

# **DORO-Chiba (National Railway Motive Power Union of Chiba)**

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To The Committee of Experts on the Application of Conventions and Recommendations

Observation on non-application of by the Government of Japan ILO Convention No.98 (Articles 1 and 2) and Convention No.87 (Articles 8-2 and 11)

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## **Main Points:**

The Japanese Government and Court are neglecting to observe effectively the ILO Conventions No.98 and No.87 they have ratified. We lodge a complaint seeking the Expert Committee of the ILO to deliver a judgment to improve the situation.

What characterizes today's situation is violation of the right to organize ensuing the Division and Privatization of the Japanese National Railways in 1987. Following are the facts and our opinion concerning this matter.

At the time of Division and Privatization of the Japanese National Railways (JNR), an intentional, discrimination on the basis of affiliation to unions was taken by the Succeeding Corporations (JRs) to exclude from employment those workers belonging to DORO-Chiba (Motive Power Union of Chiba), KOKURO (Japan National Railways Union) and ZENDORO (All National Railways Locomotive Engineers' Union) which all opposed to the said division and privatization of the JNR. The Labor Relations Commissions (Local Commissions and Central Commission), responding to the developments, unanimously delivered relief orders to treat the workers in the condition they were employed ex post facto as of the date of division of privatization of the JNR, or to redress employment procedure of new companies in a fair way. These orders are in accordance with the principles of protecting right to organize

provided for in the ILO Conventions No.98 and No.87

But the privatized JR companies, refusing to practice the orders, filed a suit to cancel the orders. Though the cases raised by the DORO-Chiba are still under litigation at the Tokyo District Court, the said court, in terms of the cases relevant to the KOKURO and the ZENDORO, revoked the said relief orders issued by the Labor Relations Commissions. The suite filed by the Central Labor Relations Commission (CLRC) to Tokyo High Court, the appellate court, was rejected and the latter maintained the first court's decision to cancel the orders of the Labor Relations Commissions. This judgment of Tokyo High Court denies effective protection of workers from discrimination in employment, and apparently violates the ILO Conventions No.98 and No.87 that have been ratified by the Japanese Government. The Japanese Government, reluctant to commit in the developments, is negligent to perform obligations imposed by the international Conventions. As a result, the lives of union members belonging to the DORO-Chiba and other unions as well as the union organizations themselves were severely affected and have been left under difficult conditions. Here we sincerely ask the ILO to urge the Japanese Government to improve the situation.

### **I. Anti-Union Discrimination, and Intervention to Complainant**

1. The DORO-Chiba (Motive power Union of Chiba) became independent in 1979 of the Japan National Railway Motive power Union (DORO in abbreviation), whose local branch being the original body of the present DORO-Chiba, opposing the undemocratic and violent management of the union. The DORO-Chiba, with the Local Headquarters at Chiba Prefecture was the major body when separated from the DORO, had a membership of 1300, comprising about 80% of all drivers working in the Chiba Railway Control Bureau of JNR (KOKUTETSU in abbreviation).

During the process of enforcing division and privatization of the JNR, the DORO-Chiba faced large reduction of employees and repeated anti-union discrimination by the JNR and its successor, the East Japan Passengers Railways Company (hereinafter JR-East), and as a result the membership has been reduced to 600 (including those employed by Japan Cargo Railway Company), all of them consistently fighting against the discrimination of the company.

2. Facing the Division and Privatization of the Japan National Railways in 1987, the trade unions within the former JNR were also divided according to their stance toward this measure: to those unions which opposed to the Division and Privatization belonged the DORO-Chiba, the National Railway Union (KOKURO), which had the greatest membership, and the Federation of All Japan Motive Power Unions (ZENDORO). The reasons of their opposition are: the Division and Privatization of the JNR was enforced without clarifying governmental responsibilities of the enormous deficit of the JNR, a public corporation. With the deficit problems unsolved the JNR was converted to a business entity to pursue profits. This would no doubt endanger people's rights for traffic. Moreover, in the course of the Division and Privatization the right to work and the right to organize of the employees of the JNR were seriously threatened.

3. On the other hand, the Railway Trade Union (the TETSURO in abbreviation) and the All Japan Facility Workers'

Union (the ZENSHIRO in abbreviation) agreed to the division and privatization policy, and DORO, though at first opposing to the policy, soon changed their original stance in 1986 and accepted the policy. These trade unions were organized to Federation of All Japan Railway Workers' Union (TETSUDO-ROREN in abbreviation) in February 1987.

4. The National Railway Reform Act provides for under Article 23 the procedures for selection of candidate workers to be transferred to the succeeding corporations (including JR-East), which inherit the JNR's tasks: the Establishment Committees of succeeding corporations, shall present the hiring criteria to JNR workers via JNR to recruit personnel for new privatized companies. While the JNR, in accordance with the criteria, shall select candidate workers from applicants, work out a candidate list and submit it to the Establishment Committees. Those who are listed and receive notification of appointment shall be employed as personnel for a succeeding corporation. (Meanwhile Article 2-2 Annex, Railway Company Act, provides, aside from the powers stipulated under Article 23, the National Railway Reform Act, that the Establishment Committees shall be permitted to get involved in necessary duties so that each succeeding company may start business smoothly at the time of its establishment.)

5. The number of employees for the succeeding corporations was, pursuant the National Railway Reform Act, set by Minister of Transport in his/her basic plan. Number of applicants did not, in fact, reach the full number for all of the three privatized companies located in the main island of Honshu. Its reasons: the elderly workers were forced to retire; the criteria of employment imposed an upper age limit of 55 years old; the railway management discriminately threatened workers to give up application for employment through intimidation and discrimination, tearing up human relations in the workshop. For the JR-East, the applicants was 84,343, fewer than planned recruit of 89,540 by 5,000.

6. The Establishment Committee of the JR-East presented the JNR management conditions for adoption of personnel, one of which being: 'a person suitable to perform company's duty'. The JNR management in working out a list of candidate workers for new employment placed a norm that 'those who had disciplinary punishment of a six-month suspension of work or repeated punishments of suspension of work since April 1, 1983' are 'not suitable for duties of Company'. For this reason, names of 12 union members of the DORO-Chiba were not put on the employment list, even though the full numbers assigned in the basic plan were not reached. 75 workers in total across the Honshu Island were treated in the same way, including those who belonged to KOKURO and ZENDORO. The JR Establishment Committees, knowing this fact, rejected to employ those workers who were not on the list.

7. Most of those refused were those who had been punished for their labor commitment, or trade union activity. Every one of the twelve workers of the DORO-Chiba is either a leading or active member of the union, who played important role in the struggle to oppose the division and privatization (note 1). The exclusion of those workers who were punished because of their labor activities was apparently practiced by application of the said norm -- a very abstract norm that does not ask for the reasons of punishment one has got. This is in fact a sheer anti-union discrimination by means of black lists under the cover of a vague norm. It must be noted that, different from the juridical condition of the

trade unions in the JNR as a public corporation, whose employees are deprived of the right of strike by the law (the Law of Labor Relations concerning the Public Corporation), the right of strike is lawfully guaranteed in the privatized new railway companies. It is groundless that those who were punished under the former juridical conditions of the former JNR should be excluded from the candidate list for employment in new companies as not “suitable for the duty of the company”.

8. Those who had not been adopted by the new company, namely JR, were transferred as personnel to the National Railways Settlement Corporation which was established to clear remaining duties of former JNR now separated from the new JR companies as a result of Division and Privatization -- duties such as redemption of long-term debts, disposal of the assets of the JNR and promotion of reemployment of the non-adopted.

On April 1, 1990, however, their majority was dismissed by the Settlement Corporation. They had lodged a complaint to the Labor Relations Commission seeking to stop employment discrimination by the JNR against them. Having got a relief order, they were demanding the company to obey the relief order. They are 1,047 in number, including nine from DORO-Chiba and others from KOKURO and ZENDORO, the opposing unions. This case of discrimination in employment is called “1047 Problem”.

9. The companies have been repeating the rafter various kinds of discrimination and interference against the unions. The DORO-Chiba lodged many discrimination cases the Chiba Local Labor Relations Commission and got relief orders, instructing the company to stop unfair labor practices, such as discriminatory employment. (Note 2, Note 3). The company never obeys the order. On the contrary the company resorts to appealing to the Central Labor Relations Commission for re-examination or bringing the case to the court. It takes, however, long time for the Labor Relations Commissions to issue a relief order. The employers, neglecting the order, can keep disputing the case, without being punished. Thus the relief orders are terribly losing effectiveness.

## **II. The ILO Report of the Committee on Freedom of Association and violation of ILO Conventions by the Courts of Japan**

10. The KOKURO and the ZENDORO lodged a complaint on discriminatory employment and violation of the Convention by the Japanese Government to the Committee on Freedom of Association of ILO. The said committee registered the case as Case No.1991 (Japan), and issued three reports in November 1999, November 2000 and June 2001, respectively and was acknowledged by the board of direction of the ILO.

The Committee's Interim Report Year 1999 recommended Government of Japan that 'it is the responsibility of the Government to ensure the application of international labor Conventions concerning freedom of association which have been freely ratified and which must be respected by all state authorities, including the judicial authorities' (Item 271 (c)). The Report Year 2000 again declares 'the Committee recalls the principle that the protection against acts of anti-union discrimination provided for in Convention No.98 guarantees protection at all times against acts of anti-union discrimination: at recruitment and during the period of employment, including the time of work termination' (Item 383 (b)). The Report of June Year 2001 keep on asking Japanese Government for the information on the expected results of the KOKURO case now in the high court (Item 41(c))

11. The case of ZENDORO is now on trial in the Tokyo High Court. In the KOKURO case, two judgments were issued last year in the Tokyo High Court on November 8 and on December 14 in terms of the case for Honshu (in the Department of Civil Affairs No.9) and the case for Hokkaido and Kyushu (No.7) respectively. Both of the two judgments refused to issue relief order to the discrimination in employment against the expectation of the Committee on Freedom of Association of ILO. The court did not care at all whether there was anti-union discrimination that was recognized by the Central Labor Relations Commission (CLRC). The court decisions were interested only in a point whether JR companies should take responsibilities for the anti-union discriminatory practices, if any, in the selecting workers to be hired and creation of a candidate list by the JNR following the National Railways Reform Act. The court denied the responsibilities of the JNR through interpretation of the said Law and Trade Union Act, domestic acts.

12. The first part of the paragraphs of Article 7-1, Trade Union Act, rules, to an employer: 'an employer is prohibited to take a disadvantageous action to an employee, including dismissal, on the fact that he/she is a union member or may have worked for legitimate union activities'. This shares an idea of Article 1-1, ILO Convention No.98. But the court turned down the appeal of the CLRC that the JNR is responsible for the case, through the interpretation of the rules provided in the Trade Union Act to prohibit unfair labor conducts and the National Railways Reform Act, which sets forth the hiring procedures of workers by the succeeding corporations at the time of JNR's Division and Privatization. The interpretation of the court is: Establishment Committees (JR's) are not 'an employer' of those rejected workers; and the prohibition clause cannot be applied to new recruitment rejecting the view of the Committee on Freedom of

Association. On the other hand, the Tokyo High Court admits that those former employees of the JNR, who were not put on the employment list and not employed in the new companies, cannot return to work, and thus the relief order loses its effectiveness. Such interpretation of the Trade Union Act and the National Railways Reform Act will inevitably result in denial of the principle of defending the right to organize. Following is a quotation from the latest judgment of the Department of Civil Affairs No.7 (on the case of Hokkaido)

13. 'Refusal of Employment at New Recruitment and Unfair Labor Acts'

It is interpreted that an enterprise has, as a rule, a freedom of concluding a contract and to decide freely, at the time of employment in terms of which worker and under what conditions unless there is special legal restrictions (Judgment of the Major Court, the Supreme Court, December 12, 1973, Case of Mitsubishi Resin Co., compiled in Collection of Civil Cases, Page 1536, No. 11, Vol.27).

Taking the above mentioned judgment into consideration, on the stage of hiring, different from the stage after employment, an employer can enjoy broader freedom and cannot be restricted in such freedom in the context of status and benefits of applicant workers, and, as for refusal of employment, it is reasonable to interpret that there is no room unfair labor practice should constitute relevant to the disadvantageous treatment provided for in the foregoing part of Article 1-1, Trade Union Act.

As is shown above, the recruitment made by the succeeding corporations represents a new round of personnel collection pursuant to Article 23 of the Reform Act by way of the Establishment Committees, and it is not interpreted that the hiring procedures do violate the Constitution of Japan and the Trade Union Act. Evidently, as there is no special restriction provided by a law and other legal means to regulate the said recruitment, it is plain no room is found where unfair labor conducts should constitute, relevant to the disadvantageous treatment described in Article 7-1, Trade Union Act, in terms of the said hiring procedure' (Judgment Document Pages 113-115)

14. As is stated above, the foregoing part of Article 7-1, Trade Union Act, shares an idea of Article 1-1, Convention No.98 of ILO. The Item 383(b) of the Recommendations for Year 2000 again confirms the effect, which reads 'the protection against acts of anti-union discrimination provided for in Convention No.98 guarantees protection at all times against acts of anti-union discrimination: at recruitment and during the period of employment, including the time of work termination'. Therefore the decision of the Tokyo High Court as to a new round of recruitment, which denies application of the clause to prohibit discrimination in the foregoing part of Article 7-1, Trade Union Act, apparently violates Convention No.98 that guarantees protection against anti-union discrimination.

15. The quoted judgment of the Supreme Court (on the case of Mitsubishi Resin Co.) by the Tokyo High Court reads the freedom of recruitment is approved 'unless there is special restriction provided by a law or other legal means'. The first paragraphs of Article 7-1, Trade Union Act, rightly represent a provision to prohibit discrimination by a law. Thus the judgment of the Tokyo High Court, which denies application of the first paragraph of Article 7-1, Trade Union Act, on the ground the National Railway Reform Act puts a provision that JR companies shall newly recruit and hire

workers, selecting from the JNR's personnel at the time of Division and Privatization of JNR, makes a mistake in interpreting the provision of Article 28, the Constitution of Japan, which guarantees the right to organize, on one hand and the Trade Union Act on the other. That is well explained by the attached Statement of Grounds of the Final Civil Appeal and Notice and Statement of Grounds for Acceptance of Final Appeal filed by the CLRC.

Thus the decision of the High Court, which depends on the said interpretation, violates too the provision of Convention No.87, which reads that 'the domestic laws should not hinder the guarantee provided for in the convention and should not be applied so that such guarantee may be hindered' (Article 8-2).

16. The latter part of Article 7-1, Trade Union Act, prohibits an employer 'to set up a condition for employment not to join or withdraw from a labor union'. This notion has the same affect as that of Article 1-2(a), Convention No.98. KOKURO contended that a fact that JNR incorporated an anti-union application standard as a norm to fix the hiring criteria provided by the Establishment Committees violates this provision, but the High Court rejected the contention either. The following is a relevant portion:

'In this case, from the very beginning, those workers who were covered by the relief orders had not been enrolled in the candidate list created by the JNR, so the Establishment Committees could not adopt them. Therefore, even if the JNR's creation of such a list may have constituted a disadvantageous treatment provided for in the foregoing part of Article 7-1, Trade Union Act, the committees could not set anti-union hiring criteria as a condition for employment, and so no room is found where the Yellow Dog Contract provided in the latter part of the same article may effect. Suppose the fact that JNR requested specific hiring criteria to applicant workers at the stage of selection of candidates for the succeeding corporations had been in conflict with prohibition of Yellow Dog Contract, further analysis should be made, in order to confirm whether such a contention may work in this case, and, if so, whether the Establishment Committees should be affected by responsibilities for such unfair labor acts or not. (omitted) JNR, relevant to selection of candidate workers pursuant to the aforementioned hiring criteria (presented by the Establishment Committees), placed a criterion that 'those workers who had punishment of over 6-month suspension of work or twice or more times of penalty of suspension of work after April, 1983, due to an illegitimate act are not suitable to duties of the succeeding corporations, thus they are not enlisted' to concretize the conditions. And it can be said that this criterion itself contains rationale, therefore it is impossible to judge that an anti-union employment criterion was presented on the ground that JNR placed the said norm. (omitted) JNR was independently entitled, in selecting candidate workers for the succeeding corporations from applicants and creating a candidate list, to perform the series of process, but the Establishment Committees were not authorized to regulate, direct or control over execution of such procedures of JNR. Therefore, supposing JNR had placed a concrete employment condition in relation with the aforementioned hiring criteria presented by the Establishment Committees in order to benefit personnel selection and creation of a list with an intention of anti-union discrimination, it is impossible to regard that the Establishment Committees furnished anti-union hiring criteria because the Committees presented the said criteria. Therefore, even though the above-mentioned interpretation of the latter part of text of Article 7-1, Trade Union Act, should be premised, responsibilities for the unfair labor acts pursuant to Yellow Dog Contract should not be

attributed to the Establishment Committees, Appellee, and other appellees, thus the said contention of Participants (KOKURO) cannot be accepted' (Pages 138-142 Judgment Document).

17. In short, the court decision says, firstly, the Establishment Committees could not present hiring conditions for those workers who were already rejected employment. Secondly, it says, supposing it is interpreted that the discriminatory conditions in recruitment are contradictory to prohibition of Yellow Dog Contract, the hiring criteria presented by the Establishment Committees are not of a nature of anti-union discrimination, and the application standard set by JNR is of a reasonable character. And even if JNR, setting such a standard with an intention to discriminate certain workers, created a candidate list and employed personnel pursuant to that norm, the Establishment Committees (JR) should not bear responsibilities for unfair labor acts, for the creation of a list pertains to the authority of JNR.

The following points must be focused in terms of the above said part.

(1) It is extremely unjust for the court decision to interpret as reasonable the fact that JNR excluded 'those who had punishment of 6-month suspension of work or penalty of twice or more times of such suspension' to actualize the hiring criteria presented by the Establishment Committees, because the decision does not pursue why such punishment had come out. DORO-Chiba's case was already explained above, but looking into the KOKURO's case, indeed, many of union members were consequently excluded from enrollment pursuant to the norm in question: they had been punished (the so-called labor dispute punishment) due to the union activities following the policy of the KOKURO (ANNEX I). The court decision interprets that 'the applied standard itself contains rationale'. It means the court approved the anti-union discrimination. Practically the court regards it as legal to use a blacklist to exclude union activists. This stance of the court actually denies protection against anti-union discrimination at the time of recruitment.

(2) Further, the court asserts: JR companies are exempt from responsibilities for discrimination in employment, for the hiring standard was not provided by the Establishment Committees (JR) but by the JNR even with an intention of anti-union discrimination. This interpretation violates the provision set forth in Article 8-2, Convention No.87. The decision regards that, since the creation of a candidate list was under the authority of JNR in compliance with Article 23, Reform Act, responsibilities for the discriminatory practice pertain only to JNR, even though the Establishment Committees actually involved in such discriminatory practice with the help of the list created by JNR. Thus the JR companies are indemnified from responsibilities. Such 'interpretation' of the Reform Act by the court is an attempt to establish a fact that the domestic laws may be 'applied to hinder the guarantee provided for in the convention'.

18. The CLRC contended that the aforementioned judgment of the High Court made it impossible for the relief measures to be effective for those union members rejected in employment by anti-union discrimination of JR companies, and that the said judgment is based upon the Reform Act, then the provisions in the said Act themselves should violate the Constitution and the ILO's Convention in terms of guarantee of the right to organize. The court decision, on the other hand, recognizes, that when the JR companies committed in discriminatory practices at the time of employment of personnel by the help of the discriminatory list created by JNR, the relief order in terms of this case 'could not be available in reality and therefore no effectiveness should be expected', even if relief order were addressed

to Settlement Corporation, instead of JR companies. Notwithstanding, the court continues to argue that there is no violation of the Convention No.98, for the Reform Act provides that a relief measure shall be arranged between JNR and Settlement Corporation when the former commits in unfair labor acts, and that the act does 'not entirely exclude the institution to cope with unfair labor acts'.

19. The relevant portion of the court decision is quoted below:

'The CLRC insists, as for the April employment of this case, which is different from other cases seen in breakup and bankruptcy of a company due to cancellation of usual business, it is inappropriate that a relief order was addressed to Settlement Corporation, because the sphere of objectives and tasks of the corporation are restricted, while Participant contends that it is meaningless for a relief order which urges employment to be addressed to Settlement Corporation, because it is totally impossible for the corporation to correct and recover the fact of infringement of the right to organize, or rejection of employment, taking its objectives and authority of the corporation into account. Participant demands a relief orders against the unfair labor acts in the case at hand, requesting employment conditions equal or equivalent to those of original posts, while Settlement Corporation commits only in redemption of the JNR's long-term and other types of debts and disposal of land and assets of the national railways, and, tentatively, work to encourage workers in need to find a new job (Articles 1 and 26, Settlement Corporation Act). Assuming this fact, it is impossible indeed to order Settlement Corporation to take necessary remedies to treat workers with conditions as equal or equivalent as of the original posts, and in this sense effectiveness of orders cannot be achieved. (omitted) Participant asserts, concerning the unfair labor acts committed under the employment process pursuant to Article 23, Reform Act, the article itself violates Article 28, the Constitution, and Convention No.98, when relief measures are to be practically denied. (omitted) Article 1, Convention No.98, provides for protection against anti-union discrimination acts (omitted). But, as is explained before (omitted), if JNR commits in unfair labor acts concerning the April employment in the case at hand, remedies shall be arranged by JNR and subsequently by Settlement Corporation, and taking a fact that the Reform Act shall not totally exclude the institution to cope with unfair labor acts into account, it is impossible to interpret that Article 23, Reform Act, should violate Article 28, the Constitution, and Convention No.98 (omission)' (Pages 116-123, Judgment Document).

20. The stance of the High Court decision means JR would not take responsibilities for the discriminatory procedures taken at the time of employment on the ground of their 'interpretation' of the Reform Act, and thus practically denies the guarantee against discriminatory acts at the time of employment. As is said before, even though Settlement Corporation was to be addressed an relief order, it would be impossible for the corporation to treat workers with conditions as equal or equivalent as those of the original posts, which admits the said court judgment quoted above. As the CLRC's Statement of Grounds of the Final Civil Appeal and other documents point out, in this case at hand, no order can be available to Settlement Corporation for back-payment or other form of money payment with an exception of an order to display Letter of Apology (Post Notice). That does not mean at all a relief to save the discriminated

workers from personal damages. Such a position not only misuses application of the institution against unfair labor acts but also denies the system itself for this case. Thus the decision of High Court nullifies the guarantee provided for in Convention NO.98, violating Article 8-2, Convention No.87, which prohibits that domestic laws and their interpretation and application may hinder the guarantee of the right to organize provided for therein.

21. The decision issued by the Department of Civil Affairs No.9, the Tokyo High Court (November 8, 2000, KOKURO's Case for Honshu), does not use a clear wording that the provision to prohibit discrimination should not be applied at the time of employment (excluding a case of Yellow Dog Contract), which was the decision issued by Department of Civil Affairs No.7. But it denies responsibilities of JR companies, which actually have committed in discriminatory employment in selecting workers at the time of recruitment and adoption, thus violating Convention No.98 in the same way as in the decision of the Department of Civil Affairs No.7.

22. Logical essence of the judgment lies in an assertion that actual anti-union discrimination committed by JR companies should be legalized by extremely narrowing the sphere of 'employer' (employer provided for in Article 7, Trade Union Act) who is prohibited from anti-union discrimination (the same is true for the decision of Department No.9). In a clearer words, the court decisions regard 'an employer' defined in Article 7, Trade Union Act, is interpreted generally as a person who employs workers and the very party which concludes a labor contract (Page 200, Judgment Document). Therefore the court decision understands generally an employer who discriminatively refuses to conclude a labor contract does not contradict the prohibition imposed. In other words, if an employer does not conclude a labor contract by way of discrimination in employment, he/she is not the party ('an employer') of a labor contract; therefore no responsibilities should be attributed to him/her for such discrimination.

23. The court decision, however, adds a following modification in terms of the sphere of Article 7, as 'the same article aims to exclude and correct unfair labor acts, recovering normal labor-management relationships': It says 'an owner of company can be reasonably regarded as 'an employer' provided for in the said article, exclusively, in the context that such an owner is in a position in which he/she can be considered, even partially, as an employer who can control and decide on the basic working conditions of workers in realistic and concrete terms' (February 28, 1990, in the Minor Court, Supreme Court, Judgments on Civil Affairs, please refer to Page 559, No.2, Vol.49). Then the court decision says JR companies do not constitute a concept of 'an employer' in this sense, finally exempting them from responsibilities.

It reads: The Establishment Committees were not in the position to control and decide on the creation of candidate workers in realistic and concrete terms, as 'the process was exclusively under authority and responsibility of JNR in compliance with Article 23, Reform Act' (Page 214, Judgment Document). Therefore 'even though certain conducts to be regarded as unfair labor acts were committed in the process of creating a list of candidate workers by JNR, responsibilities for those conducts as 'an employer' should be attributable to JNR, which actually committed in the acts, or Settlement Corporation, a succeeding corporation, and it is impossible to interpret the Establishment Committees, or

Appellee, should take responsibilities (Page 216, Judgment Document)’.

24. In the same way as in the decision of Department No.7, the judgment of Department No.9 nullifies the remedies against the anti-union discrimination (Labor Relations Commissions admit) actually committed by JNR in employing personnel, thus in this context, hampering the guarantee of the right to organize of Convention No.98 and contradicting the prohibition clause of Convention No.87.

### **III. The Japanese Government’s neglect of the discrimination and negative attitude to relief by the Labor Committees**

25. In Japan Labor Relations Commissions (composed of Local Commissions and a Central Commission) work as independent administrative institutions, issuing relief orders swiftly, upon complaint, to cope with violation of the right to organize. Employers are obliged to perform an order issued by a Labor Relations Commission, being effective on the day of issuing, without any delay. The relief orders do not lose effectiveness even while the employer, recipient of the relief order, appeal against the Central Labor Relations Commission or file an administrative suit within the context that the order (in other words any administrative or juridical procedure does not exclude the obligation to perform the order. In fact, however, no concrete article exists to sanction an employer for not performing the order as described above). These institutions are interpreted as organs to fulfill obligations provided by Convention No.98, which reads ‘in order to firmly respect the right to organize, an organization must be set up in correspondence to the domestic, internal situation, if necessary (Article 3)’.

26. In spite of these provisions the Government of Japan, as the relevant controlling body, has not taken appropriate measures to rectify the malpractices, knowing the fact that JR companies neglected the relief orders of the Labor Relations Commissions, violating the laws. On the contrary, though the rules stipulate that it shall be necessary to have approval from Minister of Transport for the selection of executive directors of JR companies pursuant to the Railway Corporation Act, the Government authorized, on the very day of application, former executive directors of JNR that continued to violate the laws as executive leaders of the new company. Thus the Government of Japan overlooked intentionally the development, even encouraging them tacitly to do so. In regard to the denial by the court of the relief order of the Labor Relations Commissions, no governmental measures have been seriously taken to improve the situation, for example, to make a remark on the judgment or to plan a strict legislation to prevent arbitrary juridical interpretation of the law. On the contrary, what the Government did was to welcome the court judgment as conforming to the governmental view and to approve the procedure taken by the JR companies, exempting them from the responsibilities of anti-union discrimination in employment.

27. Actually in the press conference held when the Tokyo District Court handed down judgment on May 28, 1998, Administrative Vice-minister of Ministry of Transport Kurono Masashi told that ‘in this issue the Ministry’s position is

the same as that of JR companies, welcoming cancellation of relief orders of the Labor Relations Commissions. On the following day, May 29, Minister of Transport Fujii put forward several conditions for the settlement of the dispute, one of which says that 'KOKURO should not appeal in litigation the case of the discriminatory employment of JR companies' as a prerequisite for a solution.

Furthermore, on November 19, 1999, Minister of Transport Nikai Toshihiro expressed his view in the press conference held after the cabinet meeting, saying that 'the developments in which the Reform Act was legislated are not correctly understood. I will try to remove misunderstanding', responding to the interim recommendations of ILO addressed in the same month to Government of Japan, which demand an early settlement of the dispute and urge the relevant parties to negotiate. This position represented a stance that the employment of personnel by JR companies is of a new round of recruitment and that the candidate list was created by JNR in compliance with the Reform Act, thus excluding responsibilities of JR companies: this stubborn position contradicts the principles provided for in the international Conventions of ILO. The court decision of the Tokyo High Court is apparently following the governmental position.

#### **IV. Destruction of Protection System of Right to Organize by Additional Information of the Japanese Government and by the "Four Party Agreement"**

28. The interim report of the ILO (November 1999) demanded Government of Japan additional information on the reasons of the JR companies in refusing numerous applicants belonging to KOKURO and ZENDORO, indicating that protection against anti-union discrimination as was stipulated in the Conventions of the Committee on Freedom of Association should include also the cases at the time of employment and dismissal. The report also demanded the Government of Japan to 'encourage JR companies and complainant unions to negotiate so that the workers in question may be fairly guaranteed for compensation and reach an early satisfactory solution of the dispute among the parties'. Responding to the recommendation from the international organization, Government of Japan called in political parties and worked out a plan formulated as so-called 'Four Party Agreement' (May 30, 2000), namely 'New Turn to Non-Hiring Issue by JR Companies', signed by the Liberal Democratic Party, New Komeito, the Conservative Party and the Social Democratic Party as the opposition. Government of Japan described it, in its report to the ILO, as 'the result of efforts made on the political level' (Item 367, Report of Committee on Freedom of Association, 2000).

29. The whole text of the Four Party Agreement is shown below:

1. Concerning the so-called non-hiring issue by JR companies, the Liberal Democratic Party, New Komeito, the Conservative Party and the Social Democratic Party confirm here, from a humanitarian point of view, to make efforts to resolve this issue smoothly in the following context;
2. KOKURO admits JR companies should not take legal responsibilities. KOKURO shall officially decide on this position in the union's National (extraordinary) Congress.
3. Given the said decision in the National Congress, the following process should be taken to deal with the issues

of ‘employment’, ‘dropping of the litigation’ and ‘reconciliation money’, as shown below:

(1) The ruling political parties will request and ask JR companies to start negotiation with each area headquarters of KOKURO, and seek for securing a job for the KOKURO union members from a humanitarian point of view.

(2) The Social Democratic Party of Japan will request KOKURO to drop litigations, at least those related to the JNR reform at the time of foundation of JR Companies, immediately after the official decision mentioned above under the column 2.

(3) The ruling political parties and the Social Democratic Party will discuss a status of reconciliation money, its amount and payment procedure.

4. The ruling political parties and the Social Democratic Party will cooperate with each other to resolve the issue in accordance with the policies described above.’

30. As is explained above, ‘the Four Party Agreement’ makes it first prerequisites that KOKURO should officially resolve in the union’s extraordinary congress that the JR companies are not legally responsible. This is totally different from a demand of stopping to call for responsibilities of JR as a condition to solve the dispute. In other words, the said agreement attempts to enforce KOKURO a negotiation on the condition that KOKURO admits that its efforts to call for responsibilities of the JR were mistake. It is, however KOKURO that has been a victim of discrimination and has been fighting for the right to organize, asking for relief against its infringement. The said agreement demands KOKURO to give up Union’s demands, including restitution to the original job, back-payment, and in a word, complete surrender of KOKURO. More than that, this development means in fact total negation of the Labor Relations Commission system as an institute to protect the right to organize; what is happening is that the JR companies are exempt from the responsibilities by the government and the court just while the Labor Relations Commissions are issuing relief orders, and claiming that the High Court Judgment is erroneous and the case is in the Supreme Court.

31. What KOKURO obtains from “the Four Party Agreement” is: only a promise of the ruling parties to ‘demand [JR companies] to ensure a job, a promise of the ruling political parties and the Social Democratic Party to ‘discuss a status’ of reconciliation money between them. What KOKURO obtains in exchange for the concession is vague promises --- concession of KOKURO means to acknowledge that JR companies are not legally responsible and to drop the suits. The agreement urges KOKURO to give away carte blanche to the ‘four parties’ and JR companies for ‘demand’ and ‘discuss’ among the relevant parties, but not negotiations between the parties concerned. Supposing JR companies are proven to be not legally responsible, then KOKURO would be obliged to accept and follow the JR companies’ possible allegation that the union members of KOKURO should not expect to be treated favorably in a current situation in which job cuts are inevitable and unemployment seriously rises.

32. “Four Party Agreement” demands KOKURO to change its present policy in the union congress; it means an interference in trade union activity. If the Government dares to insist that the agreement is a result of efforts in compliance with the ILO’s recommendations, it would be obliged to assert that there should not have been any

anti-union discrimination. But the fact is the CLRC, an administrative organ, recognized that the JR companies have committed unfair labor practices, namely anti-union discrimination in employment and issued relief orders. In this context Government of Japan presented distorted facts as additional information to the ILO's Committee on Freedom of Association, contradicting to the acknowledgment of the Labor Relations Commissions pursuant to the detailed evidences (issues of wide area transfer and service record).

33. One of the explanations of the government reads as follows: the employment rate was low for workers coming from KOKURO and ZENDORO, mainly because these workers were not cooperative in responding to companies' proposal of wide area transfer (shift of workers from the Hokkaido and Kyushu regions, where a large number of workers are redundant, to the areas in Honshu, where redundancy is scarce) in the period before the division and privatization. The ILO's Committee on the Freedom of Association has accepted this explanation (Item 375, Report for Year 2000). But the Governmental assertion is not correct as far as the fact is concerned. Even when one calculates the employment rate, putting together the number of those employed as a result of wide-area transfer and those who are employed on the spot, a tremendous gap is seen among the employment rates for workers of the TETSUDO-ROREN on one side and of KOKURO and ZENDORO on the other. (Note 4)

As is mentioned above, the wide area transfer program is aimed at shifting the so-called 'redundant workers' in Hokkaido and Kyushu, or the northern and the southern islands, to the areas of Tokyo (including Chiba), Nagoya and Osaka in the Honshu Island. Therefore Chiba is an area to accept personnel, and workers belonging to the DORO-Chiba, a local union of JNR workers, were not eligible to apply for the transfer program. So there never was formed a context whether workers are cooperative or not.

Another point: the government's allegation that the wide area transfer program affected the employment rate has never been expressed neither by the Labor Relations Commissions nor by the court or even by the JR companies. That means Government of Japan stubbornly maintains an unfair stance to protect the JR companies by every means, concealing anti-union discriminatory conducts through distorting the facts.

34. In addition, according to the information supplied by Government, the employment rate of KOKURO members is relatively low in comparison with those of other unions. But when one looks at the figures, the rate is over 80%. So some regards it not so low (Item 347). But this information is provided to intentionally mislead. In the Honshu area applicants did not reach the full number and all the KOKURO members were employed, excepting 60 workers who had punishment due to labor disputes. It was in Hokkaido and Kyushu, where applicants outnumbered the recruitment, that produced discriminatory practices in selecting the personnel and the hiring rates revealed an extraordinary gap between the two groups, as is described above.

35. Another explanation, made by Government in the additional information, for the low employment rates for KOKURO and ZENDORO union members was due to the fact that the workers from the two unions had allegedly poor service records (Item 346, Report Year 2000). This point was also denied by the Labor Relations Commissions, which

relied on clear evidences. The additional information submitted by Government did not refer to the acknowledgement of the Labor Relations Commissions at all. With no new proof shown, the information remains an arbitrary allegation. As for the case of DORO-Chiba, in particular, workers were penalized exclusively due to commitment in labor movement and for this reason excluded from the employment list. The union members of DORO-Chiba have never been punished except for union activity. On the contrary they are conspicuous for their service record and often commended (Note 5). It illustrates evidently that the reason for their exclusion from employment list is nothing but their commitment in labor movement --- apparent cases of anti-union discrimination.

To add some figures, the JR companies in Honshu have additionally employed certain numbers of personnel. The figure is as follows: 752 personnels in 1987, 510 in 1989 and 15 in 1990 that is 1277 employment in all. But application was received only in Hokkaido and Kyushu, and non-employed workers in Honshu were not given even an opportunity to apply.

36. The Government, however, stubbornly denies the apparent facts of anti-union discrimination and states that 'the Four Party Agreement' is 'to solve the dispute from humanitarian point of view' (clause 367). But the said agreement is to solve the problem through total surrender of KOKURO. It has stirred up vigorous criticism among the union members as well as the supporters of the union and produced turmoil and split in the union organization. After holding union congress four times with the total reshuffle of the union executives, 'the Four Party Agreement' was formally accepted. In spite of this official decision of the congress, the procedures to be taken in accordance with 'the Four Party Agreement' has not yet begun until today, six month after the congress. No demand has been yet made to resume negotiation by the ruling political parties to JR companies. The JR companies, on their part, have not examined the matter. They maintain that they are not in the right status to respond to the recommendations of ILO which urges relevant parties to reach a satisfactory solution of the problem and guarantee fair compensation for the workers in question because the advice was addressed to Government and not to the companies (a reply from Executive Director at the Shareholders' Meeting on June 27, 2001). The Government too responds quite reluctantly to the issue, stating 'no sufficient understanding is made concerning the fair compensation' (Reply of Government at Committee of Ministry of Land, Infrastructure and Transport, House of Representatives, May 29, 2001).

37. Judging from the developments, it is evident that the intention of 'Four Party Agreement' has been mainly to force KOKURO to give up struggles to pursue responsibilities for JR companies' unfair labor practices. As is stated, the Government has abandoned efforts as authoritative organ to improve non-observation by JR companies of the relief order and repeated administratively undue procedure to recognize the selection of executives of the JR companies on the day of application that have been committing unlawful activities. The Government, being the biggest stockholder of the JR companies by participating through the JR Settlement Corporation, dares not exercise its influence to improve the procedure. This leads to negligence of the obligation of protecting the right to organize and to nullification of the effectiveness of relief measures against unfair labor practices. The political aim of the Division and Privatization of the JNR lay apparently in destroying those trade unions with the unfavorable political stance for the Government, such as

KOKURO, DORO-Chiba and others. The then Prime Minister NAKASONE Yasuhiro testifies it ten years after that (see ANNEX II). This policy has been followed consequently till today and is going to be completed in the 'Four Party Agreement' which demands the complaints to ask for cancellation of the relief orders.

38. The agreement, entitled 'New Turn to Non-Hiring Issue by JR companies', was prepared by the four political parties and the executive organ of KOKURO, while ZENDORO and DORO-Chiba excluded that have been discriminated in the same way as KOKURO, and have been fighting against it.

'Four Party Agreement' meant to force the biggest union, KOKURO, covering 1,047 workers to abandon the struggle; and at the same time to give a severe blow to the struggles of ZENDORO and DORO-Chiba. It is a sheer intervention into the labor movement and the governmental 'effort on the political level' was to achieve this goal. These two unions have expressed their will to oppose 'a solution' that denies pursuit of responsibilities for the unfair labor acts and endangers the very existence of the Labor Relations Commission system.

In face of this grave situation, a rally was held on May 30, 2001 (one year after the conclusion of the 'Four Party Agreement'), at the Hibiya Public Hall in Tokyo with the participation of 3,000 people, to encourage the struggle of the TOSODAN (Fighting Corps of the unlawfully dismissed 1047 national railways workers) and called for 'Let's Go Together With TOSODAN! May 30 Foundation Rally of Joint Council (in preparation) to Accuse Unfair Labor Acts by JR companies'.

## **V. Institutional Defects in Protecting Right to Organize**

39. The 1999 Interim Report pointed out that a long delay in taking up relief measures for the anti-union discrimination case means denial of social justice, denial of the right to organize trade unions (Item 269). The fact that the discrimination issue, which arose in 1987 in the process of division and privatization of JNR, is still left unsolved means that Government of Japan is negligent in fulfilling its obligations of Conventions to protect the right to organize. It is originated in institutional defect in protection of the right to organize.

40. The major reason why discriminatory practices and interference have not been eliminated is that relief orders issued by the Labor Relations Commissions, an institution as a system to protect the right to organize, can be left unperformed without being punished. Under the Japanese law, an order of Labor Relations Commission should effectively be performed by an employer without delay from the date of issue. But, due to absence of sanction clause, employers dare to violate the law, postponing a solution through appeal for re-examination or filing of lawsuit, during which they expect weakening and collapse of unions. This practice is proving to be effective for them. DORO-Chiba is currently suffering from this.

41. Government explained: as there exist in Japan relief system supported by the Labor Relations Commissions against unfair labor practices, an employer should be punished or imposed fine if violation of relief orders is officially finalized,

and that a court can order an employer to follow orders of Labor Relations Commission until judgment is finalized, even if an employer files an administrative suit against such relief orders of Labor Relations Commissions, and that its violation shall be fined (Emergency Order System). Thus, according to the explanation of the Government, effectiveness of relief orders is maintained (Item 260, 1999 Interim Report). But that is proven not true today by the fact that JR companies have not observed relief orders of Labor Relations Commissions to today.

42. As for the emergency order system, we are very doubtful of its effectiveness, for the law court, the very party to sustain the system, has proven to be so reluctant to follow the international standard of protection of the right to organize as to overturn the stance of Local and Central Labor Relations Commissions by an arbitrary interpretation of the domestic laws.

43. In addition, an employer cannot be exempt from obligations to fulfill the orders, even when he/she has filed a suit against the Central Labor Relations Commission to review such relief orders (Article 27-5, Trade Union Act, Article 45-1, Regulation of Labor Relations Commission). No sanction clause, however, exists to apply to a case of violation. Therefore an employer, without disadvantage arising from non-fulfillment of orders, can continue a suit in the court or in the Labor Relations Commission. If such a dispute prolongs, on the part of trade unions weakening or deterioration of organization could take place, letting the employer enjoy unfair labor acts further. The current situation surrounding KOKURO eloquently tells this fact.

## **Conclusion**

44. As is stated above, Government of Japan has been indeed violating the Conventions of No.87 and No.98 of the ILO, which it ratified of its free will. In order to dissolve this illegitimate situation, DORO-Chiba request your office of ILO to issue recommendations to Government of Japan in terms of the following points:

(a) To ensure fulfillment of obligations of relief orders issued by the Labor Relations Commissions by taking every appropriate means, including imposing penalties and executing administrative control over an employer, even when he/she is requesting a review or filed a suit, demanding cancellation of such orders, unless alteration is made by such reviewing, or until a court decision is finalizes to cancel such orders.

(b) To revise domestic laws that allow anti-union discrimination at the time of employment and to correct their application to nullify effectiveness of relief orders, as contradicting the obligations provided for in the ILO Convention to protect the right to organize.

(c) To take a fair compensation measure for those workers whose rights were infringed by the above-said application of domestic laws (namely union members of DORO-Chiba and 1,047 workers).

Lastly, we would like to call your attention upon the fact that information supplied by Government of Japan can be very often incorrect and sometimes seriously distorted, as is illustrated above. We sincerely hope that we should be

informed of the answer of government of Japan upon this complaint to Your Office and we would like to be given an opportunity to inform Your Office of our refutation to it.

(ANNEX I) List of Number of KOKURO Union Members (in number) who have obtained Relief Order from Central Labor Relations Commission for Exclusion from Candidate List due to Reason of Punishment of Leave of Work

Oct. 4, 1995 Order for six workers (First Examination, Kanagawa LLRC, Dec.16, 1988, nine workers)  
Jan.10, 1996 Order for five workers (First Examination, Tokyo LLRC, Aug.1, 1989, nine workers)  
Mar.6, 1996 Order for one worker (First Examination, Miyagi LLRC, Feb.28, 1990, two workers)  
Apr.17, 1996 Order for two workers (First Examination, Chiba LLRC, Feb.28, 1990, twelve workers)  
May 8, 1996 Order for one worker (First Examination, Fukushima LLRC, Oct.24, 1989, six workers)  
May 8, 1996 Order for one worker (First Examination, Shizuoka LLRC, Dec.27, 1989, one worker)

LLRC: Local Labor Relations Commission

Though rejected by CLRC, two workers obtained a relief order of the Osaka LLRC November 28, 1988, and another one, of the Okayama LLRC January 12, 1990.

(ANNEX II) NAKASONE Yasuhiro, the then Prime Minister: My intention (in carrying out the division and privatization of JNR) was to destroy SOHYO (General Council of Trade Unions of Japan). If KOKURO collapses, then SOHYO collapses inevitably. This was my convinced policy (Asahi Shinbun Weekly, AERA December 30, 1996 and January 6, 1997). In Japan it is now commonplace to name the division and privatization of JNR as unfair labor practice by the state. ] A book is published, titled ‘Theory of Unfair Labor Acts by State: Criticism Against JNR Division and Privatization in Legal Context’ (1990, Waseda University Publishing House) written by Sato Akio (Prof., Waseda University).

(Note 1) DORO Chiba most vigorously fought against the division and privatization of the JNR. In protest DORO-Chiba waged 24 hour’s strike two times, on November 1985 and February 1986, while none of the other trade unions opposing the division and privatization of the JNR dared to strike. Though the strikes of DORO CHIBA, with the limited duration and its locality, have not brought about substantial effect enough “to give serious damage to the public life”, JNR management took extraordinary severe disciplinary measures: 28 workers dismissed; 59 workers’ jobs suspended; 305 workers got wage cut. As a result dismissed workers could not apply for the new employment; of those workers who were suspended in job and applied for the new employment, 12 workers were excluded from employment (There are no indications by the time of the new employment to exclude suspended workers).

DORO-Chiba started a suit on this dismissal case against the JNR (later JNR Settlement Corporation), demanding to nullify the dismissal. In the first trial DORO CHIBA obtained a decision that the measures taken to 12 workers were invalid as abuse of right of dismissal. The appeal court effected a reconciliation: all dismissal be cancelled and at the time of reconciliation all dismissed person retire (March 31, 1997).

It has been proved that suspension of the job was a severe retaliation to the strikes and abuse of right of disciplinary measures.

(Note 2) DORO-Chiba filed a suit to the Chiba Prefectural Labor Relations Commission, seeking a relief order for those suspended in job and not adopted in employment and claiming that these measures were unfair labor practices (March 31, 1988). On February 27 the Chiba Prefectural Labor Relations Commission issued a relief order for all concerned, instructing the JNR to treat the workers in the condition they were employed ex post facto as of the date of division and privatization of the JNR. The management of the JNR, however, refusing to obey the order, brought the case to the Central Labor Relations Commission for a new trial. On April 17, 1996 the Central Labor Relations Commission issued a relief order only for two persons. Dissatisfied with this order, both of DORO-Chiba and the JNR filed respectively suits to the Tokyo District Court seeking its cancellation. The company, meanwhile, has not yet practiced the order. The District Court concluded the trial on July 18, 2000 but the case is pending in the court.

(Note 3) The cases on which relief orders have been issued and have not been practiced are as follows (see Appendix 3 for the contents of the cases and relief orders): (1)

(1) Discrimination in Employment by JR (1988 by the Chiba LLRC, Unfair Labor Act, No.7 and No.8) Filed March 31, 1988, ordered on February 27, 1990. Currently continued to sue at the Tokyo District Court

(2) Threat to Withdraw from Union (1988 by the Chiba LLRC, Unfair Labor Act, No.11) Filed March 31, 1988, ordered on February 27, 1990. Currently tried at the Tokyo District Court.

(3) Discrimination in Using Announcement Board and Other Means (1990 by the Chiba LLRC, Unfair Labor Act, No.2) Filed March 6, 1990, and ordered on February 13, 1997. Currently continued at the CLRC.

(4) Control and Interference in Strike (1990 by the Chiba LLRC, Unfair Labor Act, No.3) Filed March 30, 1990, and ordered on April 16, 1996. Currently continued at the CLRC.

(5) Discrimination in Employment of Train Operators in Preparatory Course (1990 by the Chiba LLRC, Unfair Labor Act No.4) Filed March 30, 1990, ordered on June 1, 1993. Currently continued at the CLRC.

(6) Discrimination in Employment for Full-Time Job by JR Settlement Corporation  
Filed August 4, 1990, and cancelled on April 18, 1997 due to reconciliation.

(7) Award Payment to Strikebreakers (1990 by the Chiba LLRC, Unfair Labor Act, No.7) Filed September 7, 1990, and ordered on March 29, 1993. Currently continued at the CLRC.

(8) Discrimination by means of Job Transfer at Tsudanuma Branch (1993 by the Chiba LLRC, Unfair Labor Act, No.5) Filed December 15, 1993, and ordered on June 24, 1998. Currently continued at the CLRC.

(9) Threatening to Withdraw from Union at Kisarazu Branch (1997 by the Chiba LLRC, Unfair Labor Act, No.1) Filed January 7, 1997, and ordered on March 31, 1999. Currently continued at the CLRC.

(Note 4) Take a case of Hokkaido. The number of workers from the TETSUDO-ROREN who had wanted to be employed locally counted 8,016, and indeed 7,969 workers out of them were employed as they wished, the rate reaching 99.4% (December 15, 1993, according to the CLRC's order, Table 8). Contrasting to that, the number of KOKURO union workers who wished to be employed locally counted 5,851, and in fact 2,807 workers of them were adopted, with the employment rate being 48%. As for the case of ZENDORO, those who had wished counted 1,012, but 284 workers of them were employed, with the rate being as low as 28.1% (op.cit.). Those who responded to the wide area transfer program, coming from TETSUDO-ROREN, counted 895 workers (Item 247, Report for Year 1999).

Assuming this number as that of those who wished to be employed locally and adding the figure to the previous count of 8,016, that becomes 8,911. In total 7,969 workers of TETSUDO-ROREN were accepted, therefore the employment rate reaches 89.4%, an apparent gap, compared with the rates of KOKURO and ZENDORO (this fact was raised in the document submitted by KOKURO TOSODAN in March, 2001 to the ILO).

(Note 5) Service and award records of those workers who were not put on the candidate list of the new employment and accordingly not employed of the union members of DOROCHIBA are as follows:

- (1) Takahashi Masahiro, who won promotion in wage as of April 1, 1984
- (2) Nakamura Hitoshi, who was awarded for his excellent service by Director, Operation Department, Chiba Railway Control Office on March 31, 1974
- (3) Tsunoda Kiyooki, who was awarded four times certificates for absence of accident for 100 thousand kilometer-distance service by Director, Chiba Railway Control Office, March 31 1974, April 24, 1977, May 22, 1980 and May 27, 1983. He is also qualified as an instructor (in charge of locomotive engineers who lack experiences)
- (4) Hayashi Toshiaki, who was awarded three times certificates of absence of accident for 100 thousand-kilometer distance by Director, Chiba Railway Control Office, on April 6, 1979 and on April 10, 1982, with the first occasion unknown. On July 25, 1976, he won the prize for his efforts to prevent a railway accident, awarded by Director of Transport, the Sobu Line, Chiba Railway Control Office, and he was praised several times for his contribution to prevent accident at railroad crossings and to detect failures on the traffic lights, winning Prizes of Director, Chiba District of Locomotive Driving.
- (5) Aihara Teruji, who was awarded certificates of absence of accident for 100 thousand kilometer-distance service, four times, on July 2, 1974, July 25, 1977, July 31, 1980 and August 21, 1983. He won several times of Prize of Director, Chiba Railway Control Office and Narita District of Locomotive Driving for his efforts to detect failures in the rails (which triggers a de-railing accident) and in the crossing gates. He is also qualified as instructor of locomotive engineers.
- (6) Eguchi Haruo, who won four times certificates of absence of accident for 100 thousand kilometer-distance service (July 6, 1983 of the fourth time)
- (7) Nakamura Shunrokuro, who won four times certificates of absence of accident for 100 thousand kilometer-distance service (on January 30, 1987 on the fourth time). November 2, 1981, he won an award of Director, Department of Operation, Chiba Railway Control Office for his contribution in dealing with the accident of crush and de-railing, which took place at the crossing.
- (8) Shiozaki Akihiro, awarded four times certificates of absence of accident for 100 thousand kilometer-distance service (January 30, 1987 on the fourth occasion). He saved a little girl playing in the crossing, through quickly stopping the train. He won twice the Prize of Director, Chiba Railway Control Office, for his contribution to prevent a serious accident by making a quick stop of his train on discovering a failure in the hanger that may have led to cutting of wiring.
- (9) Tada Masao, awarded four times certificates of absence of accident for 100 thousand-kilometer distance service, on

April 1, 1976, January 13, 1979, March 15, 1982, and January 30, 1987. In 1976, awarded Prize of Director, Chiba Railway Control Office, for rescuing a human life. He won several prizes.

(10) Ito Takashi, awarded four times certificates for absence of accident for 100 thousand kilometer-distance service, on December 25, 1975, January 1, 1979, February 2, 1982, and January 30, 1987.

(11) Iso Tetsuo, awarded four times of a certificate for absence of accident for 100 thousand kilometer-distance service, on January 6, 1973, January 14, 1980, January 30, 1983 and one more occasion. On December 10, 1985, he found failure in the battery of other train (that might have led to malfunction) and was awarded for prevention of accident by Director, Shinkoiwa Operation District Office.

(Note 6) On the other hand, it has been disclosed that even those workers who had got disciplinary measure, for example, of 6 month's job suspension, are employed if only they belong to TETSURO. (Appendix 1).

Only to quote one case: the case of Mr. NUMATA Kazuyuki. He was arrested in September 1983 on suspicion of violating the Youth Protection Regulation of the Miyagi Prefecture (Local papers reported the case as immoral deed quoting the name of the suspect) and got a disciplinary punishment of 6 months' job suspension for "disgracing the social position of the public employee". In spite of this, he was put on the candidate list and was hired by the JR Higashi. This example manifestly indicates that the standard given by the JR companies for the new employment is nothing but a pretext to exclude the union members whose unions are opposed to the division and privatization of the JNR. This is a sheer discrimination.