



Japanese Employment Law Update



Governing Law in Cross-Border Employment Contracts: Lessons from the KLM Case

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Whether a mandatory provision of another jurisdiction can override an agreed governing law is an important question that may arise in employment disputes between foreign corporations and Japanese individuals.

Recently, a lower court judgment that had applied a mandatory provision of foreign law was, in effect, substantially overturned on appeal. Before the appellate court issued its ruling, the parties reached a settlement, influenced by an academic opinion submitted to the appellate court. As a result, the original judgment was effectively reversed in practice.

In this newsletter, we will briefly discuss the key differences between the lower court's holding and the academic opinion, and the broader implications of this case for determining the applicable labor law in cross-border employment disputes.

1. Japanese Statute Regarding Governing Law (Act on General Rules for Application of Laws)

Under Japanese law, the formation and effect of a legal act are governed by the law of the place chosen by the parties at the time of the act (Article 7 of the Act on General Rules for Application of Laws (the "Act")).

Even where the law applicable to the formation and effect of a labor contract as a result of a choice under Article 7 of the Act is a law other than the law of the place with which the labor contract is most closely connected, if the worker has expressed to the

employer their intention that specific mandatory provisions of the law of the place with which the labor contract is most closely connected should apply, then those mandatory provisions shall also apply to the formation and effect of the labor contract (Article 12, Paragraph 1 of the Act).

The law of the place where the work should be provided under a labor contract (or, if that place cannot be specified, the law of the place of the business office at which the worker was hired) is presumed to be the law of the place with which the labor contract is most closely connected (Article 12, Paragraph 2).

2. Original Judgment

(1) Issues

This case concerned a dispute between Japanese cabin attendants and KLM Royal Dutch Airlines (“KLM”), a foreign airline. A key issue was whether the cabin attendants’ fixed-term employment contracts with KLM had, under Dutch law, been converted into permanent contracts. While the contracts expressly designated Japanese law as the governing law, the cabin attendants argued that Dutch law was the law of the place most closely connected with their contracts. On this basis, they sought to apply a provision of Dutch law which provides that an employment contract is deemed to be converted into a permanent contract once its total duration exceeds three years (the “conversion rule”).

(2) Original Judgment Ruling

The Tokyo District Court found that *the place where the work should be provided* by the employees could not be specified, since the airplanes on which the plaintiffs primarily worked flew across multiple jurisdictions.

The District Court noted that KLM’s core personnel management functions and decisions concerning the terms of the labor contracts were carried out either at its headquarters in The Netherlands or by a department located there. It also observed that KLM had no physical facilities in Japan relating to the plaintiffs’ work, whereas a crew center existed in The Netherlands. On this basis, the court determined that *the place of business office at which the worker was hired* was The Netherlands.

The District Court further held that there was no evidence sufficient to rebut the legal presumption that Dutch law was the law of *the place with which the labor contract is most closely connected* with respect to the cabin attendants’ employment contracts.

Consequently, the District Court concluded that the Dutch conversion rule applied, and the cabin attendants enjoyed the benefits of permanent employment contracts under Dutch law. The airline appealed this judgment to the Tokyo High Court.

3. Terms of Settlement at the Appellate Court

Before the Tokyo High Court could issue a ruling, however, the parties reached a settlement. Under the settlement, they agreed that the governing law of the subject employment contracts was Japanese law despite the Tokyo District Court's earlier judgment applying Dutch law.¹

Since this case was resolved through settlement rather than a High Court judgment, the appellate court's own view remains unknown. However, several facts imply that the settlement was influenced by the airline's submission of an opinion letter from a prominent scholar of international private law (the "Opinion Letter"). The parties also included a unique provision in their settlement agreement expressly permitting the airline to disclose most of the settlement terms, including the agreement on governing law, by way of publication in at least one case commentary. The scholar who authored the Opinion Letter has further stated that the settlement should be regarded as having, in substance, reversed the District Court's judgment.

The key points of the Opinion Letter submitted to the appellate court were as follows.

- The primary purpose of conflict-of-laws rules is to determine the governing law without evaluating the underlying policy or rationale of that law; therefore, the choice of law should be made without favoring the protection of either party.
- The governing law (the law of *the place most closely connected*) must be determined at the time of execution of a contract in order to ensure foreseeability for the parties, and such determination should not be subject to later changes in circumstances after the contract has been executed.
- *The place where the work should be provided* in this case was either Japan or unspecified, but certainly not The Netherlands. In particular, (i) the duty of cabin attendants to remain on "standby" existed only in Japan, not in The Netherlands; (ii) the cabin attendants resided in Japan, whereas they only stayed temporarily in hotels in The Netherlands; and (iii) the cabin attendants departed from and returned to Narita Airport. Thus, the labor provided by the cabin attendants was significantly greater in Japan, in both time and effort, than in The Netherlands.
- *The place of business office at which the worker was hired* was also Japan. This should be understood as the employer's business office involved in concluding the labor contract with the employee, and not as the place where employment matters are managed (which can be changed unilaterally by the employer after the conclusion of the contract). In this case, the employment contracts clearly stated

¹ "Application of Article 12 of the General Rules Act to an Employment Contract between a Foreign Airline (KLM) and a Japan-based Cabin Crew - Conclusion of a Settlement Substantially Overturning the March 27, 2023 Judgment of the Tokyo District Court," HANREI HISHO JOURNAL: Reference No. HJ100219, uploaded Apr. 15, 2025 (Masato Dogauchi).

that the location for concluding the contract was Japan, and the recruitment and interviews of the cabin attendants had also taken place in Japan.

4. Conclusion

In today's environment, where cross-border remote work is increasingly common across many industries, the "place where work is performed" may not always be clear, particularly when an employee works while traveling across multiple jurisdictions.

In such circumstances, the "place of the business office where the worker was hired" can become a decisive factor in determining the governing law, as illustrated by the KLM case.

The KLM litigation highlights that, if employers wish to avoid the application of mandatory provisions of a particular jurisdiction in situations where employees perform work in multiple locations, it is advisable to carefully consider which business office will handle recruitment and hiring, where the employment contract will be concluded, and to maintain clear written records of these matters.

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