

UNLAWFUL LABOR PRACTICE CLAIM

March 9, 2018

Tokyo Labor Committee Chairman Fusamura Seiichi

Petitioner 2-20-68 Higashi Tabata, Kita-ku, Tokyo JR Building 3rd floor
East Japan Railway Workers' Union Tokyo Area Headquarters
Chairperson of Above Written Miyazawa Kazuhiro
Telephone 03-3894-3901

Petitioner 61 Teramachi, Hachioji, Tokyo JR Hachioji Club 2nd floor
East Japan Railway Workers' Union Hachioji Area Headquarters
Chairperson of Above Written Kanai Masaaki
Telephone 042-627-4451

Respondent 2-2-2 Yoyogi, Shibuya-ku, Tokyo
East Japan Railway Corporation
CEO of Above Written Tomita Tetsuro
Telephone 03-5334-1111

The actions of the Respondent as follows are unlawful labor practices corresponding to Article 7.3 of the Labor Union Law, hence, after an investigation, we are submitting the claim herein.

Petitioner East Japan Railway Workers' Union Tokyo Area
Headquarters
Chairperson Miyazawa Kazuhiro

Petitioner East Japan Railway Workers' Union Hachioji Area
Headquarters
Chairperson Kanai Masaaki

#1. Content of Requested Relief

1. The respondent shall not recommend withdrawal to the members of Unions of the Petitioners, treat persons who do not withdraw unfavorably, act or say anything at the workplace that actively approves withdrawals from the Union, or makes public comments about the abandonment of the labor agreement with the goal of encouraging withdrawals from the Union.
2. The respondent shall submit to the Petitioners the “Post of Apology” with the same content on the A3 paper posted on all Respondent’s staff bulletin boards, alongside with the immediate issuance of an apology of the content written below.
3. From now on, no unlawful labor practices shall be done to East Japan Railway Workers’ Union and East Japan Railway Workers’ Union Members.
4. The losses to the JR East Union’s activity due to unlawful labor practices shall be monetarily compensated and recovered.

We request counsel on the Relief Claim above and “Measures on Effectively Securing Inspections.”

Year / Month / Day

East Japan Railway Workers’ Union

East Japan Railway Corporation

1. East Japan Railway Corporation apologizes to all members of the East Japan Railway Workers’ Union and recognizes that it has coerced Union withdrawal through actions such as inflicting concrete disadvantages or possibilities of disadvantages, and soliciting withdrawal sheets at the workplace.
2. East Japan Railway Corporation shall not repeat the same actions from now on.

#2 Main Points of the Conflict

This matter, during the 2018 spring offensive (“shunto”), East Japan Railway

Corporation (hereinafter 'Respondent') coerced the union members of the East Japan Railway Workers' Union (hereinafter 'JR East Union') to withdraw, and as a result, many of members withdrew from the Union against their wills. The action of coercion for withdrawal corresponds to an Unlawful Labor Practice under Article 7 of the Labor Union Law, and since it is still continuing, the Petitioners are requesting counsel from the Tokyo Labor Committee on the Relief Claim and "Measures on Effectively Securing Inspections" for this Claim.

#3 Concrete Facts of Unlawful Labor Practices

1 Related Parties

(1) Petitioned Unions

JR East Union is a labor union organized by the workers of the Respondent's company, and as of January 2018, prior to the time of the claim, the number of members was 46,000 workers.

The petitioners are representatives of the area headquarters of the JR East Union, an organization divided into 12 area headquarters around East Japan. They are composed of several branch systems, and the branches are mainly formed from the workplace organizations called 'chapters.' Each system has union officers approved at the convention.

On the other hand, due to the withdrawal coercion JR East Union has had a mass withdrawal, already losing more than 10,000 members in a short amount of time, and there are still withdrawals taking place. The filing of this Claim is centered around the events in Tokyo Area Headquarters (hereinafter 'Tokyo HQ') and Hachioji Area Headquarters (hereinafter 'Hachioji HQ').

(2) Respondent Company

The company of the Respondent's headquarters is located at the address written above, and it is a corporation running businesses mainly related

with railways, centered around Eastern Japan, and its staff number, at the time of the writing of this Claim, is approximately 56,000. The Respondent has many labor unions other than the Petitioners' Union, such as the National Workers' Union East Japan Headquarters and JR East Japan Labor Union. The respondent's company is divided into 12 branches around Eastern Japan. (Each of the 12 branches corresponds to each of the 12 regions.)

The withdrawals of this matter have been happening in each area of Eastern Japan, but the focus of our claim is the events occurred in the East Japan Railway Corporation Tokyo Branch (hereinafter 'Tokyo Branch') and the East Japan Railway Corporation Hachioji Branch (hereinafter 'Hachioji Branch').

(3) Relationship between the Petitioner Union and Respondent Company

Between the JR East Union that the Petitioners' Unions belong to and the Respondent Company, there was a healthy relationship for labor-management cooperation towards the mutual goal of prosperity of the Respondent's company after the conclusion of the Labor-Management Joint Declaration on August 7, 1987, the third Labor-Management Joint Declaration, and the 21st Century Labor-Management Joint Declaration (Towards New Leaps) before the full privatizing. Also, the 'Tokyo Labor-Management Declaration 2002' was signed between the Tokyo HQ and the Tokyo Branch on November 1, 2002. In the declaration, it states that 'working towards Tokyo's "Construction of a Labor-Management Relationship of Higher Quality," we aim to improve the value of working for us with a focus on 'Workplace Number One,' and when the efforts of the labor and the management are kept in harmony, we are confident that, even under tough business conditions, we shall hire workers according to the growth of our company and secure happiness for the families of our workers.'

However, during the conflict in 2018's spring offensive, the Respondent

issued its #901 document “About the Invalidation of the Labor-Management Joint Declaration” on February 26 of this year to us, with unfounded untruthful reasons, stating, “not only your Union has clearly spread untruthful opinions and facts about business dealings between the labor force and the management, it has also made predictions of disputes, which naturally destroys the trust relationship with the company, negating the points and spirit of the Labor-Management Joint Declaration.” Also, for the same reasons, the Tokyo Branch has notified the Tokyo HQ of the invalidation of the ‘Tokyo Labor-Management Declaration 2002’ via Tosokin #315.

2. The process which unfair labor practices had occurred.

- (1) The dispute process between labor union and management regarding disparity in wage increase

“Human Affairs’ wage system” which had been executed in April 2012 is a wage system reform from the old ‘step-based salary system’ using a basic salary chart, to the new ‘wage-management system’ where the amount of regular salary increases and pay raise from promotion are determined by levels of positions. The allowances based on job responsibilities were also established. The labor and management both agreed on this system change to ‘the wage-management system’. In this system reform, ‘the amount of a predetermined salary increase’ was newly established, where a regular pay raise is managed by the amount of money based on the position level. Regarding the salary increase approach, there was no labor and management debate at all among 28 collective bargains.

During the spring negotiation in 2014, regarding the salary increase practice after 6 years, JR East Japan Railway Company first time practiced ‘the differentiating pay scale raise’ whose calculation was based on the predetermined pay raise amount. Since then, labor and management have been opposed each other for the pay raise whose calculation is based on the amount of fixed salary increase, which resulted

in the labor and management dispute during spring labor offensive in 2017.

JR East Japan Railway Company explained the reason why they use the predetermined pay raise amount for calculating the increase in wage as “for practicing pay raise, it is appropriate to use ‘the predetermined pay raise amount’ for calculation base because salary raise should be based on treatment for employees’ job responsibilities, no complication, reasonability, and fairness.” However, the labor union insisted that there should be no differentiation on pay raise because the increase in salary should be for the portion of price rise and improvement in living standards. Treatment based on job responsibilities have been implemented into the system already. Therefore, pay raise whose calculation is based on the predetermined pay raise amount should not be enforced. If ‘the differentiating pay scale raise’ occurs, there will be a ‘double disparities’. Nevertheless, JR East Japan Railway Company has kept practicing ‘the differentiating pay scale raise’.

In order to make an end to ‘the differentiating pay scale raise’ which lasted three years since the Spring negotiation in 2014, the union enforced ‘1 secret voting by every union member’ in December of 2016 in accordance with JR East Labor Union regulation Article 59. This resulted in acquiring 82.3 percent high ratification for the right to strike. In addition, at the 33rd JR East Labor Union’s extraordinary conference held in 10th of February 2017, the direct secret voting by delegates was held, they gained 96 percent of approval and resulted in establishing the right to strike limited only to ‘opposing differentiating pay raise’.

At the spring negotiation in 2017, the union with their established right to strike fought with the management and after the labor and management consultation, ‘the uniform fixed amount of 1,000-yen wage increase for every union member is implemented. This means that the union could demolish ‘differentiating pay raise’ in 2017, however, the management replied that “regarding the pay raise after 2018, we cannot

deny not to use the predetermined pay raise amount for calculation base”. At the negotiation, the union insisted that “the labor-management dispute has not ended.” and the discussion between labor and union has inevitably opposed each other.

During the negotiation for request of ‘management allowance related’ increase which was held at the same period of time based on the discussion of the uniform fixed amount of pay raise in spring negotiation in 2017, there were three issues which labor and management agreed on: (1) Implementing the uniform fixed amount of pay raise (2) ‘pay raise’ and ‘allowance’ are two different systems and treatment according to job responsibilities should be done with allowance. (3) Do not continue the predetermined pay raise amount method.

JR East labor union does not request for a wide range of pay raise but they merely oppose to ‘differentiating pay raise’, which means to request to stop using the predetermined pay raise for calculating pay raise. They submitted a proposal to ‘request getting rid of ‘differentiating pay raise (JR East labor union article 13)’ and instead, implementing the all union member uniform fixed amount of pay increase’. Based on the terms of agreement on spring negotiation in 2017, JR East labor union requested the uniform fixed amount of pay increase. On 6th of February, a collective bargain was held to negotiate to abolish the differentiating pay raise and solve the labor-union dispute.

However, in the bargain, it could be confirmed that the situation of the labor-management dispute has worsened compared to last year by judging from the outright refusal to eliminate "differentiating pay raise" and the disqualification of the labor-management agreements. We notified in the meeting that we would be considering various strategies including the use of established strike right to deal with the situation. Subsequently, the same policy was adopted at the 44th General Central Committee Meeting of the JR East Labor Union held on Feb 9, 2018.

The primary cause of prolonged labor and management dispute is that both sides did not discuss 'how the pay raise system should be' during the process of dispute against 'human relations/wage system' which was enforced in April 2012.

- (2) The status of the collective bargain of spring negotiation 2018 and releasing strike order

JR East labor union made an urgent proposal which requests enforcing 'pay raise system which does not use the predetermined pay raise amount for base calculation' in order to overcome the labor-management dispute of February 16, 2018.

On February 19, 2018, JR East labor union gave preliminary notice of labor dispute (uncooperative strike) to the respondent. However, the notice says that uncooperative strike will be ① held in out-of-business hours ② regarding self-development activities and it will not include businesses which disrupt train operation.

On February 23 and 26, 2018, labor and management decided to have collective bargain because both sides agreed that this is an important opportunity to solve the labor-management dispute, which had been continuing since the spring negotiation in 2014. As a result, the respondent answered that they do not stick to the disputing theme: 'to make the predetermined pay raise amount a calculation base' which generates differentiated pay raise. JR East labor union confirmed this as well. Thus, by getting the agreement on a 'pay raise method', the labor-management dispute was settled. As a result, on February 24, 2018, JR East labor union removed the warning of uncooperative strike dated February 19, 2018, which 'labor union members, limited to the train operation places. will not perform self-development activities out of working hours.'

At the collective bargain, the respondent warned that it is a one-sided destruction for labor and management joint declaration as 'by a warning of strike, JR East labor union makes the meaning and spirit of labor and management joint declaration invalid.' However, because of difference in perception between the management and JR East labor union, the collective bargain ended in dispute.

3. Cases of unfair labor practice

- (1) JR East Japan Railway Company management gave instructions at the workplace and many union members left the union after that.

Right after Sankei Newspaper reported, 'JR East labor union, considering strike' dated February 12, 2018, workplace inspection (attachment 1) by the respondent company's management such as president, vice president, and managing director has started. Immediately after that, a lot of withdrawal from the union occurred all at once among all the regions of the respondent company.

Starting from the 1st notification titled 'To employees' (President) from the respondent company's president on the bulletin board dated February 16, 17, and 20th in 2018, a lot of notifications and newsletters such as 'To crew members', 'To employees who work at stations', 'To employees who work at train facilities', and 'Employee newsletter' were displayed on the bulletin board on 23rd of February 2018. The respondent company management tried to distort argument of JR East labor union and advertised the message to the respondent company employees (most of them are JR East labor union members) as if JR East labor union seems to have all the responsibilities for this strike. (As mentioned before on this petition, the preliminary notice of labor dispute says clearly that uncooperative strike will be held ① out of business hours ② regarding self-development activities, and it will not include businesses which disrupt train operation. Nevertheless, the respondent company management made false

propaganda as if the uncooperative strike might have an influence on train passengers.)

Furthermore, on February 24, 2018, in spite that the union gave 'a release notice of dispute activity', the respondent company management put the notification on employee's bulletin board saying, 'labor and union joint declaration' became invalid as if the labor and management dispute were still going on. (The respondent used the word 'become invalid' because they did not put 'the labor and union joint declaration' on bulletin board when they made an agreement.) With these series of actions, the respondent acted as if JR East labor union members might suffer a loss.

In addition, the respondent strictly prohibits union members to do any union activities inside the workplace during working hours, and they don't even allow people to put a tangerine box with 'JR East Japan Union' label in the guard room. However, the respondent management forces and persuades union members to quit the union by threatening or providing them inducements. During working hours, the respondents talked to the union members individually as a consultation such as 'It is now the time to quit the union.', 'you will not pass the exam unless you quit the union.', 'it is better for you to go with the flow.', 'Tell them it is **your intention** when you quit the union.', 'Do not receive the union's newsletters.'

As a result, since February 13, 2018, some union members from a planning department and a management department on the spot started to leave the union. Before and after when the uncooperative strike was decided to be canceled, an enormous number of union members left the union during a short period of time. At the union assembly, many union members testified that 'the management asked union members to consider and submit the form of withdrawal by 16th, 19th, and 23rd since these are the dates for consolidating.'

Please see some testimonies from the union members who were forced to

leave the union and the people who forced the union members to leave the union.

- Company president and vice president come to the office very often and tell me 'do not cause trouble to customers' again and again like a spell. What people at the company said, and the news contents are very different from what we are thinking about. When I went to have drinks with my boss (highest ranked person at my office), he asked me whether I would quit the union or not.
- The atmosphere of the branch office is tremendously bad because of this withdrawal coercion from the union. Most union members from the branch office quit as there is no other way due to pressure from the management.
- At 12 noon on 23rd of February, inside of the smoking room of Oota Unyu district, staff from the human resource department of the branch office who was visiting the office told the train driver before his work shift that 'it is better to quit the union.'
- The company management comes here every day. Each time, the management gathered at the technical center for a meeting. For those from the maintenance center to attend the meeting, it takes 1 hour for round trip and 1 more hour for the meeting. Their actual work is suspended for 2 hours every day. It seems as if the company is on strike every day. I really feel sorry for them watching them every day.
- Since the stationmaster asked me that 'do you think you can do a strike?', I left the union. I don't know whether this is really a correct thing to do. I cannot sleep at night.
- There should be a quota of withdrawal form submission. I cannot get a work settlement from my section chief without submitting a withdrawal form. That is why I submitted the withdrawal form reluctantly.
- At the branch office, they try to force me to leave the union every day. I cannot stand it anymore. I cannot concentrate on my work. I feel mentally very stressful.
- The senior staff told me if I am a union member, it means I agree with the strike. It is crazy that the management of the company comes to the

workplace and check every day. There is no other way than leaving the union.

- The things I have been doing is to people to leave the union. This is a crime. Crime will be revealed sooner or later. I am very sorry for people I forced to leave the union. I cannot feel sorry enough. My mental will be destroyed. The company will also be destroyed.
- This incident looks like it is between the union and the company, however, it is actually the small group of extreme management (director of the headquarter) which pulled the string for this withdrawal scheme. They cannot keep committing crimes. They will be punished sooner or later. It is no use to help withdrawal scheme because they might betray you. You will not get any benefit from leaving the union. Think first before you do something. Do not follow them if you feel weird. You should stop the unfortunate chain behavior at your spot. Once the gears get out of their joint, it is difficult to fix it easily. Company and workplace situation will not be the same as before. It is now the time to stop it.

(2) Existence of Withdrawal Notice based on 'Entry Examples' on Withdrawal Notices

In the 'Entry Examples' found in Attachment #2, past judicial precedents such as, "withdrawal from a labor union will take effect when its notice is made, even if there is an agreement that it requires deliberation from the Central Committee" (Tokyo Court) and "the effectiveness of a withdrawal shall occur immediately at the time of the declaration of intention by the withdrawing person" (Fukuoka Court) were added in, as they thought it necessary. Moreover, the comments "your organization does not have the right to remove names or control disposition," and "if it is published in the organizational bulletin, prepare to sue for defamation" were also added. There have never been withdrawal notices like these ones, and regular union members do not write them down.

There are several such withdrawal notices as the form explained above,

and they happened at the same time in multiple workplaces over a large area, such as Takadanobaba Station Chapter, Abikounyuku Chapter, Nakano Station Chapter, Matsudo Station Chapter, Mito Branch General Affairs Department Chapter, Tsuchiura Station Renku Chapter, and Mitaka Vehicle Center. The copy of the entry of the Mito Branch General Affairs Department Chapter case is it's on the back of the withdrawal notices. In these, there are forms with only the date and names filled out, forms with only the stamp signature on the name, and forms used by union members who are not from the same chapter, which cannot have occurred without someone capable of acting across branches of the entire company at the same time to incite them. We cannot think of someone other than the Respondent who fits that person.

(3) Conversation about Withdrawing between the Respondent's Senior Management and Field Directors

◎ Concrete Example 1: Conversation between Company Manager 1 and Field Director

Field Director: Yesterday one of the drivers, one of them withdrew.

Company Manager: Was she the one pressing on her beliefs from before?

Company Manager: And, why don't you let her ride with you sometimes? It might be a lot of work, but if she tells you the way, you can go to the branch and the HQ together. Just by that, I think raising your hand at the workplace, in a lot of ways, requires courage, so don't leave her high and dry.

Company Manager: Only one person made the decision?

Field Director: As of now, only one person has done it, but there's back-up and there are 2 potential drivers. And it's the female driver, but we're talking to her.

Field Director: Then, at this point, we haven't had a withdrawal from a manager, but we'll get one in a few days. We're talking to the Borderline people and some people have shown intentions to do so.

Company Manager: Right now, absolutely protect those who are doing their own

thinking. We're working hard, and the company is turning its rudder, and the rudder will not go back. The stance will not change, so just don't worry about that.

© Concrete Example 2: Conversation between Company Manager 2 and Field Director

Company Manager: How's it going now?

Field Director: Some withdrawals came out just now, so it's pretty tense in the office.

Company Manager: I guess so.

Field Director: Right now, there have been 5 withdrawals, and there is one worker who came up for the first time today, but it was obvious xx was the potential, for example, so the recent one also rode here with me.

Company Manager: Also, how about the young drivers? Did they say anything?

Field Director: There might be more drivers, but they're pretty stubborn.

Company Manager: If the entire group of drivers go, which section would they go to, right? Accurate information like what kind of environment, what's the other sections doing, and how's the other system's doing would be hard to convey, so the HQ is fully sending out documents to all staff members, so what the union is saying is all lies, so have the staff members who know this to talk to the others.

Company Manager: Did you say there are only 3 ward deputy headmen?

Field Director: I speak of more.

Company Manager: More, huh.

Company Manager: Anyway, the ones who can talk to the women properly are the ones who can go into the women's changing rooms, so...

© Concrete Example 3: Conversation between Company Manager 3 and Field Director

Company Manager: Who's them over there at the entrance, are they union members or staff?

Field Director: The worker wearing a jumper is the Chapter President of the East Union. The worker's called xxx. The other person, that's a driver who's just off his ride, the driver with a cap is worker xxx, an executive officer of the chapter.

Company Manager: Well, so that's them... Wow, you have it tough.

Field Director: I'm sorry.

Company Manager: No, no, that's alright. That's something that has to be fixed. Let's do it.

Field Director: Allow me to explain the state of the region to you.

Company Manager: That's fine, I already came here last February, so that's fine.

Field Director: Then allow me to briefly do it.

Company Manager: What, the state?

Field Director: Right now, five workers have left the union. 4 main drivers, and two with great potential among them. 1 assistant, the xxx that explained the driving conditions is that assistant.

Company Manager: You're doing well. I'm rooting for you.

Company Manager: From that, the management corps will become stronger a little.

Field Director: Tomorrow the 3rd ward deputy headman will come to take up the new post.

Company Manager: Ah, who?

Field Director: The driving department's section vice-chief.

Company Manager: So, it'll be three people.

Company Manager: From now on, really, as the management side knows, in a way it'll be the toughest part of the battle, so please focus your energies.

4 Conclusion

As above, the extortion of large-scale withdrawals by the Respondent is an unlawful labor practice, so we request counsel on "Relief Claim," and "Measures on Effectively Securing Inspections."

Evidence

- JR East Union Organizational Map
- Labor-Management Joint Declaration
- Correspondence Letters between Headquarters and Tokyo Branch
- Faxed news of local strike committee uploaded on the homepage
- Records of Withdrawal Notices and their forms