

Japanese Employment Law Update



October 17, 2022

In this issue, we discuss a decision rendered by the Tokyo District Court on December 13, 2021 (the “Barclays Securities Case”) which holds that Japan's strict limitations on dismissals for redundancy also apply to highly compensated employees of multi-national companies.

1. Premise: Strict Limitations on Dismissals for Redundancy

As we reported in [our last Japanese Employment Law Update of July 14, 2022](#), there are strict limitations on dismissals in Japan. In the Barclays Securities Case, the central issue was the validity of a dismissal for redundancy. This is a type of dismissal taken by companies in order to reduce employees due to business needs.

The Japanese courts apply strict limitations on these types of dismissals. More specifically, the court determines the validity of a dismissal for redundancy based on the following requirements: (a) there is a need to reduce employees; (b) efforts were made to avoid dismissal (i.e., the company made efforts to avoid dismissal by implementing other measures such as reassignments, transfers, or solicitation of voluntary retirement); (c) the selection of the employee(s) for dismissal was reasonable; and (d) the procedures for dismissal were reasonable. Upon a comprehensive consideration of these factors, a dismissal would only be considered valid when it is found that (i) an objective, justifiable reason exists; AND (ii) it is considered to be appropriate under general societal terms.

2. Barclays Securities Case

(1) Basic Facts

The Plaintiff claimed that his dismissal was invalid and sought confirmation of his status as an employee and the payment of wages. The facts of the case were as follows.

a. Parties

The Defendant was Barclays Securities Japan Limited, a member of the Barclays Group,

a global group of financial companies. The Plaintiff joined the Defendant in May 2006 as an employee without a fixed term and was dismissed by the Defendant as of June 14, 2018 (the “Dismissal”).

b. Plaintiff's Position and Wages

At the time of the Dismissal, Plaintiff was a Managing Director (“MD”), which was the highest employee rank at the Defendant, and held the position of General Manager of the Defendant's Syndication Division. The Plaintiff's annual salary at the time of the Dismissal totaled 42 million yen, and the Plaintiff's bonus in 2016 was approximately 21 million yen.

According to the Defendant, while the Syndication Division led by the Plaintiff performed poorly for several years, the Plaintiff failed to take any proactive steps. The Defendant accordingly decided to eliminate the Plaintiff's position.

(2) Points in Dispute

There were several points in dispute, among which the following were the main issues:

- a) Whether the same strict requirements applied in determining the validity of the Dismissal.
 - b) If the same requirements applied to the Dismissal, whether the Dismissal met them.
- The Defendant contended that the same requirements should not apply because of the unique employment practices at foreign-owned companies. The Defendant argued that, unlike Japanese companies, lifetime or long-term employment was not expected at foreign-owned companies, and it was common knowledge for their employees that, in exchange for receiving high compensation, they may be asked to resign if they could no longer contribute to the company.

(3) Summary of the Ruling

With regard to point a) above, the court held that even if the content of the employment agreement should be interpreted based on the employment practices at foreign-owned companies, there was no reason not to apply the same requirements when determining the validity of the Dismissal.

With regard to point b) above, the court found that (i) the Company's need to reduce employees was insufficient to justify the Dismissal; (ii) the Defendant should have considered other measures, such as reassignment, demotion and reduction in wages, before the Dismissal, but failed to do so; and (iii) because the Defendant failed to

consider soliciting voluntary retirement from other employees, it did not have a reasonable basis to dismiss the employees it dismissed. The court thus concluded that there was no objectively justifiable reason for the Dismissal and it was not considered to be appropriate under general societal terms, and the Dismissal was invalid. In particular, the court pointed out that the Defendant should have considered reassignment or demotion prior to the Dismissal, because the Plaintiff's employment agreement did not limit the duties to which the Plaintiff could be assigned. Furthermore, the Defendant's work rules provided for the company's authority to reassign employees to a different position or duties as necessary, and stipulated that the company may dismiss an employee for redundancy "when it is difficult to transfer the employee to other duties."

In addition to the factors prompting the Defendant to opt for the Dismissal, the Defendant cited the Plaintiff's poor work performance and work attitude as reasons for the Dismissal, but the court concluded that the Dismissal was still invalid.

3. Conclusion

As mentioned above, this decision clarifies that the same requirements imposed on dismissals by Japanese companies extend to dismissals for redundancy in foreign-owned companies. It seems unlikely that the courts will reject this principle. What is noteworthy is the District Court's observation on the lack of limitation of duties in the Plaintiff's employment agreement and the reassignment provision in the Defendant's work rules, both of which are common in Japan and are generally included to benefit the employer. The court's reasoning indicates that there may be a need to reassess the pros and cons of such provisions from the viewpoint of the ability to terminate employment when the need arises. It should be noted, however, that limiting an employee's duties in an employment agreement alone does not make it easy to dismiss an employee, and it is still important to collect objective evidence to support the facts underlying the validity of the dismissal.

We will make sure to monitor new trends and developments as they come, including the appellate court decision of Barclays Securities Case which is currently being litigated in the Court of Appeals.

TMI Associates

Cross-Border Labor and Employment Team

23rd Floor, Roppongi Hills Mori Tower
6-10-1 Roppongi, Minato-ku, Tokyo 106-6123, Japan
Tel +81(0)3-6438-5511 Fax +81(0)3-6438-5522
Email XBorLE@tmi.gr.jp
<http://www.tmi.gr.jp/english/>

This newsletter is provided as a general informational service to clients and friends of TMI Associates and it does not constitute legal advice.