

Case Law Introduction

~A Case Where a Mid-Career Job Offer Was Revoked Due to False Educational and Career Background~

November 18, 2025

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1 Overview

The court ruled that the revocation of a job offer for a mid-career hire was valid where the company discovered that the prospective employee had provided false career information during the recruitment process (Tokyo District Court, July 18, 2024, Labor Case Reports No. 1333, p. 63; hereinafter referred to as "the Subject Case"). The Tokyo High Court also upheld the judgment of the Subject Case (Tokyo High Court, December 17, 2024, Labor Case Reports No. 1333, p. 58). While there are various theories regarding the legal nature of a tentative job offer (we will not discuss the theoretical debates here), the prevailing view in current practice, known as the "deferred commencement with reserved right of cancellation theory," holds that a tentative job offer creates an employment contract between the prospective employee and the company, but this contract is subject to a deferred commencement date and includes a reserved right of cancellation (see Dai Nippon Printing Case - Supreme Court Second Petty Bench, July 20, 1979, Civil Cases Reports Vol. 33, No. 5, p. 582; Nippon Telegraph and Telephone Public Corporation Kinki Telecommunications Bureau Case - Supreme Court Second Petty Bench, May 30, 1980, Civil Cases Reports Vol. 34, No. 3, p. 464).

However, the permissibility of exercising this reserved right of cancellation has been an issue, and courts tend to take a strict attitude toward companies' revocation of job offers (Kazuo Sugeno and Ryuichi Yamakawa, "Labor Law" [13th Edition], p. 267; Optoelectronics Case - Tokyo District Court, June 23, 2004, Labor Case Reports No. 877, p. 13; Dream Exchange Case - Tokyo District Court, August 7, 2019, Labor Economy Express No. 2405, p. 13). Indeed, in the Dai Nippon Printing Case, which concerned the revocation of a job offer for a new graduate, the court established a strict framework for the exercise of the reserved right of cancellation.

The Subject Case is noteworthy in that this strict framework also applies to the revocation of job offers for mid-career hires, yet nevertheless finds the revocation of the job offer to be valid. In today's environment where labor market mobility is increasing and mid-career hiring is on the rise, It is crucial for both employers and employees to understand the circumstances in which a mid-career job offer can be revoked.

This article first examines the facts and reasoning of the Subject Case, followed by our analysis of its implications..

2 Overview and Reasoning of the Subject Case

2.1 Background Leading to the Lawsuit

2.1.1 The defendant is a consulting firm. In early 2022, the plaintiff applied for mid-career employment with the defendant by submitting a resume and a career history statement. In the resume, the plaintiff stated that he had been consistently working as a sole proprietor since April 2011, and in the career history statement, the plaintiff also declared, on the premise of being a sole proprietor, that they had been working without any gaps in their employment history until March 2022.

2.1.2 After two interviews, the defendant decided to hire the plaintiff and, on May 30, 2022, sent the plaintiff an offer letter (hereinafter "the Offer Letter") and an employment contract (hereinafter "the Employment Contract"), which the plaintiff accepted, resulting in a tentative job offer. However, the Offer Letter stated: "Please note that this offer and your employment are conditional upon your satisfaction of the 'Conditions' set forth in the employment contract (including but not limited to pre-employment screening (i.e., background check), pre-employment medical examination, and prohibition of bringing or using confidential or material information from third parties to the Company)." Additionally, the Employment Contract stipulated as one of the conditions for offer withdrawal: "Full cooperation with the Company's standard background check and successful completion of such background check without issue" (Article 4 of the Employment Contract).

2.1.3 After the tentative job offer, when the defendant conducted a background check, it discovered employment relationships that the plaintiff had not disclosed: employment with Company G (June 2021 to November 2021) and Company H (March 2022) during the most recent year, as well as a gap in employment history (December 2021 to February 2022).

It should be noted that the plaintiff had been involved in disputes with Company G and Company H regarding the termination of these employment relationships.

2.1.4 On August 30, 2022, the defendant revoked the plaintiff's job offer on the grounds that the plaintiff had intentionally made false declarations and failed to meet ㇏ the high level of compliance awareness required by the defendant.

2.2 Reasoning of the Subject Case

The Subject Case, with respect to the validity of the job offer revocation, referred to the Dai Nippon Printing Case and the Nippon Telegraph and Telephone Public Corporation Kinki Telecommunications Bureau Case, established a framework for judgment, examined relevant factors in light of the facts, and ultimately concluded that the revocation of the job offer was valid.

2.2.1 Framework for Judgment

(Assuming that an employment contract was formed between the plaintiff and the defendant through the tentative job offer), it is reasonable to interpret that during the tentative job offer period, the parties agreed to conduct a background check including career verification, and as one form of failing to satisfy the conditions set forth in Article 4 of the Employment Contract, if such background check reveals that the plaintiff made false statements in the resume and other documents submitted to the defendant and concealed the truth by falsifying their career history, the defendant retained the right to cancel the employment contract on



this basis.

However, considering that even in the context of mid-career hiring as in this case, it remains true that employers generally hold a superior position over individual workers when entering into employment contracts, and that those who receive tentative job offers abandon opportunities and possibilities of employment with other companies in expectation of continuing an employment relationship with the relevant company, the exercise of such right of cancellation should be limited to facts that could not be known and could not be expected to be known at the time of the tentative job offer, and which can be objectively and rationally recognized as reasonable grounds for revoking the job offer in light of the purpose of the reserved right of cancellation, and which can be deemed socially acceptable and justifiable. Therefore, in this case, it should be interpreted that the exercise of the right of cancellation is valid only when, through a background check including career verification, not merely has it been discovered that the plaintiff made false statements in the resume and other documents or concealed the truth, but as a result thereof, the employer objectively and rationally misunderstood the quality and ability of the workforce (sic), which may cause disruption to the maintenance of corporate order, or when such a degree of wrongfulness is recognized that the plaintiff lacks the character to maintain smooth human relationships and mutual trust relationships necessary for corporate operations, making it impossible to retain the plaintiff in the company.

2.2.2 Application to the Present Case

2.2.2.1 Matters Falsely Declared

The matters falsely declared by the plaintiff were about career history, which is essential for judging a worker's job competency and qualifications. The reason why employers require workers to declare their career history when hiring them is to accurately assess the worker's job competency and qualifications as an employee based on the declared career history. For this reason, when the defendant requested the submission of the resume and career history statement, it can be inferred that the defendant sought confirmation of a disclaimer stating, "All information contained in the submitted documents is accurate, and there are no false statements or hidden facts that could lead to misjudgment in the hiring screening process." Given that the plaintiff responded "Yes" to the disclaimer and submitted the resume and career history statement, the plaintiff should have recorded the truth in good faith. Nevertheless, the plaintiff did not record the existence of employment relationships with Company G and Company H in the resume and career history statement, and made false declarations, which must be considered an act of breach of trust.

2.2.2.2 Motivation for False Declaration

With respect to the degree of breach of trust, examining the plaintiff's motivation for not recording the true career history in the resume and career history statement, ... it can be inferred that the plaintiff did not truthfully declare the employment relationships with Company G and Company H and the gap in employment history between these companies precisely because the plaintiff considered that if these employment histories were recorded in the resume and career history statement, it might become apparent that disputes had arisen with these companies regarding the termination of employment relationships, which would work disadvantageously for the plaintiff's hiring. In light of this motivation, the plaintiff's



degree of breach of trust is high.

2.2.2.3 Matters Concealed

In light of these falsely declared matters and motivations, it is appropriate to recognize that the matters concealed by the plaintiff through false declarations in the resume and career history statement were not merely the facts of employment relationships with Company G and Company H themselves, but the existence of disputes with these companies regarding the termination of employment relationships (it should be noted that the existence of disputes with these companies was first revealed to the defendant during an interview conducted based on the background check, before the revocation of the tentative job offer). Given that the nature of the disputes between Company G and Company H and the plaintiff was as described above, and that both companies terminated their employment relationships with the plaintiff based on their recognition that there were grounds attributable to the plaintiff, these facts, regardless of their legal validity, could have been important matters related to the plaintiff's qualifications as an employee for the defendant's decision on whether to hire the plaintiff.

2.2.2.4 Method and Manner of False Declaration

The plaintiff's conduct should be characterized as intentional career falsification, and it can be inferred that, based on the above-mentioned motivation, the plaintiff attempted to prevent the concealed facts from being discovered. Such manner of falsification is wrongful.

2.2.3 Conclusion

The plaintiff made false statements in the resume and career history statement, and the defendant could not have known the fact at the time of the tentative job offer. Considering the plaintiff's motivation for making false declarations, the matters concealed, and the method and manner of concealment, it is recognized that the plaintiff lacks the character to maintain smooth mutual trust relationships necessary for the defendant's operations, and that there is such a degree of wrongfulness that makes it impossible to retain the plaintiff in the company. Therefore, the revocation of the tentative job offer can be objectively and rationally recognized as reasonable and can be deemed socially acceptable and justifiable.

3 Analysis

While the Subject Case ultimately found the revocation of the mid-career job offer to be valid, in establishing its framework for judgment, the court clarified that the strict judgment framework from previous case law concerning the revocation of job offers for new graduates also applies to mid-career hiring, and showed a strict standard of judgment. The court did not apply a lenient standard to the revocation of mid-career job offers.

Nevertheless, the revocation of the job offer was found to be valid because the court found that the plaintiff's career falsification was not merely a factual error or minor clerical mistake, but involved "such a degree of wrongfulness that makes it impossible to retain the plaintiff in the company."

The Subject Case considered factors such as (i) the matters falsely declared, (ii) the motivation for false declaration, (iii) the matters concealed by false declaration, and (iv) the method and manner of false declaration in determining wrongfulness. The court judged the plaintiff harshly on each of these considerations, but given the facts as found, we believe the court's judgment is appropriate.

While it remains necessary to monitor future case law developments to determine whether the judgment criteria and considerations shown in the Subject Case will be generalized to similar cases, at least at this stage, when considering revoking a job offer based on career falsification, it appears necessary to keep these considerations in mind.


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