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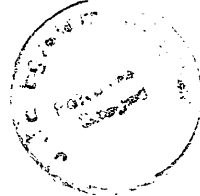

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Japanese Labour Law Cases Dealing with Foreign Multinational Corporation in Japan

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1. Preface[*]

This paper will be divided into two sections: *1.* facts and statisitics about industrial relations in foreign companies owned or invested in by foreign multinational companies operating in Japan, and 2. labour law cases decided by Japanese courts dealing with those of foreign companies operating in Japan.

The objective of this paper is to introduce some facts and aspects of transnational industrial relations in these companies. The perspective of the paper is to try to measure the level of workers' protection provided under these industrial relations and Japanese courts to look for the underlying reasons for the various approaches.

2. Industrial relations and labour law of foreign multinational corporations in Japan

A. Facts and statistics about industrial ralations and labour law

The following are the results of research carried out by the Department of Labour of Japan (Roudou Shou: RS.GK) in August 1997 involving 732 (the response rate was 42.2%) foreign multinational corporations (MNCS) operating in Japan.[1] The percentage of foreign investment of these surveyed MNCS was more than one third of the whole capital of these surveyed MNCS. Foreign investment rankings are 1. the U.S.:37.2%, 2. Germany: 12.0%, and the U.K.: 7.5%.

a) Unionization Rate and Associationization Rate

While the percentage of MNCS which have organized trade unions in their establishments is 12.7 %, the unionization rate of the surveyed MNCS is 23. 2% (Table 1). This figure is lower, but close to the average unionization rate of non-MNC companies in Japan: 23.8%.[2]

Table 1

Unionization and the Associationization Rates

Neither trade unions nor employees' association	71.6%
Employees' association only:	15.0%
Single trade union in an establishment	10.9%
Plural trade unions in an establishment	1.8%
Do not know	0.7%

(RS,GK, at 11, 1995)

[*] I would like to extend my gratitude to Associate Professor Josepf Hajdu of the Faculty of Law, Unversity of "Jozsef Attila" for translating my English paper into Hungarian, and to Associate Professor Aldo Ciano of the Faculty of Law, Ritsumeikan University for editing my English of this paper.

[1] Roudou Shou, Gaishi kei Kigyou no Roushi Kankei nado Jitsutai Chouse Ketsuka, at 11, 1998) (hereinafter RS, GK, 1998).

[2] Roudou Shou, Roudou Kumiai, at 15, 1998.

Significance is the fact that the plural unionism, which means that more than two unions are organized in the same establishment is only 1.8 % of MNCS surveyed (Table 1). This means many MNCS have Japanese style industrial relations because single unionism, which means that one union is organized in the same establishment, was so popular among Japanese establishments since employers under plural unionism are exceptional in that they have to deal with different unions on similar issues at the same establishment.

Another notable figure concerns organized the employees' associations (Table 1). That is the percentage of MNCS which have organized an employees's association in the same establishment: 15.0%. This percentage draws attention because the employees' associationization rate (15.0%) is higher than that of the unionization rate (12.8%). This may mean that both the managers in charge of industrial relations and the employees of these MNCS of foreign MNCS in Japan prefer employees' associations rather than trade unions. Thus, the policy and reality of industrial relations of these MNCS will be established with the mutual understanding of the parties and a more cooperative nature, rather than the confrontational nature of trade unions.

b) Industrial Disputes

A 1997 Department of Labour survey showed a clear cut trend that industrial disputes in foreign MNCS operating in Japan were small in number in 1997 and decreasing in number compared to a 1973 survey of the same kind (Table 2). In 1973 when the first survey of this kind was carried out by the Department of Labour 20.0% of all MNCS surveyed experienced labour disputes. Now only 1.4% of MNCS surveyed in 1997 experienced disputes.

Table 2

MNCS which had Industrial Disputes

	Total	MNC with union	MNC with disputes	% among total	% among MNC with union	No. of disputes	No. of disputes in a MNC
1995	732	93	10(8)	1.4%	8.6%	108	11
1991	873	101	14(12)	1.6%	11.6%	91	7
1987	990	156	27(26)	2.7%	16.7%	54	2
1983	1051	222	52	4.9%	23.4%	123	2
1977	550	247	106	19.3%	42.9%	255	2
1973	486	207	97	20.0%	46.9%	255	3

(RS, GK, at 11, 1998)

A total of 8.6% of these MNCS involved in these disputes, had trade unions organized within their establishments in 1995 (Table 2). Again comparing this 8.6% with 46.9% of the 1973 survey of 22 years before, we can see the apparent trend that trade unions organized in foreign MNCS establishments in Japan have become less militant and more hesitant to take collective actions against their employers. One of the reasons for this, among others, is that trade unions in Japan became more cooperative with their

employers in general. The reasons are presumably that workers and employees *1.* have been satisfied with improved living standards by derived from their improved working conditions, *2.* understood their companies' strategy among competitive market situations under international pressure, *3.* have institutionalized labour-management joint consultation machineries in many establishments, and so forth.

Another point revealed by these statistics, is that a small number of specific MNCS have been facing difficulty in coping with the same trade unions organized within their establishments. This is because the statistics show that 11 out of 108 disputes occurred at the same MNC in 1996 in a year: 0.12%. It is presumed that disputes are more concentrated in the same establishments with the same unions in recent years. This is the conclusion when we compare 3 disputes in 1973 out of 250 industrial disputes occurred: 0.01% (Table 2). This suggests that a few MNCS still suffer from industrial disputes because of prolonged mis-understandings between parties within specific MNCS who have lost their confidence in dealing with their trade unions, while many MNCS are well settled in terms of preventing industrial disputes in recent years.

c) Labour-Management Joint Consultation Machinery

Roushi Kyougi Kai (Labour-Management Joint Consultation Machinery) is popular among foreign MNCS operating in Japan. 26.9% of MNCS surveyed answered that they have institutionalized such machinery (Table 3). Even though this percentage is almost half of the average of non-MNC Japanese companies: 55.7% in 1994,[3] this portion can not be ignored in consideration of the Japanese type of industrial relations which are mainly managed by joint consultation machinery rather than collective bargaining under the threat of strike actions.

This machinery is used as a substitute for collective bargaining because more than half of joint consultation machinery includes authority to negotiate on working conditions, such as *1.* working hours and holidays: 61.4% (in case of Japanese domestic companies operating in Japan, 86.8 %, ibid., at 8, 1995), *2.* wages and bonus: 57.9% (in case of domestic Japanese companies, 75.8%, id.) and *3.* so forth (Table 3).

The other function of such machinery is that an employer takes advantage of these opportunities to explain managerial matters when the employer thinks it necessary thereby improving communication between an employer and employees. The issues which the employer explains are *1.* the basic policy of management of the company: 43.1%, *2.* the basic schedule of production and sale: 36.5%, *3.* setting-up and reorganization of departments or sections of the company: 34.0%, *4.* the rationalization of production process: 13.7%, and *5.* so forth.

[3] Rou Dou Shou, Communication. at 13, 1995.

Table 3

Negotiation Matters at Labour-Management Joint Consultation Machineries

Working Conditions	%		Managerial matters	%
hours and holidays	61.3		basic management policy	43.1
wages and bonus	57.9		basic product. & sale plan	36.4
welfare and pension	56.9		setting-up & renewal of company's internal organization	34.0
assignment change	40.1		introduction of new machines & rationalization of production process	13.2
safety and health	37.1		cultural & health activities	23.9
severance payment	27.9		training & education plan	17.3
transfer & farm-out	25.9			
discharge & lay-off	24.9			
retirement age	21.3			
hiring & placement standards	13.7			

(RS, GK, at 12, 1998)

d) Other Devices Improving Labour-management Communication

One of the measures to prevent industrial disputes is to set up many channels of communication between employees and an employer, though disputes will occur regardless of these devices because of difference of opinions based on their interests (Table 4).

Table 4

Communication Devices between Employer and Employees

labour-management joint consultation machinery 26.9% (55.7%)

shop floor meetings	38.9% (69.8%)	no specific devices	37.4%
employees' proposal system	25.4% (56.7%)	company's periodicals	23.4% (22.7%)
quality circle activities	14.2% (47.9%)	attitude surveys	12.4% (26.0%)
grievance procedures	6.3% (20.3%)		

(RS, GK, at 13, 1998)

· %s in ( ) are those in domestic Japanese companies operating in Japan (Rou Dou Shou, Nihon no Roushi Komunikeishon no Genjou, 1995)

(RS, GK, at 12, 1998)

1. "Shop-floor meetings", where supervisors, forepersons, and employees working on the same shop floor gather in order to discuss work assignments, safety and health and other matters to help in raising productivity and others, are the most popular among foreign MNCS operating in Japan: 38.9% , while in the case of Japanese domestic companies operating in Japan, it is 59.6%.[4] 2. "Proposal systems", by which it means

[4] Rou Dou Shou, Komunikaishon., at 8, 1995.

that an employer encourages employees to raise new and good ideas for raising productivity and others, rank second: 25.4% (69.8% in case of domestic Japanese companies, id.). *3.* "Company periodicals" by which an employer can send information and messages necessary for communication, and distributes to all employees, rank third: 23.4 % (Table 4. 22.7% in case of domestic Japanese companies, id. at 76).

It is interesting that "grievance procedures" are not well rooted in even foreign MNCS operating in Japan: 6.3% (20.3 % in case of domestic Japanese companies, id.,at 8). This means that the North American type of the labor management system which somehow depends on this system is not well accepted in Japan. This is because most employees at these establishments are Japanese who dislike to publicize their own complaints before third parties such as grievance committee members and arbitrators.

2. Labour law and court decisions concerning MNCS in Japan

Hereinafter the basic framework of Labour Law of Japan with court decisions is introduced which refer to the cases of foreign MNCS in Japan are involved. Therefore, the following is not comprehensive explanation of Japanese Labour Law.[5]

A. Laws Regulating the Treatment of Individual Employees

a) Basic Issue: Vagueness of Contract of Employment

One of the features of the contract of employment in general in Japan is that the parties do not prescribe the details of a contract in many cases, but also do not exchange a contract in writing in some cases. This is explained by the trust theory that employer-employee relationships are based on trusting each other and by the flexibility theory that it is more practical for the parties to evade complexity arising out of detailed terms and conditions of employment when disputes arise.

Therefore, an employer can take liberty in interpreting expressions written in a contract of employment at its will as long as it goes not abuse such interpretation. A district court supported this stance at Sandpick: a Swedish based subsidiary company in Japan. In this case, though a place to work was written as Satsuporo City in a tentative hiring notice, which is usually sent to a job applicant several months before an employee actually begins to work, the court ruled that the name of the City for work written in a notice was a tentative place to work and did not necessarily guarantee the employee would work at that location.

However, once they are written clearly as terms and conditions of employment, they are binding on an employer. A high court held that the specification of an employee's status as a regular worker written in a job advertisement card posted by an

[5] As to comprehensive explanation of Japanese Labour Law, Kazuo Sugeno translated by Leo Kanowitz, Japanese Labor Law, University of Washington Press and University of Tokyo Press, 1992. As to a brief introduction to Japanese Labour Law, Masahiro Ken Kuwahara and Michael R. Brown, Employment Law and Practices in the U.S. and Japan, Hikakuhou Kenkyu Centre, Kyoto, 1996.

employer in a Public Employment Security Office became part of the contract of employment.[6]

When the content of employment is clearly defined, a labor dispute is definitively resolved according to the content of the contract. The Tokyo District Court decided in a case involving the Chase Manhattan Bank: a Tokyo branch of a U.S. bank that where the content of the contract was explicitly clear that the plaintiff was hired as a general manager of other lease company as being transferred to that company by the defendant bank, the plaintiff had no right to be transferred back to the defendant bank when the lease company disclosed its operation.[7]

Other examples are found in Agreement-not-compete cases, where there is it means an agreement between an employer and an employee that the employee or ex-employee who ceased working for a former company shall not initiate by him/herself business, which is to compete with the former employer, or shall not join another company involved in, the business. In some cases an employee and an employer have an agreement-not-to-compete under the contract of employment. There are some court decisions which issued an ex-employee a karishobun or temporary restraining order to halt a new business which competed with the former employer.[8]

It should be noted that there are a few cases where courts supported the companies' civil damages claims against ex-employees, even though no specific agreement-not-to-compete between the employee and the company had been signed, but there was a similar provision provided under work rules.[9]

b) Equal Treatment

Article 3 of the LSA prohibits discrimination with respect to wages, working hours, or other working conditions on the basis of an employee's nationality, creed (including political and religious beliefs and other states of mind) or social status (such as having a criminal record or having been declared bankrupt).

ba) Nationality and Social Status

As to discrimination on the basis of nationality, a damage claim litigated by a Korean, who had been informed tentatively once as being hired from next April, was supported in the Hidachi Manufacturing Company case by a district Court with the ground that the cancellation of a tentative hiring contract was a violation of LSA Art. 3, and against Kohjo-ryohzoku or the public order and good moral clause of the Civil Code Art. 90, and therefore the cancellation was null and void.[10]

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[6] Chiyoda Kyou Gyou case, Osaka High Court, 8 March, 1990, 575 Roh. Han. 59.

[7] 27 March 1992, 607 Roh. Han. 63.

[8] Tokyo Legal Mind case, Tokyo District Court, 16 October 1995, 690 Roh. Han. 75; Osaka Trade Company case, Osaka District Court, 15 October 1991, 596 Roh. Han. 21.

[9] Chesukomu Secretary Center case, Tokyo District Court 28 January, 1993, 1469 Han. 19 1993.

[10] Yokohama District Court, 19 June 1974, 206 Roh Han, 25-3 Roh Min 277.

bb) Age, Disability and Ethnic Origin

Discrimination on the basis of ethnic origin, age, disability, or etc. is also not covered by Article 3 of the LSA because there is no language to that effect in the Article. As a result, the Ministry of Labor has no legal ground to give administrative guidance to employers who discriminate against employees based on these reasons and cannot investigate or prosecute them under this Article if they do not follow any guidance which is given.

bc) Sex

As sex discrimination is not prohibited under this Article, the Government promulgated the Act Concerning Equal Opportunity and Treatment between Men and Women in Employment (EEOA) in 1985.

In 1997 the Government passed an amendment bill to the EEOA, which will become effective in April 1999. This amendment Act reinforced the original Act. *1.* It abolished provisions on employer' duties to do its best effort to treat female employees equally to male employees in cases of job advertizment, hiring, placement and promotion, and instead making them to prohibit to discriminate them against. *2.* It inserted a new provision that an employer should take preventive measures to evade sexual harassment at working places, *3.* It repealed a procedural provision that an employer had a right to give its consent on whether a complaint would be handed to a mediation committee. *4.* As a new penalty clause, it inserted a new provision that the name of an employer who violated stipulations of the Act might be made public when a local director of the Women's Bureau of Department of Labour decided it appropriate to do so under its administrative discretion.

As to wage discrimination, the LSA Art.4 provides the principle of equal-work, equal-pay. A high court in the Iwate Bank case ruled that any type of compensation, such as family allowance should be paid equally to male and female employees.[11]

c) Transfer, Farming out, Moving out and Promotion

ca) Employers' Right to Transfer, Farming out and Moving out Employees

Orders of reassignment and transfer from one job to another without consent of an individual employee by the same employer, and even moving out and in some cases farming out from one company to another without or with his or her consent are common practices directed to employees by Japanese employers.

Unlike the Western practice in which workers are hired for specific jobs and given few opportunities for reassignment to other types of jobs, in many cases Japanese companies hire workers without specifying their jobs, but with the explicit or implicit understanding that they may be reassigned to other jobs with on-the-job training. Moreover, a company may transfer an employee to another company for managerial reasons, while maintaining its status as employer, and in extreme cases may even order

[11] Sendai High Court, 1 April, 1992, 605 Roh. Han. 98.

such an employee to transfer officially on the rolls to become the employee of the other company.

Court precedents say that an employer can order reassignment or even transfer of employees remaining on their rolls to other companies legally, even in cases where no work rule has been provided in regard to these matters. On the other hand, an employer cannot order its employee to transfer officially onto the rolls of a new employer unless an explicit agreement to that effect has been made with those employees, because such as order would in a change in the fundamental elements of the terms and conditions of their employment.

cb) The right to transfer

As mentioned earlier, it is common labor practice that a contract of employment is interpreted flexibly because of the vagueness of contracts in general. Therefore, unless explicitly expressed in a contract of employment, an employer has discretion to interpret the content of employment except where interpretation is unreasonable. A district court decided in the Chase Manhattan Bank case: a Japanese branch of U.S. bank, that an employer's direction to order an employee to be transferred to Tokyo from Osaka was within the scope of employer's discretion, even though the employee was initially directed the employee to work at Osaka.[12]

This case followed the Supreme Court decision on the Kohwa Paint Co. case which held that an employer could order an employee to be transferred to another place of work without the consent of individual employees if an employer's right to do so had been provided under either a company's work rule or in a collective bargaining agreement.

However, the Supreme Court decided on exception to this established principle and held that decision that the transfer order was null and void under the theory of abuse-of-an employer's-right to order to do so.[13]

A district court applied this exception to a Japanese sister company's case of a U.S. company: the Marincrot Medical Co. where an employer had ordered an employee to transfer an employee from a managerial position at a Tokyo office to a sales position at a Sendai office. The court ruled that this order was null and void because, when directing the employee to be transferred, the employer had the intention and expectation that the employee would have quitted the company as a result of this transfer direction. The court went on to state that the employer had an illegal intention and purpose, and the mental suffering of the employee caused by this transfer was excessive as compared to the amount which an employee as a third person should have shouldered in general.[14]

cc) Farming out

Farming out means that an employee is ordered by an employer to work under another company's direction or supervision at its premises for certain period of time while the employee is still employed by the original establishment. Therefore, the employee has an opportunity to return and work at the original establishment when the

[12] 12 April, 1991, 588 Roh. Ha. 6; 768 Han. Ta. 128.
[13] 14 July, 1986, 477 Roh. Han. 6: 1198 Han. 19.149.
[14] Tokyo District Court, 31 March, 1995, 680 Roh. Han. 75.

employer directs the employee to do so. Although no Supreme Court decision has yet been reported, it is almost established that an employer can lawfully farm out an employee without an employee's consent if a company work rule or a collective agreement provides the employer may do so.

Therefore, a district court decision in the Dow Chemical Co.: a subsidiary of a U.S. company, which required an employer to obtain an employee's consent to be farmed out, is an exceptional decision.[15]

The problem arises when an employee does not follow an employer's order to come back to work at the original company, from which the employee was farmed out. The Supreme Court on the Furukawa Electric Industry Co. and Nuclear Fuel Industry Co. case held that to discharge an employee, who did not follow this order to return by an employer was supported. The Supreme Court went to state that the farming a contract included the duty to come back and work at the original company unless an special agreement between the parties.[16]

cd) Moving out

Moving out means that an employer orders an employee to move from the original company, by which the employee was hired, to the another company, at which the employee did not contract to work. The Tokyo High Court decided in the Sei Kyou E Co-op case that the employer had to obtain the explicit consent of the employee regarding the place of work, the kind of work, and the amount of wages for moving out.[17]

ce) Promotion under Seniority

The Japanese court has never acknowledged the seniority system as a right of employees under Japanese Labor Law. Each case is decided on the basis of whether such labor practices exist in the company.. For example, the Tokyo District Court held in the North West Airline case: a Japanese branch of an U. S. company that there were no such labor practices in the company, even though ten employees out of sixteen employees were promoted according to the length of employment periods. In this case the court did not uphold the plaintiff's assertion that he should have been promoted because he had a right of seniority.[18]

d) Individual Dismissals and Mass Discharges

da) Life Time Employment Practices stated in Court Decisions

One of the Tokyo High Courts in the Toyoh Oxygen Co. case clearly referred to Life Time Employment Labor Practices in Japan in relation to setting up criteria for mass dismissals. This has made difficult for an employer to discharge employees

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[15] Tokyo District Court, 14 November, 19986 485 Roh. Han. 19.

[16] 5 April, 1985, 450 Roh. Han., 39-3 Min. Shuh 675.

[17] 16 March, 1994, 636 Roh. Han. 63.

[18] 13 June, 1985, 455 Roh. Han 31.

because the theory intends strong job security. It stated that an employer had to take life-time-employment practices into consideration under which employees planned their livelihood under the assumption that their job security would last longer and be stable under the principle of life time employment in Japan as a rule.[19]

However, whether this principle could be maintained as a rule by the court at the time of 1990's is another issue. The Tokyo District Court referred to this point in the Chase Manhattan Bank case in 1992. In this case the plaintiff ,who was a foreigner, argued in the court that he thought he was hired until his retirement age like other Japanese employees when he agreed to his contract of employment, but the court did not accept his argument.[20]

db) The criteria of legally acceptable discharges

Japanese courts have developed judge-made law on dismissals and mass discharges because the LSA contains no provision requiring a employer to have just cause or reasonable grounds to discharge employees. Just causes for legal dismissal found in case law include. inter alia. the inability to do a job, the lack of qualifications for a job, improper behavior worthy of disciplinary firing, reasonable economic or managerial reasons for a mass discharge. and the application of a union shop clause. If an employer fires an employee without just cause and the employee sues the employer. a court could decide that the firing was null and void under an abuse-of-right-to-discharge theory.

Courts have set up criteria by the accumulation of court decisions that employers must, at the time of discharging a number of employees in mass: *l.* have reasonable economic or managerial grounds to do so, *2.* have no alternatives left after having tried in vain to transfer or temporarily lay off the employees or recommend their voluntary resignation with advantageous conditions provided by the employer, or other methods, *3.* use appropriate criteria for determining which employees are to be discharged. *4.* properly apply these criteria to individual employees. and *5.* properly apply any procedures required by a collective bargaining agreement or other types of rules.

These criteria except #3) were confirmed in the Informic case: a subsidiary of a U.S. company case by a district court.[21]

A district court found a lack of #3), #4) and #5) in the American Express International case: a Japanese branch case of a U.S. company with the conclusion that back-pay should be provided to illegally discharged employees, even though the court held that an employer had at its will the right to shut down a branch under justifiable financial reason to do so.[22] In this case seven employees who had been working at the Okinawa branch of the company were fired.

The procedural condition mentioned above as #5) is also important. The Supreme Court on the Asahi Day Care Center case decided that the lack of a proper procedure to dismiss employees nullified the discharge.[23]

This theory was applied to the Royal Insurance Public Limited Co. case by the Tokyo District Court. In this case two former directors of some sections of the company

[19] 330 Roh. Han. 71.
[20] 27 March, 1992, 609 Roh. Han 63.
[21] 31 October, 1997, 726 Roh. Han. 37.
[22] (18) Okinawa District Court, 20 March, 1985, 455 Roh. Han. 71.
[23] (19) 27 October, 1983, 1091 Roh. Jun. 427 Roh. Han. 63.

were discharged as a result of the company's new policy to restructure the company. The court held that the discharges were null and void because the employer had not exhausted the procedure for discharges, which had been provided under the company's work rule, and ordered the employer to pay the employees back-pay under the proposition of reinstatement of the employees.[24]

Under the national state of economic hardship, a Tokyo District Court enunciated the new theory of the notice-of-changing-terms-and-conditions-of-employment in 1995. The Tokyo District Court elaborated upon this theory in the Scandinavian Airline case by stating that discharges were legally accepted when *1.* an employer had offered employees the necessary revisions of working conditions because of the economic hardship of the company, but some of employees refused to accept them, and *2.* the need of the revisions superseded the disadvantage caused to the employees, and lastly *3.* the employer took all measures to avoid discharges of the employees who refused to accept the revisions.[25]

dc) Administrative Guiding in executing Individual Labour Law

Administrative guidance in this field means that the local offices of the Ministry of Labor, in order to force employers to follow the law, counsel or make recommendations to employers known to be violating the LSA by calling them to the Ministry and pointing out the consequences which may result from their violations, visiting them at their premises for investigation, threatening them with the possibility of taking action through prosecution, and other techniques. This system of administrative guidance is special in that it does not rely on taking quick and direct disciplinary measures, but instead waits until employers themselves decide to follow the law. This method requires time but gives the employers an opportunity to consider the consequences of violating the law and in the end comply with it of their own free will. The administrative guidance policy tends to resolve cases of violations of the law by employers by not arousing antagonistic feelings on their part against the Ministry of Labor, but instead waiting for their cooperation, which is more flexible, less aggressive and less costly to carry out than litigation. One detriment of such a system, however, is that employees have to wait until their employer chooses to take, and in fact takes, action to follow the law.

B. Collective Industrial Relations Laws

A few court cases dealing with Trade Union Law and Labour Relations Adjustment Law in relations to foreign MNCS in Japan have been decided. Therefore, partly because of limitation of pages of this paper, no specific comprehensive explanation except sections relevant to the Department of Labour survey is written in this paper.

[24] 31 July, 1996, 712 Roh. Han. 58.
[25] 13 April, 1995, 675 Roh. Han. 13.

3. *Summary and conclusion*

Industrial Relations of Foreign MNCS in Japan

Statistics shows that Japanese type industrial relations prevail among MNCS though some of their capital is invested partly provided by foreign companies. Nevertheless, employers-employees' communication devices are not well established and the diffusion rates are below half of domestic non-MNCS. The resemblance is found in the fact that *1.* employees' associations are organized more than trade unions in their establishments. When trade unions are organized, a single unionism, by which it means that one union is organized at their establishment, is common. *2.* Concerning industrial disputes, they occur in very small number in recent years like those in domestic non-MNCS. However, *3.* Although many communication devices other than collective bargaining are set up, such as labour joint consultation machinery, shop floor meetings, quality control activities and so forth, the diffusion rate of these devices is less than domestic non-MNCS.

First of all, the reasons for the similarity of industrial relations between foreign MNCS and domestic non-MNCS is because in the fact that *1.* the managers of foreign MNCS know the peculiarities of Japanese industrial relations. *2.* Both of these companies hire mostly Japanese employees who do not take an adversarial stance against their employers. Nevertheless, the diffusion rate of communication devices is different because *1.* foreign MNCS have a shorter history of industrial relations in Japan. *2.* Most managers of foreign MNCS have learned their method of managing industrial relations from the West before they came to Japan. *3.* Therefore, communication devices, which require employers to approach closer to their employees personally with the presumption that their employees are regarded as the members of their "corporate family", are not still popular among them.

With respect to court decisions involving foreign MNCS, few specific features because of foreign MNCS are found, though some of their capital is invested by foreign companies. However, some special cases which would not happen otherwise are found in court records.

Japanese type legal reasoning are applied to these cases. *1.* There are few cases regarding race or ethnic discrimination in employment. *2.* Under general labour practices in Japan, the details of the contents of contracts of employment, such as job classifications, are not written into contracts. Instead, courts interpret contracts of employment based on work rules and general labour practices of the companies concerned. However, once the contents of the contracts of employment are specified upon the individual agreements of such contracts, for example an non-competition, courts rule that the parties are bound by the contents of the contracts. *3.* Similar tendency of few specific features because of cases in foreign MNCS in Japan are recognized in court decisions dealing with transfer, farm-out, move-out of employees. Courts follow the general rule, which has been applied to domestic non-MNCS cases, that the employers of foreign MNCS in Japan can legally transfer their employees to other kinds of jobs within establishments, farm-out employees to sister companies without employees' consent, but only with consent in case of moving-out employees to other companies. *4.* As to mass discharge cases, courts applied the same precedents to foreign MNCS in Japan as to domestic non-MNCS. Court precedents require employers

to meet the following conditions, when they want legally fire employees in number. They must have reasonable economic reasons, no alternative measures other than discharging them, appropriate standards for the discharges, and the exhaustion of procedures agreed between the parties in advance and etc.

The reasons similar legal rules are applied to foreign MNCS is simple. They are under the Japanese court jurisdiction. Therefore, legal rules which are popular in foreign jurisdictions are not necessarily persuasive in Japanese courts. For example, an employee's argument that seniority should be respected when discharging employees was not accepted.

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A SZEGEDI JÓZSEF ATTILA TUDOMÁNYEGYETEM ÁLLAM- ÉS JOGTUDOMÁNYI KARÁNAK E SOROZATBAN ÚJABBAN MEGJELENT KIADVÁNYAI

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