

National Labor Relations Commission's Decision Finding an Unfair Transfer Does Not Necessarily Mean the Existence of a Tortious Act

Company D had implemented a personnel measure removing employees approaching the wage-peak system¹ from their assigned posts (the "Personnel Measure"), with the aim of resolving personnel backlogs, etc. Some of the affected employees filed petitions for relief with the Labor Relations Commission, arguing that the Personnel Measure constituted an unfair transfer. The Labor Relations Commission ruled that the Personnel Measure constitutes an unfair transfer.

Some of the employees subject to the Personnel Measure then filed a damage claim against Company D, claiming that the Personnel Measure also constituted a tortious act under Article 750 of the Civil Act and seeking non-pecuniary damages. The plaintiffs who had filed the petitions for relief also sought damages equivalent to the labor-consultant fees they had incurred in connection with those proceedings.

Representing Company D, Shin & Kim argued that the legitimacy of the Personnel Measure and the existence of a tortious act must be assessed separately. Accordingly, the fact that the Personnel Measure had been found to constitute an unfair transfer did not, by itself, establish Company D's liability for damages. Shin & Kim further emphasized that courts have recognized tort liability in relation to a unfair transfer only where the transfer constituted a retaliatory or other comparable measure against a particular employee.

Shin & Kim also argued that the Personnel Measure could reasonably be regarded as a legitimate transfer and did not constitute a tortious act giving rise to liability for damages. In support of this position, Shin & Kim pointed out that: (i) the Personnel Measure had in fact served its intended purpose of alleviating personnel backlogs; and (ii) the affected employees' job grades and salaries remained unchanged after the Personnel Measure, while the duties newly assigned to them were ordinary duties routinely performed by Company D employees and did not materially alter their working conditions in a manner that was excessively harsh or otherwise beyond what they could reasonably be expected to tolerate.

The court accepted Shin & Kim's arguments, holding that, notwithstanding the National Labor Relations Commission's decision on re-examination finding the Personnel Measure to constitute an unfair transfer, there were substantial grounds to hold that the Personnel Measure was justified and that it could not readily be characterized as a tortious act giving rise to liability for damages. The court therefore dismissed all of the plaintiffs' claims.

¹ A system under which employees' wages are adjusted after reaching a specified age, typically before mandatory retirement.

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