

An Industrial Accident Case that Recognized Unpaid Union Activities by a Labor Union Officer as Work Performance

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I. Introduction

Although the actual working hours do not meet the standards for recognition of an industrial accident due to overwork, a ruling has been issued that recognizes unofficial union activities of union officers as work on behalf of the company. In considering the court rulings and administrative judgments in the past, only the union activities of paid full-time union officers have been recognized as company work, while unpaid union activities have not been considered directly related to the union member's work for the company. Therefore, this instance of acknowledging unpaid union activities as part of work for the company is a meaningful judgment that may be referenced in similar cases in the future. Union officers' union activities are now recognized as a part of the company's internal HR management.

In this particular industrial accident case, in which a union officer's unpaid union activities were recognized as work performance, I would like to review the reasons why the Korea Labor Welfare Service (hereinafter referred to as the 'Welfare Service') disapproved of the application for this industrial accident and why the court approved the application as a work-related accident.

II. Details of this particular Industrial Accident Case¹

1. The Welfare Service's reasons for disapproval:

The victim joined Korea Railroad Corporation on December 11, 1990 and worked as a KTX train driver at the Seoul Office from January 2, 2006. The victim was found dead at his home on January 24, 2018 at 23:30. The cause of death was determined to be a heart attack (acute cardiac death) as a result of an autopsy analysis conducted by the National Institute of Forensic Sciences. In its application to the Welfare Service on July 2, his surviving family claimed that the death of the victim was an occupational accident.

According to the Welfare Service, on February 1, 2019, ① the working hours of the victim were, on average, 38 hours and 56 minutes one week before his death, 42 hours and 21 minutes per week for the 4-week period previous, and 36 hours and 28 minutes per week for the 12-week period prior to death. These averages did not meet the short-term and chronic overwork criteria of the Labor Ministry.² ②Shift work was performed, but was scheduled one month in advance. ③When the victim worked at night, he was given long holidays, such as two or three days off from the following day after the night shift. ④The application for survivors' benefits and funeral expenses were rejected because the Welfare

¹ Seoul Administrative Court ruling on Oct. 27, 2021: 2019guhap86761.

² Brain stroke and heart disease (Ministry of Employment and Labor Notice No. 2017-117, issued on Dec. 29, 2017)

Service's Occupational Disease Judgment Committee stated that it was difficult to recognize a causal relationship between work and the death of the victim, as they were unable to find any sudden circumstances that could lead to death.

2. Claims of the surviving family

The victim was a KTX train driver and performed irregular shift work according to the shift work schedule.³ In addition, as the Vice Chairman of the Seoul KTX labor union branch and the union officer in charge of occupational safety and health (hereafter referred to as the 'Safety Officer'), the victim additionally performed other union duties. At the time of his death, it was not easy to review and confirm the shift work schedule due to the Lunar New Year holidays and the Pyeongchang Olympics. The victim had also not suffered any particular diseases prior to his death. Taking these circumstances into account, it is reasonable to believe that the victim's heart attack was due to overwork and work-related stress.

3. Judgment of the Seoul Administrative Court

(1) Working hours: The working hours of the victim were 38 hours 56 minutes in the week just before his death, 42 hours 21 minutes on average per week in the previous 4 weeks, and 37 hours and 48 minutes per week in the 12 weeks previous to that, which falls short of the standard of working hours for chronic overwork set by the Labor Ministry.⁴ However, the working hours of the victim are somewhat higher than the working hours of his fellow train drivers, and in addition, it seems that the victim spent a considerable amount of time on union activities while performing his duties as the Vice Chairman of the union branch. This was all in addition to the fact that the victim experienced many work-aggravating factors such as irregular shift work and work with great mental stress due to his additional responsibilities.

(2) Union activity hours: Although the time the victim had put into union activities as the Vice Chairman of the labor union was not recognized as working hours by the company, it must be taken into account in judging whether or not there was work-related overwork. The victim had participated in collective negotiations since November 2017, and had been in charge of the preparation of the shift work schedule for two years since mid-2016. Although the victim did not work immediately before his death on January 24, he had attended a labor union officers' workshop for two days and one night during January 23 to 24, 2018 to discuss pending issues such as the wage peak system. While the work shift schedule preparation task was repeated every month, it was very stressful when arranging night work hours and non-working days for about 230 train drivers, and had to be performed in addition to his regular work hours. This all suggests that the victim was putting a considerable amount of time into union activities in addition to his own working hours. In fact, January 24, 2018, when the victim died, was actually a day off, but he handled work-related duties such as attending a workshop for union officers and reviewing the work shift schedule, and after becoming aware of a train-delay incident, he even called and persuaded the company's Operations Manager that the train driver involved with in the incident was

³ The shift work is assigned on a six-day rotation, consisting of "day – day – night - night & morning work – off-day - holiday." As the working day is calculated as eight hours, when it is calculated for four weeks, drivers work 18 days, with an average of 36 hours per week.

⁴ Brain stroke and heart disease (Ministry of Employment and Labor Notice No. 2017-117, issued on Dec. 29, 2017)

not responsible.

(3) Work aggravating factors: Based on the deceased's work shift schedule, there were other factors that increased the burden of work prescribed by the Labor Ministry Guides, such as irregular arrivals and departures, and performing additional work once or twice a week after working at night. In addition, he had to drive the KTX from its departure point to the destination by himself, as there was no substitute driver on the train; he had to meet the arrival time of the train even during long operations. In particular, since the review of the work shift schedule was directly related to the labor intensity and wages of the train drivers, it was difficult to reconcile the interests of the train drivers within its deadlines, which caused considerable stress on the victim.

(4) Stress just before death: In addition to the above-mentioned heavy work, on the day of his death the victim received a message from another union executive/employee who was assisting him with the work shift schedule, advising him that he wanted to quit such work. While settling the work shift schedule for February, there were many considerations due to the opening of the Pyeongchang Winter Olympics, the opening of Incheon Airport Terminal 2, the Lunar New Year holidays, and the dispatch of train drivers due to the opening of the Gyeonggang Train Line. Considering the circumstances in which the victim tried to protect the position of fellow workers to the company's Operations Manager in relation to the train-delay incident, it can be seen that the victim was under stress due to work and related union activities.

(5) Cause of death: Overwork or stress due to work and related union activities of the deceased induced an increased heart beat and higher blood pressure, which could cause a heart attack in persons with heart disease, such as the deceased.

III. Court's Interpretation of the Welfare Service's Rejection

1. Welfare Service's criteria for judging death from overwork

The Welfare Service decided whether the victim was overworked based only on the standard of overworked death listed in the guidelines of the Labor Ministry. However, the court recognized the victim's union activities as work performance on behalf of the company and viewed it as overwork. As the Vice Chairman of the Seoul High Speed Rail union branch and the union Safety Officer, the victim was engaged in a lot of overtime activities outside of his regular work. In particular, he participated in a two-day, one-night union workshop just before his death. As the labor union's safety manager, he acted on behalf of a fellow train driver in a train-delay incident. Such union activities were not recognized as work performance by the Welfare Service.

2. Omission of facts and non-reflection of facts by the Welfare Service

The court corrected the factual error of the Welfare Service by requesting a fact inquiry on the workplace and the labor union, and supplemented the previous insufficient investigation.⁵ In the 11th week prior to the death of the victim, 16 hours spent for collective bargaining were omitted from working hours. In addition, the Welfare Service

⁵ Fact Confirmation Reports from the Seoul High Speed Railway Office and the Seoul High Speed Railway Labor Union branch.

said that the victim worked 6-day shifts and took a break for 2-3 days from the next day when working at night, but in reality the victim could only take 2 days off because of his leaving work in the late morning after driving a train in the morning and working a night shift before the day.

The Welfare Service stated that no sudden circumstances leading to death were confirmed, but in reality, despite the fact that the day of the time-delay incident was an off-day and only 4 hours before his death, the victim checked the shift schedule with a deadline, and was also advised by a fellow worker who assisted him in reviewing the shift work schedule that he would be quitting his support role. In particular, one hour before his death, the victim received notice of a delay incident of KTX trains the day before, understood the situation, and made a strong effort to explain that it was not the fault of the train driver by calling the company's Operations Manager. The Welfare Service did not acknowledge these sudden incidents.

3. The Welfare Service's failure to reflect work aggravating factors

The Welfare Service excluded the aggravating factors on the grounds that KTX train drivers carry out their work according to a shift work schedule normally prepared one month in advance. In response, the court judged that the work of the victim was work with aggravating factors. The working hours on the work shift schedule were irregular, with different starting and leaving times every day, and night shifts were performed once or twice a week. In addition, it was very stressful because the victim operated the KTX alone, had to match the train time even during long operations, and was held accountable for delayed operations.

IV. Criteria for Determining Whether Union Activities are Work Provided to the Employer

Injuries and diseases caused by union activities are not specified in the Industrial Accident Compensation Insurance Act. However, union activities of full-time or part-time union officials are recognized as work according to criteria but are limited to activities outlined in the collective agreement or activities approved by the employer. In addition, the court considers injury or disease during labor union activities as work-related in accordance with a wider application of the current criteria for work-related injuries.⁶

The court has recognized, as work-related, those accidents involving full-time and part-time union officials that occurred while such officials were engaged in union activities that met the following criteria: First, it involved full-time or part-time union officials using the paid time-off system. The fact that a full-time labor union official has been engaged in labor union activities without having to do the work originally outlined in the labor contract is due to a collective agreement or company consent. Labor union activities allow a full-time union official to engage in company labor management tasks, which can be seen as work provided to the company, instead of his original work. Thus, an illness or accident occurring to a full-time union official in the course of performing related labor union activities constitutes a work-related injury or disease.⁷

⁶ Lim, Jongyul, Labor Law, 18th ed., 2020, p. 497.

⁷ Supreme Court ruling on Feb. 22, 1994: 92nu14502; Supreme Court ruling on Dec. 8, 1998: 98doo14006; Supreme Court ruling on Mar. 29, 2007: 2005doo11418; Supreme Court ruling on May 29, 2014: 2014doo35232.

Second, accidents that occurred outside of working hours were work-related union activities. In the need to enhance smooth and stable labor-management relations, the full-time union official system allows union officials to take charge of labor union affairs instead of the work originally outlined in the labor contract, while still holding the status of employees. In order for a full-time union worker to be regarded as having a work-related accident under the IACI Act, the labor union activities performed by the full-time union official must be directly and specifically related to company labor management.⁸

Third, the labor union's work must be closely related to the company's labor management work, which means that the employer allowed union officials to take charge of the work in place of their original work.⁹

However, the following union activities by full-time or part-time union officials are not regarded as work: First, activities by an umbrella union that are unrelated to the work of the company concerned¹⁰; Second, illegal labor union activities; and Third, confrontational labor-management activities over a period of time from the existence of a labor dispute to conclusion of a collective agreement.¹¹ Fourth, activities outside of working hours that are not specifically related to the employer's labor management work.¹²

V. Conclusion

In determining whether the death of the KTX driver was due to overwork, and therefore an occupational accident, the court ruled, based upon not only whether the incident occurred during working hours, but also the special working conditions of the deceased and the union activities he was involved in as a union officer. The average working hours of the victim were only 42 hours per week over the previous 4 weeks, but they were just more than the normal high-speed train driver's average of 36 hours per week over a similar 4-week period. There are also environmental factors such as the number of night or irregular shifts, and tension and noise in the driver's cab arising from the high-speed train's single-driver and high-speed operation. In particular, the employee had attended a two-day union officials' workshop held according to a regular schedule on the day before the date of the incident. At the same time, on the day of the incident, the victim had carried out the work of preparing the work shift schedule for union members at his home, and also, as the labor union's Safety Officer, protested on behalf of a union member to the company's Operations Manager about the delayed railway incident. In judging whether this case was related to overwork, the Seoul Administrative Court considered the union activities carried out by this union official as well as the Guidelines on Working Hours for Determining Overwork issued by the Ministry of Employment and Labor.

⁸ Supreme Court ruling on July 14, 2015: 2005doo5246.

⁹ Supreme Court ruling on May 29, 2014: 2014doo35232.

¹⁰ Supreme Court ruling on July 14, 2005: 2005doo5246.

¹¹ Supreme Court ruling on March 15, 2004: 2003doo923.

¹² Supreme Court ruling on March 28, 1997: 96noo16170.