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Introduction of Case Law

~A case where Article 19, item (ii) of the Labor Contract Act was applied by analogy to a worker employed on a daily basis~

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One Asia Lawyers Group Tokyo Office
Bakuto Yamamoto, Lawyer (Japan)
Yugo Kusu, Lawyer (Japan)

1 Overview

In a recent court decision (Osaka High Court, January 19, 2024, published in Rodo Hanrei No. 1327, p.13; hereinafter, the "Decision"), Article 19, item (ii) of the Labor Contract Act (the "Act") was applied by analogy to a day worker.

Article 19, item (ii) of the Act provides that “it is found that there are reasonable grounds upon which the said Worker expects the said fixed-term labor contract to be renewed when the said fixed-term labor contract expires”. Although this provision pertains to fixed-term labor contracts, the Decision is notable for analogically applying it to a worker employed on a daily basis, whose contracts, by nature, terminate upon the conclusion of each working day and generally do not envision renewal.

If the doctrine concerning refusal to renew employment applies, then the labor contract is deemed to have been renewed. Therefore, whether Article 19, item (ii) of the Act is applicable is highly significant. The Decision, which applied the article analogically, deserves attention for its potential impact on practice. Below is an outline and analysis of the case.

2 Case Background and Judicial Opinions

2.1 Circumstances Leading to Litigation

2.1.1 The plaintiff (appellant, hereinafter referred to as "X"), a man born in 1958, initially joined the defendant company (appellee, hereinafter "Company Y") as a full-time employee around summer 1992. Although there was a period of interruption, he re-entered into a labor contract on September 5, 1994, and worked until around 1999 delivering ready-mixed concrete to construction sites by mixer truck. Around 1999, due to financial difficulties, Company Y sought voluntary retirement and X applied for it, resigned on March 20, 1999, and received a retirement allowance.

2.1.2 After retirement, X continued to work under Company Y for 13 to 18 days a month, being prioritized over other daily workers. His working days were

determined by confirming X's availability the day before, and there was no obligation to work on specific days. Wages were paid in cash at the end of each working day, and X received Job Applicant Benefits for Insured Day Workers on non-working days.

2.1.3 On August 25, 2017, Company Y was administratively advised by the head of the Koka Public Employment Security Office(甲賀公共職業安定所長) that, given X's actual work conditions, he should be classified as a generally insured person rather than as a daily worker. Company Y requested X to work at other business locations to maintain eligibility for job-seeker benefits, but X refused. A labor union demanded that X be recognized as a regular employee and treated as a generally insured person. Company Y declined to recognize him as a regular employee but agreed to enroll him as a generally insured person and pay him a guidance allowance in addition to base pay, bringing his total monthly wages to nearly JPY 500,000.

2.1.4 In July 2018, following the arrest and prosecution of Company Y's representative, the company received a request from the Otsu Ready-Mixed Concrete Cooperative Association (大津生コンクリート協同組合) to suspend concrete deliveries for one month in December. On December 27, 2018, Company Y delivered a written notice and an employment insurance separation notice ("Notice") to X, stating: "We have been forced to suspend deliveries for one month from December 1, 2018," and "Future employment from January onward is uncertain, and continued employment as before is not possible." Company Y ceased requesting X to work thereafter.

2.2 X's Claims and the Judicial Findings

2.2.1 X's Claims:

X argued that the notice of dismissal or non-renewal issued by Company Y was invalid, and therefore sought the following relief and other related remedies:

① Confirmation of employment status under the labor contract.

② Payment of unpaid wages.

2.2.2 District Court Ruling (Otsu District Court, February 25, 2022, Rodo Hanrei No. 1327, p.28)

The District Court dismissed X's claims for the following reasons (summarized only with respect to Article 19, item (ii) of the Act; underlining added by the author):

It was recognized that the labor contract between X and Company Y was a daily labor contract, under which the worker provides labor for a single day, and the employer pays wages accordingly. Once the day's labor is completed, the employment contract itself is terminated. Therefore, Article 19 of the Act cannot be directly applied (at most, the analogical application of this provision may be considered).
(1) X previously worked as a regular employee of Company Y but retired in 1999 after receiving a retirement allowance. Thereafter, he worked based on the premise of a daily labor contract with Company Y.
(2) Company Y, in response to administrative guidance from the head of the Koka Public Employment Security Office, requested X to work at other business locations. However, X refused this request (thus, Company Y did not actively designate X as a generally insured person);
(3) At the time of the Notice, there was insufficient evidence to conclude that X would have had difficulty finding work at another business with employment conditions equivalent to or better than those at Company Y.
In light of these points, it cannot be said that there were circumstances giving rise to a reasonable expectation of continued employment.

2.2.3 High court ruling (Osaka High Court, Feb. 13, 2024, Rōdō Hanrei No. 1327, p. 15)

The high court partially upheld X's claims for unpaid wages and other compensation, for the following reasons (Only the portion regarding the application of Article 19, item (ii) of the Act is excerpted; underlining added by the author):

Even in cases of daily employment, where an employment relationship with a particular employer may in fact continue, there are days on which no hiring takes place. For that reason, it is not possible to recognize the existence of a continuous legal labor contract relationship through contract renewals. However, in the present case, the appellant worked under the appellee for at least approximately 13 days per month over a long period of time. In such circumstances, the existence of an expectation that work at a similar level would continue, and the necessity of protecting such expectation, are not different in nature from those in the case of the renewal of a fixed-term employment contract. Accordingly, it must be said that there is room to apply Article 19, item (ii) of Act by analogy to daily workers.

3 Analysis

3.1 There is a precedent, although the case predates the enactment of Article 19 of the Act, in which the doctrine concerning the refusal to renew fixed term labor contracts was applied to a daily-employed worker (Supreme Court Decision of May 16, 2005 [Case No. L06010239], hereinafter referred to as the "2005 Supreme Court Decision"). It should be noted that the judgment of the Tokyo High Court dated November 26, 2002 (published in Rōdō Hanrei No. 843, p. 20) is frequently cited in relation to this decision.

In this case, the issue was the non-renewal of a daily-employed banquet server (a hotel steward) who had worked under a daily employment arrangement for approximately 14 years. The court took into account the following factors: (i) the worker had continued in a daily employment relationship for a lengthy period of approximately 14 years; (ii) the worker had consistently worked five days a week since 1996 (the employer denied the existence of an employment contract after May 11, 1999); (iii) the worker had agreed to employment terms more favorable than those offered to other banquet servers; and (iv) at the time of non-renewal, it would have been difficult for the worker to find similar or better employment conditions as a steward at another hotel. Based on a comprehensive assessment of these circumstances, the court held that, in the employment relationship between the worker and the employer, a certain degree of continued employment was to be expected, and that the worker's expectation of continued employment deserved legal protection. Accordingly, the court found that the doctrine applicable to dismissals should be analogously applied to the non-renewal in this case, and that such non-renewal would not be permissible absent objectively reasonable grounds that would be considered appropriate under socially accepted norms and practices (This judgment was rendered by the court of second instance and the Supreme Court dismissed the final appeal.).

3.2 **<u>A comparison between the Decision and the 2005 Supreme Court Decision</u>**

	The Decision	2005 Supreme Court Decision
Duration of Employment	Approximately 19 years as a daily worker (from 1999 to 2018) Approximately 26 years in total including the period as a regular employee (from 1992 to 2018)	Approximately 14 years

Work Frequency	Continued to be engaged for approximately 13 to 18 days per month	Consistently working five days per week since 1996
Difference from Other Workers	The worker was given priority over other daily workers and continued working 13 to 18 days per month His total monthly wages reached nearly JPY 500,000 (indicating treatment comparable to that of a regular employee)	The worker had agreed to employment terms more favorable than those offered to other banquet servers
Possibility of Employment Elsewhere	At the time of the notice, the worker was already 60 years old, and it was reasonably expected that it would be difficult for him to secure a similar position at another workplace under equivalent conditions to those provided by the employer	It was found that, at the time of non-renewal, it would have been difficult for the worker to be employed as a steward at another hotel under conditions similar to or better than those provided by the employer

In light of the above, it can be said that there are many similarities between the Decision and the 2005 Supreme Court Decision.

In the first place, a government notice explaining the applicability requirements of Article 19, item (i) and item (ii) of the Act (Notice No. 2 of the Director-General of the Labor Standards Bureau, dated August 10, 2012: "Regarding the Enforcement of the Labor Contract Act," Section 5, 5, (2), (u)) states that whether the requirements under item (i) or item (ii) of Article 19 are met is to be determined, "as in past court precedents, by comprehensively considering such factors as the provisional or regular nature of the employment, the number of contract renewals, the total period of employment, the employer's management of contract periods, and whether the employer's words or conduct gave rise to an expectation of continued employment, based on the individual circumstances of each case." These factors are also those considered in the two aforementioned judicial decisions involving the non-renewal of daily-employed workers.

Furthermore, although the original judgment (Osaka District Court, February 25, 2022, published in Rōdō Hanrei No. 1327, p. 28) did not recognize the analogical application of Article 19, item (ii) of the Act, it differs from both the Decision and the 2005 Supreme Court Decision in that it found there was insufficient evidence to conclude that, at the time of the notice, the plaintiff would have had difficulty securing employment at another workplace under conditions equivalent to or better than those offered by the defendant. This suggests that the possibility of alternative employment may also constitute an important factor in such cases.

In addition, while the original judgment in the present case did not recognize the analogical application of Article 19, item (ii) of the Act, whereas the High Court did, one analysis [1]suggests that the divergence in the conclusions reached by the court of first instance and the appellate court stems from the fact that the District Court placed particular emphasis on the mere possibility that the daily-employed worker could have worked at another workplace, whereas the High Court, even assuming such a possibility, found that the existence of a reasonable expectation of continued employment could not be denied in light of the plaintiff's stable and continuous work history over a long period of time.

4 Conclusion

The above provides a brief overview of the present case, in which the analogical application of Article 19, item (ii) of the Act, was recognized.

Given the scarcity of judicial precedents acknowledging such analogical application, cases like the present one appear to be quite rare. The case is also noteworthy in that the court recognized the existence of daily employment involving a similar number of working days per month as before, even for a daily-employed worker.

Although the judgment in the present case may be considered a fact-specific decision based on particular circumstances, it is nonetheless significant in that it reflects a potential expansion in the scope of Article 19, item (ii). Accordingly, attention should be paid to this decision as well as to future developments in judicial practice.

[1] Rodo Hanrei No. 1327, p.13

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<Authors>

	Bakuto Yamamoto One Asia Lawyers Tokyo Office Lawyer (Japan) Bakuto Yamamoto registered himself as a lawyer in 2022 and joined OneAsia (Tokyo Office). Since joining the firm, Mr. Yamamoto has handled general corporate legal matters, focusing on labor law and financial law. Recently, he has been handling cases related to AI and WEB3 technology, as well as personal information management. bakuto.yamamoto@oneasia.legal
	Yugo Kusu One Asia Lawyers Tokyo Office Lawyer (Japan) Yugo Kusu is a member of the ONE ASIA LAWYERS Tokyo Office. He collaborates with lawyers from various jurisdictions to handle a diverse range of legal matters, both domestically and internationally, with a focus on corporate legal issues. He possesses HSK Level 6 certification and provides services in Japanese, English and Chinese. yugo.kusu@oneasia.legal