the National Government are dismissed.

Court's Decision

(underlined subheadings are the union's wording)

The dispatch company's "29.5 hours a week" is a lie to get out of paying insurance.

Schools also deliberately ordered long hours of unpaid work

- Interac, entrusted by Tokai City with Assistant English Teaching work, signed an employment contract with the plaintiff and assigned him to work at Kagiyaaminami Elementary School. This labor contract fixed the hours of work at 29.5 hours per week: Monday through Friday, from 8 A.M. Until 5 P.M. excepting lunchtime and breaks, for a total of 5.9 hours per day. However, the hours actually worked by the plaintiff based on this labor contract were longer than this.

- The plaintiff, when placed by Interac at the school in question, was told by this school's principal to arrive by 8:20 so as to participate in Morning Assembly. Therefore, he arrived at work at 8:20. At Morning Assembly, the school's Curriculum Coordinator Kako gave an explanation of the day's plans and events.
- As soon as the plaintiff arrived at the elementary school and sat down at the desk in the Teachers' Room, he checked the flashcards and copies that were to be used in lessons.
- The plaintiff carried out his lessons in the International Room, which was in the same building as the Teachers' Room. Moving from the Teachers' Room to the International Room took him approximately 10 minutes, as he was stopped and talked to by other teachers and students on the way. In the International Room, he arranged the materials needed for the lesson, and arrived before the start of lessons. Between lessons, the plaintiff did tasks such as erasing the blackboard and organizing flashcards. When there was time before the next lesson, he went back to the Teachers' Room and prepared for the next class.
- During his lunch hour of 12:25 P.M. To 1:15 P.M., the plaintiff received his boxed lunch in the Teachers' Room, went to his assigned classroom, and conversed with the teacher in charge and with students while eating his lunch.
- After lunch, from 1:15 P.M. Until 1:50 P.M. the plaintiff cleaned the International Room together with the second-grade students. He had started doing this on orders from Curriculum Coordinator Kako. He continued to do so after signing a labor contract with Interac and being assigned to the school in question. When he was unable to finish the cleaning in this time, he sometimes had to continue cleaning in the time allotted for lesson preparation.
- The plaintiff was told by the principal of the school to remain at school until 4:30 P.M. Therefore, he stayed until 4:30 P.M. to prepare lessons for the next day or the next week, and to discuss lesson plans with the teachers in charge.

When the General Union exposed their fake outsourcing, they began maneuvering to circumvent the law. "No need to meet with teachers or go to Morning Assembly"?

- On October 19, Heisei 21 (2009), the plaintiff, along with other members of the labor union to which he belongs, visited the Aichi Labor Department to file a report claiming that the outsourcing contract in question was "fake outsourcing", a violation of the Worker Dispatch Law. In response, on the 22nd of the same month, he was directed by the person in charge at Interac to take part in a meeting to be held in a conference room near Owari Yokosuka Station.

- Furthermore, on the 29th of that same month, when the plaintiff arrived to work at the elementary school in question, there was a fax from Interac on his desk. This message said “You may not meet to plan with the school teachers. Do not attend Morning Assembly”, etc.
- While the plaintiff was at the school, he had no time when there was nothing to do. There was not even time to take a rest. He was at work from Monday through Friday, from 8:30 A.M. to 4:30 P.M.
- Regarding the length of time the plaintiff was engaged in work, since there was no supervision by time-card, there is no objective evidence to back up this claim. However, it is admitted that every time the plaintiff came to work, the duties performed that day were recorded on a Work Report form; and that the school’s Vice-Principal Morita and others checked this report each month and stamped their seal on it. In addition to “lessons”, this form also included “preparation” and “other activities”. In any case, there is a record that the plaintiff remained at school from the first period until past the sixth period.
- The contents of the plaintiff’s statement mentioned above are specific and detailed. During the examination of witnesses, his testimony remained constant and unwavering through cross-examination by the defendant, Japan Pension Service. No unnatural or unreasonable points can be found in it. Therefore we must say that its credibility is high.

District Court acknowledges 7-8 hours a day, 35-40 hours a week. National Government evades responsibility, saying “demand overtime pay from the company”

- In response to this, defendant the Japan Pension Service asserts that “if he was working longer hours than those specified in the labor contract, it would be only natural for him to request overtime allowances or demand a change to the contents of the contract. Yet he has taken no such action. This is not natural.” But there is nothing unnatural about the plaintiff’s statement that “there was no rule about overtime pay in the contract” and so “I thought even if I requested overtime pay, they wouldn’t pay it”.
- Interac was meant to notify Tokai City of the times of starting and ending work, after coordinating with them. But there is no evidence to indicate that Interac ever notified Tokai City about a starting or ending time, nor can any particular reason be found for this. To the plaintiff himself, too, Interac actually sent only an “SL Plan” listing which lessons he would be teaching, etc., and did nothing to supervise his starting and finishing times. Defendant the Japan Pension Service does not dispute

this.

- It can be seen that what time to have the plaintiff start and finish work, and in what way he should perform his duties, were left to the judgment of the school's principal; and that said judgment was given tacit approval.
- Based on the above, we cannot accept the aforementioned argument made by defendant the Japan Pension Service. The plaintiff's working hours under the labor contract in question were basically from Monday through Friday, starting at 8:30 A.M. (before the fax was sent on October 29, Heisei 21(2009), at 8:20 A.M.) and finishing at 4:30 P.M., for a total of eight hours a day, 40 hours per week. Even if the appropriate rest time is taken into consideration, the total is easily at least seven hours a day, or about 35 hours per week.
- Additionally, defendant the Japan Pension Service makes the claim that "The contract in question is for 5.9 hours a day. It is fixed at 29.5 hours a week, and the plaintiff was aware of this". But the working hours of the plaintiff should be determined by the objective hours actually spent in performing the labor based on the labor contract, and not directly affected by the provisions of the contract itself, nor by the plaintiff's subjective awareness of them. This assertion by defendant the Japan Pension Service, like the previous one, cannot be accepted.

Exceptions from insurance enrollment are limited by the Employees' Pension Law and the Health Insurance Law (see below). Other contracts qualify for insurance.

- Employees' Insurance Law, Article 9, states that "those under 70 years old employed at applicable workplaces will be covered". On the other hand, Article 12 of the same law states that those that come under any of the following shall NOT be covered by Employees' Pension Insurance:

-Exceptions from enrollment under the Employees' Pension Law and Health Insurance Law:

- ◆ Those who are employed temporarily, and hired day by day (except for those employed continuously for more than one month),
- ◆ Those employed for a fixed period of less than two months (except for those who continue in employment beyond the specified period)
- ◆ Those employed in seasonal work (except for those employed continuously for more than four months)
- ◆ Those employed at workplaces for temporary projects (except for those employed continuously for more than six months)

- Also, the Health Insurance Law, Article 3, states that “the insured shall be those employed at applicable workplaces”. Apart from the case of specially-insured day laborers, it indicates the same persons as Article 12 of the Pension Law.

Length of working hours as a criterion to qualify for enrollment--right or wrong? There is NO law or explicitly-stated rule

- As to who qualifies to be covered under the Employees’ Pension Law and the Health Insurance Law, the laws themselves state, as noted above, that it is anyone employed at applicable workplaces. here is no clear regulation stating whether one can be insured under the Employees’ Pension Law or Health Insurance Law based on one’s working hours.
- Insurance premiums are set at the number obtained by multiplying the standard remuneration by the premium rate. It is difficult to interpret the Employees’ Pension Law and Health Insurance Law as intending to cover those who do not receive enough remuneration to be able to pay such premiums. It cannot be said, then, not to permit the interpretation that it does not include those short-time workers who do not reach an amount of remuneration appropriate to enable them to pay the indicated premium.
- Whereas defendant the Japan Pension Service, taking the Showa 55 (1980) memorandum (which states “workers whose number of hours worked per day or week, or number of days worked per month, are three-fourths or more of those of regular workers performing the same type of tasks at the same workplace shall in principle be considered covered by Employees’ Pension Insurance and Health Insurance”) to be reasonable and in accord with this interpretation of the Health Insurance Law and the Pension Law, has claimed that the plaintiff does not fulfill the conditions of this Showa 55 (1980) memorandum, and therefore is not covered.
- However, the plaintiff’s working hours under the labor contract in question were over seven hours per day, or 35 hours per week. Compared with statutory working hours as per the Labor Standards Law, Article 32, this can be recognized as well over three-fourths. Even judging by the Showa 55 (1980) memorandum, therefore, the plaintiff’s certification as covered by Employees’ Health and Pension Insurance is not affected.
- Accordingly, without debating the justice of the standards in the Showa 55 (1980) memorandum, we reject the claim of defendant the Japan Pension Service that the plaintiff was not eligible for coverage.

(Small Print) The dismissal in this case, as it denied that the plaintiff was covered by

insurance, must be ruled illegal.

(Obligation)

If the case is interpreted as an application-type mandamus action as specified in the Administrative Litigation Law, Article 3, Section 6, Paragraph 2, then as stated above, the decision to dismiss the confirmation request in this case was against the law and must be overturned. The obligations in this case therefore correspond to these conditions. Defendant the Japan Pension Service is hereby ordered to recognize the plaintiff as covered by Employees' Pension Insurance.

(Claims against defendant the National Government)

In a suit seeking the overturning of a ruling regarding a particular proceeding, the ultimate purpose is considered to be the overturning of this proceeding. As stated above, the plaintiff's request for dismissal in this case must be accepted. Therefore legal interest to sue for reexamination of the case must be interpreted as being lost.

Accordingly, of the suits made in this case, those parts dealing with claims against defendant the National Government are lacking in benefit of suit, and must be ruled unlawful.

Tokyo District Courts, Civil Branch 3

Judges: Kannai Hisashi Fukuto Hiroki Kawasaki Tomomasa