

Turning Point of Labor Dispute Related to Employment Adjustment: Personnel Management Policy and Labor Union Activities in One Dismissal Case

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ABSTRACT

This study is aimed at forming working hypotheses, through a case study on the Toyo Sanso case, analyzing and considering critical turning points in the prolonged large-scale dispute. Toyo sanso case is said to be a leading case of economic dismissal cases. The validity of the economic dismissal had been referred to a series of court cases for 14 years. As a result, 3 primary hypotheses were drawn: (1) For over 10 years since the dismissal, the management had shown little intent of avoiding disputes or seeking early settlement, (2) At the time of the dismissal, there were strong forces that pursued the personnel policy for labor-management cooperation the cost of long-term dispute outside the company, and (3) The forces were so strong that management shakeup was needed to end the dispute. In this case, the competency of the new management was a decisive factor in the resolution of the dispute. However, to minimize losses associated with labor disputes, it is far from enough to wait for the advent of competent management. Business administration must get in front of studies on measures to prevent and handle any disputes associated with employment adjustment by sorting out the problems of management function issues.

BACKGROUND AND PURPOSE

The purpose of this study is to make a preliminary discussion on critical turning points of one prolonged large-scale labor dispute about economic dismissal, which lasted for over 14 years including the trial period.

The author has studied actual litigation cases associated with employment adjustment. In the case studies, two problematic facts which need to be studied further were found:

- (1) Judgments or decisions of the court, which were so critical that they might influence subsequent trials, were far from actual settlement of each dispute in some cases. In quite a few cases, half of all dismissed workers were reinstated as an outcome of post-trial negotiation between both parties, despite court's decree of validity of the dismissal.
- (2) From the standpoint of dispute avoidance or minimizing damages, both parties, (employees and employers), often take irrational actions. For example, some employers did not make appropriate efforts in labor bargaining before trial, and many of them dismissed workers who chose to bring actions to the court with little chance of winning the lawsuit (or without such standpoint), despite their financial difficulties due to the economic dismissals.

Even when important and well-known legal judgments such as the high court decision for the Toyo Sanso case were received, quite a few parties pressed ahead with a full appeal and after all trials, many of them still continued bargaining. In other words, they make significant sacrifices for trials that might seem

to be unnecessary from the viewpoint of innocent bystanders and moreover, they spend enormous amounts of time to find resolution to the dispute aside from ongoing trials. Things they lose and social costs they pay through such disputes are too much.

Employment adjustments do not necessarily cause labor disputes and not all disputes are brought to the court. Where are the turning points that make disputes about employment adjustment to be prolonged and large-scale?

A number of studies are necessary to provide an appropriate conclusion of such a critical issue. Therefore, the goal of this study is narrowed down to make working hypotheses about managerial turning points in a prolonged large-scale dispute about employment adjustment. In concrete terms, as there are only few past studies on cases where a dispute about employment adjustment was brought to the court, the past studies of the author et al. are reviewed to clarify managerial turning points that made the disputes to be prolonged and large-scale as well as make a basis for future studies.

ANALYSIS SUBJECT

As a first step towards the above-mentioned purpose, the Toyo Sanso case was chosen as the analysis subject of this study. The judgment of Tokyo High Court in this case is well-known as a judgment that established the legal principle regarding economic dismissal, which is courts' decision framework. Legal principle for economic dismissal is a decision framework formed as a result of accumulated judicial precedents about validity of dismissal for economic reasons in local courts in the context of structural depressions due to the dollar shock in 1971 and the first oil shock in 1973. According to the legal principle for economic dismissal, dismissals are deemed abuse of the right of dismissal unless all of the following 4 requirements are fulfilled:

1. managerial necessity of workforce reductions
2. fulfillment of employer obligations to make every effort to avoid dismissal (e.g., discharging temporary workers, job rotation and/or *Shukko*(in Japanese) , recruitment of voluntary retirees) ,
3. rationality of selection of employee(s) to be dismissed, and
4. validity of dismissal procedures.

The author has also conducted studies on other cases that ended with judicial judgments critical in transition of labor laws at the time of establishment of this legal principle for economic dismissal. In addition, cases that were without critical judicial judgment but extensively covered and socially influential were also investigated (Kambayashi and Hirasawa 2008b). Further, case studies on economic dismissals whose disputes were ended around 2000 were also conducted (The Japan Institute for Labour Policy and Training 2005 and Hirasawa 2011). Of all subjects in these studies, only the Toyo Sanso case was selected as a subject of this study.

Comparison of all findings from these past case studies may, to some extent, imply factors of prolongation and escalation of disputes as a general trend. However, from my experiences in these case studies, the author assumes that factors implied in this way would be far from enough to contribute to discussions of the ideal future employment adjustment to minimize the losses and social costs of litigants.

The author believes that appropriate steps of a procedure for the above-mentioned purpose are: (1) narrowing down the subject to the Toyo Sanso case, which triggered the establishment of the legal principle for economic dismissal, and making a preliminary analysis, (2) analyzing other cases that ended around the time of the establishment of the legal principle for economic dismissal in another article, (3)

extending the analysis subjects to cases, which ended around 2000, over 20 years after the establishment of the legal principle for economic dismissal, and (4) comparing the cases by times.

In addition, turning points of prolongation and escalation of disputes may depend not only on the interested management side, but also on the interested labor side, in addition to external factors, such as dispute settlement authority, dispute settlement system, and socio-economic backgrounds of the time. However, this article is primarily dedicated to sorting out the possible turning points on the interested management side. One reason for this is the paper width.

However, there are the primary reasons for the focus on management side. First of all, the decisive and ultimate factor that determines the time and mode of dispute settlement is the litigants. Even if any judicial judgment, order or decision regarding dispute settlement is received from external dispute settlement authority, dispute resolution is not implemented without proactive actions of interested parties. The second reason for the focus on management, not labors, is that, employment adjustment is, in the nature of the action, conducted based on management decision. Nonetheless, there are only few discussions in the business administration field about appropriate decision making and proceedings regarding employment adjustment by management for minimizing losses due to employment adjustment. To be more accurate, the author has doubts about the fact that the business administration studies have hardly squarely addressed the major question: "what can business administration do to solve issues of employment adjustment?"

OVERVIEW OF THE TOYO SANZO CASE

The Toyo Sanso case is an economic dismissal case arising from a producer of industrial gases such as oxygen, nitrogen and acetylene in the chemical industry.

The following is the publicized outline of the case until the judgment of Tokyo High Court. Y in the following statement refers to Toyo Sanso while X refers to one of the dismissed workers (plaintiff).

Company Y, a producer and distributor of oxygen nitrogen and acetylene etc., suffered a cumulative deficit of 400 million JPY in the second half of FY 1969. The acetylene gas production department that had various issues, such as intensifying competition, price decline due to the emergence of petroleum fusing gas, and poor productivity, was the source of the deficit. Therefore, Company Y decided to close the acetylene department in Kawasaki Plant. And on July 24, 1970, the company announced dismissal of all employees of the department including X and other 12 employees for "unavoidable operational reasons" as stated in the employment regulation on August 15, 1970. Job transfer opportunities or voluntary retirement benefits were not offered. There was no so-called personnel affairs consent covenant in the work rules or collective agreements. In addition, X and other workers were members of Kawasaki Branch of the Japanese Federation of Synthetic Chemical industry Workers' Unions for Company Y (Morito1995, p.152).

This case took over 14 years from dismissal of 47 workers of the closed department (acetylene department) on August 15, 1970 to the settlement upon the recommendation of the Central Labor Relations Committee on December 26, 1984, as indicated below in chronological order. Generally, Labor Relations Committee is regarded as quasi-judicial institution. During this period, the dispute was referred to 5 judicial authorities.

Around October 1969: Company Y decided to get rid of the acetylene department

March 30, 1970: Company Y tried to sell the acetylene department and proposed new company formation but failed.

June 5, 1970:	The board of directors of Company Y decided to close the acetylene department.
July 16, 1970:	Company Y notified the union of closure of the acetylene department.
July 24, 1970:	Company Y gave all 47 employees of the acetylene department excluding manufacturing manager and section head dismissal notices.
August 15, 1970:	Company Y closed the acetylene department and the dismissal occurred.
April 19, 1976:	Tokyo District Court judged the dismissal invalid as provisional injunction for maintenance of the status quo. The company appealed the court ruling.
April 1977:	14 employees who were not fired since they were not in the acetylene department and had supported the dismissed workers appealed for remedies due to unfair Labor practices (wage and promotion discrimination) to the Kanagawa Local Labor Relations Commission.
October 29, 1979:	Tokyo High Court overturned the district court's provisional injunction for maintenance of the status quo and held the dismissal to be valid. The workers made a special appeal to court of the last resort.
April 3, 1980:	The Supreme Court rejected the appeal for an order of the provisional injunction for preserving of the status as a employee. Then the final judgment for provisional injunction was fixed; the dismissal was valid.
May 1980:	The dismissed workers filed a suit on the merits for confirmation of the status as a employee in Tokyo District Court.
December 1980:	The Kanagawa Local Labor Relations Commission issued a remedial order for wage and promotion discrimination (In this case, the workers who were not fired in the dismissal case in August 1970, but had supported the dismissed workers filed an appeal for remedies for wage and promotion discrimination that they suffered, with the Kanagawa Local Labor Relations Commission.) The company sought an administrative review with the Central Labor Relations Commission.
December 26, 1984:	Settlements were reached in both the dismissal case and wage and promotion discrimination case upon recommendation by the Central Labor Relations Commission. Reinstatement of 6 out of the 13 litigant workers was included in the settlement conditions.

Moreover, although the dismissal of all litigant workers was judged as valid in both the High Court and Supreme Court, the settlement was made upon recommendation from the Central Labor Relations Commission on the condition that 6 out of the 12 litigant workers, other than a worker who was beyond the retirement age at the time of settlement, were reinstated. The settlement condition was opposite to the judicial judgments. The 6 workers were actually reinstated and 5 of them stayed with the company until mandatory retirement age.

As this article aims to identify managerial turning points of the prolonged and large-scale disputes about employment adjustment, it is necessary to sort out the findings related to this case in light of the following questions:

- a. Why did the department closure lead to employment adjustment?
- b. Why could consensus not be built between the labor and capital? This question is especially important in 2 points. First, why could consensus not be built between the labor and capital regarding the employment adjustment and could the lawsuit not be avoided? Second, why could the labor and capital

not reach to settlement after the lawsuit until the intervention of the Central Labor Relations Commission?

In the next section, the findings of Kambayashi and Hirasawa (2008a) are reviewed from the viewpoint mentioned above.

In addition, various materials were used for the case studies associated with this case: publicized materials including courts' judgment documents, order statement of the Labor Relations Commission, record of the settlement and securities reports, data obtained in interviews with the worker X, who took a central role in the trials and a union officer A, who was not fired but continuously supported X and other dismissed workers until the settlement (one of the workers who filed an appeal for remedies for wage and promotion discrimination), and case records.

FINDINGS

Why Did The Department Closure Lead to Employment Adjustment?

When the acetylene department of Toyo Sanso was closed, acetylene departments of the other manufacturers also were faced with structural depressions in the industrial gas industry. Competitors also closed acetylene and nitrogen departments but adopted corporate strategies, which transferred the man power to oxygen and machinery departments. When the acetylene production equipments were discarded in the other companies, they did not have to dismiss the employees of obsolete departments. Then why did Toyo Sanso fail to transfer the employees? Moreover, there are some evidences that when a facility was suspended and then closed only 1 or 2 years before the economic dismissal in 1970, a number of surplus workers were transferred to other departments. At the time of oxygen plant closure in and around 1980, no industrial dispute occurred. Why did Toyo Sanso fail to transfer the employees of the acetylene department in 1970 despite these facts?

To put it simply, it is likely that the company could have transferred the work force but was not willing to do so. Specifically, there was a conflict between 2 groups over policy direction in the Toyo Sanso labor union and the company tried to discharge one group in support of the other group by means of economic dismissal. This is the background of the economic dismissal of this case. At least that was the way X and other litigant workers understood it. Reasons that made them understand so are indicated below.

In Toyo Sanso, the Toyo Sanso Labor Union was formed in 1947 and the union became a member of the Japanese Federation of Synthetic Chemistry Workers' Unions in 1956. The heart of the Toyo Sanso Labor Union's activities was the Kawasaki branch, and specifically the acetylene facility in Kawasaki Plant, which was the backbone of the activities.

In 1960's, dissension within the union over the policies came to the fore. In 1963, "Yuwakai," an organization for all the employees, was established. Though this organization was soon to be dissolved, the members of "Yuwakai" played a central role in establishing the Toyo Sanso Labor Union Democratization Alliance (hereinafter referred to as "the Alliance") in the next year. The members of the Alliance criticized the union headquarters and Kawasaki branch as combative and gained wide support. Around the same time, the employer accepted an investment from a capital B and preparation of a system for labor-management cooperation was promoted. Specifically, the labor relations department was set up in the Toyo Sanso headquarters in August 1964, and a former manager of the labor relations department in an affiliate company of the capital B assumed the office of managing director of Toyo Sanso in December of the same year.

These internal moves created confrontational relations between the union headquarters and Kawasaki branch. However, it was the spring labor offensive in 1965 that shaped the conflict. At that time, the company consistently offered the wage level lower than that of other companies in the industry and the union went on indefinite strike in response. This strike was not successful and the union had to accept the company's original offer. Given the unsuccessful strike after the spring labor offensive in 1965, the group supporting the Alliance occupied the majority of union representatives and officers of the headquarters in the regular union convention held in September and the new executive office was formed under the leadership of a chairperson who supported the Alliance.

As the court recognized, there was no dismissal consent covenant in the work rules at the time of the dismissal (August 1970). However, the order statement of the Kanagawa Local Labor Relations Commissions for the wage and promotion discrimination case described in the chronological table above recognizes that the company revised the work rules and cancelled dismissal consent covenant without approval of the union in August 1969.

Kawasaki branch strongly protested against the cancellation of dismissal consent covenant and 2 central executive committees representing Kawasaki branch requested the union headquarters to raise a protest against the provision by the company but the union headquarters never tried to act.

In consideration of this background, it is highly conceivable that the company's way of promoting labor-management cooperation policies by eliminating the resistance force rejected the option of transfer within a single company of Toyo Sanso.

Why Could Consensus Not Be Built Between the Labor and Management?

Why could consensus not be built between the labor and management regarding the employment adjustment and could the lawsuit not be avoided? Why could the labor and management not reach settlement until the intervention of the Central Labour Relations Commission?

Review the background of the lawsuit first. After the company notified of the plant closure and dismissal on July 16, 1970, collective bargaining between the management and labor union was conducted. However, there was disagreement between the union headquarters and Kawasaki branch regarding claims against the company. The union headquarters focused on negotiation of retirement conditions, while Kawasaki branch persistently insisted on withdrawing the dismissal. The company conducted collective bargaining with the union headquarters only (no collective bargaining with Kawasaki branch, to which the dismissed workers belonged) until the lawsuit was filed by the dismissed workers. From the point of view of dismissed workers, the union headquarters who can hardly be expected to represent the interests of the dismissed workers conducted the bargaining on behalf of the employees during the most important period around the dismissal.

Eventually, the union headquarters, without prior consultation with members of the acetylene plant and Kawasaki branch, requested the company for; (1) voluntary retirement status and (2) 10 million JPY as conditions of resolution on September 7, 1970. The company then replied to the requests with promises of; (1) voluntary retirement status and (2) parting benefit of 1,600,000 JPY per worker, who accepted the voluntary retirement offer. The union headquarters accepted the conditions and exchanged a memorandum with the company. On October 13, the union headquarters notified Kawasaki branch that the acetylene plant members had forfeited their union membership in response to complete resolution of the dismissal issue by the memorandum. The company also gave Kawasaki branch notice that the company rejects any access to and use of all company facilities by the acetylene plant members.

X and other dismissed workers hoped the labor union fought for withdrawal of the dismissal and resolved the issue quickly. As for the reasons of their lawsuit, X said that, given that the union headquarters accepted the dismissal and branch operations were rejected by both the union headquarters and the company, "there was no chance of settlement through negotiation. There was nothing for it now but lawsuit."

Therefore, it can be speculated that the management did not have the will to search for common ground directly with the dismissed workers or any party that represented their interests. This situation continued until August 1983, when the voluntary bargaining between labor and management representatives started as a solution to the dismissal case and wage and promotion discrimination case. The contents of a settlement conditions that was created in this voluntary bargaining were mostly used in the settlement recommendation from the Central Labour Relations Commission in 1984. Both the labor and management had to put significant amount of work to reach the ground for settlement.

Let's look into the cost incurred by the labor. A together with other workers, who supported X and dismissed workers, filed a complaint against wage and promotion discrimination as a fight from inside and the Kanagawa Local Labor Relations Commission issued a remedial order. They also fought against the company in the Central Labour Relations Commission. Beside the struggles through litigation in the court and labor relations commissions, X, A and their associates staged a protest against the company's headquarters in March 1977, and against bank C (capital B's affiliate), which was a large shareholder of Toyo Sanso and sent executives into Toyo Sanso in September.

On the company's side, the company had to change the executive committee as it replaced the personnel department director and had a new senior managing director from bank C (who became the president later). This implies that the company determined that the original executives could not end the dispute and reshuffling in the executive committee was necessary in order to end the dispute.

WORKING HYPOTHESES FOR FUTURE STUDIES

Based on the review of findings about the Toyo Sanso case above, possible working hypotheses for future studies to explore managerial turning points are listed below.

- (1) The management did not have the will to avoid dispute or to reach early settlement as far as possible until the settlement framework was arranged.
- (2) Or, the labor-management cooperation policies were deemed necessary even at the cost of long-term dispute outside the company at least by the company management of those days.
- (3) Even if there was no such value judgment or clear decision making regarding the personnel policies based on such value judgment, there were forces strong enough to postpone the settlement of the dispute for over 10 years.
- (4) Since the forces were so strong that management shakeup was needed to arrange the framework for settlement, it is likely that they were the forces carrying out the policies, rather than the forces of the personnel policies themselves.

Each of the 4 statements above is short of clear definition of agents, as a working hypothesis. However, Toyo Sanso executives and the capital B can be defined as substantive agents of management's words regarding the dismissal dispute.

At least, the effort of the management toward settlement seems to be led by the capital B, based on the findings of the study. In addition, X and A said that the settlement could be made largely because of the competency of the senior management director from the affiliate bank C of the capital B.

The author met with the senior management director, person-to-person, and confirmed that his was a firm intention of ending the dispute. Further, he said that he thought it was necessary to sit down with the other party for the dispute to end and indeed, he actually had exhaustive discussions with the dismissed workers.

The presence of such executives is desirable for avoidance and closure of disputes. However, it also implies a serious pessimistic view. Specifically, the implication is a kind of fatalism that the course of dispute and the fate of litigants may heavily depend on competency of the management or presence/absence of competent management.

Indeed, various past case studies show the significant influence of human competency in settlement of dismissal disputes. In some cases, the parties reached settlement because the judge was trustworthy while in some other cases, litigants were unhappy with the judge's manner in settlement recommendation and carried the case to the Supreme Court. In a case of a mass economic dismissal, the representative of litigant workers was committed to interest adjustment of dozens of dismissed workers at the cost of his own reinstatement, in order to end the dispute with settlement, subject to reinstatement of half of all the dismissed workers.

However, it is not only in places with such competent persons where necessity of and dispute over employment adjustment does reside. In addition, there is no capitalist economy without employment adjustment and as such, we should not accept such fatalism. For example, we should classify the problems into 2 categories of managerial problems i.e. problems in business administration regarding establishment of appropriate managerial systems for employment adjustment, and problems in function of management regarding appropriate roles and qualifications of management executives. We should therefore approach these problems as managerial issues. Further, we should seek ways to minimize losses and social costs incurred by workers in future employment adjustments.

The senior management director who ended the Toyo Sanso case dispute also focused his energy on building good labor-management relationship in the company after he assumed the presidency. In addition, he offered counsel to business owners in the midst of industrial disputes on how to end them, advising them to do exactly as he says and they would be successful in solving these disputes amicably. This implies that losses due to dispute can be reduced by taking appropriate measures without the need to wait for advent of competent management.

Application of right procedure to turning points of prolongation and escalation of dispute will reduce losses. I would like to conduct further studies to reveal turning points and right procedures as an immediate issue.

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