

Hiroto TSUBAKI

送信者 : "Hiroto TSUBAKI" <hts@tcn.zaq.ne.jp>
宛先 : "hts" <hts@tcn.zaq.ne.jp>
送信日時 : 2006年12月6日 0:35
件名 : Nestle Criticized by the Most Authoritative Weekly Magazine

Hiroto TSUBAKI
Secretary General,
Nestle Japan Labour Union
hts@tcn.zaq.ne.jp
<http://www.tcn.zaq.ne.jp/njlu/>

Forgive us if this mail overlaps

Nestle Criticized by "Shukan Kinyobi" the Authoritative Weekly Magazine in Japan

"Shukan Kinyobi (Weekly Friday)", a weekly magazine edited by 6 prominent Japanese luminaries including writers and critics, in its October 23, 2006 issue features Nestle Japan's ongoing labor dispute. Well known across the globe in the business world, this particular imbroglio has shown itself to be the longest, stickiest, and most intractable of numerous labor disputes in which Nestle is presently involved worldwide. Why?

- Nestle management in Japan split a labor union of more than 2,000 employees;*
- The company's illegal practices have provoked nationwide criticism and have galvanized labor's resolve to redress;*
- The dispute has spanned a quarter century.*
- Japanese justice and labor-relations councils, including the Supreme Court, have issued more than 80 decisions and orders condemning Nestle.*
- Nestle management continues to decline amending its illegal practices.*

Nestle is paying lip service by saying that it "is observing **the United Nations Global Compact**" and that it "is fulfilling its Corporate Social Responsibility (CSR)." However, it continues to dig its heels in against public opinion, against Japan's legal community and against its own labor force. Nestle is lying to the world.

It is said that in the 21st century, "**any enterprise that neglects the CSR will be left behind**". In order for Nestle to survive in this century and become a corporation truly worthy of its reputation, it needs to acknowledge and correct its wrongful conduct. And there would be no better place to start than here in Japan, with its most high-profile case.

Only when the dispute is properly resolved will Nestle be able to honestly claim adherence to the principles of the United Nations' Global Compact as contained in the notion of Corporate Social Responsibility.

Full Text of the "Shukan Kinyobi"

Inhumane Condition of Workers within Foreign-Capital Enterprises

There are about 2,000 foreign capital enterprises doing business in Japan (statistics of the Ministry of Administrative Affairs, 2004). Those which somehow or other violate their employees' rights are unfortunately not few in number.

As the number of foreign enterprises is expected to increase in the coming years with the enforcement of a new corporation law, some kind of brake must be put on their activities to prevent such abuses.

A brief overview of the multiple judgments handed down against Nestle by Japan's Supreme Court follows below.

"Disregard of Japanese Laws and Regulations" Prevailing in Nestle: Anti-Union Attack Condemned by the Supreme Court

Nestle, the world's largest food manufacturer widely known through "Nescafe," is causing trouble in many parts around the globe. Nestle Japan, its Japanese subsidiary, stands out in particular for having provoked division in the employees' union, for repeated unfair dismissals of employees who challenged the outrageous management practices and for human rights abuses.

The company flaunts Japan's legal system by blatantly disregarding various court rulings and shows disdain for the cultural practice of negotiation by turning a deaf ear to recommendations and injunctions issued by the Labor Relations Commission.

Behind the company's elaborately embellished advertisement campaign, it has shamelessly violated Japanese laws and regulations. Can we trust such an ethically questionable multinational company?

Mr. Shinichi Tomita (49 years old) and Mr. Shinichi Kurimura (52), both ex-workers of Nestle Japan's Kasumigaseki Plant (Inashiki City, Ibaragi prefecture), were suddenly dismissed in spring 2001 for allegedly committing violence against their superior.

They filed a lawsuit against the company in the Ryugasaki Section of Mito District Court to preserve their employee status and obtained a judgment that "the discharge of the plaintiffs is not valid since the testimony given by Nestle Japan management to support the existence of violent acts cannot be considered as trustworthy". However, the company appealed, and the Tokyo High Court overturned the district court's ruling based on unverified personal testimony by a single supervisor.

In the meantime, Messrs. Tomita and Kurimura, along with their families, have had to endure the humiliation of being stigmatized as "violent employees" and the social consequences that accompany that, including the prospect of being "unemployable."

An Epoch-Making Legal Victory: Allegation of Violence Was Ungrounded

On October 6, 2006, the Second Petty Bench of the Supreme Court (presided over by Judge Yuki Furuta), accepting almost entirely the claims presented by Tomita and Kurimura, decided that the "dismissal of the plaintiffs is not valid as disciplinary measure since it lacks reasonable ground and constitutes an abuse of power," quashing the judgment of the Tokyo High Court. This Supreme Court ruling confirmed the district court judgment that had questioned the "existence of violent act" and ordered the company to acknowledge the two workers as its employees. It also required the company to pay them back wages. It was a dramatic legal victory for Messrs. Tomita and Kurimura.

The Supreme Court at the same time criticized the company for grave procedural irregularities in failing to discipline the employees in question at the time of the alleged infraction, which was seven years prior. In their ruling the justices state that "disciplinary dismissal after a long period has passed since the act that justifies the disciplinary action is committed constitutes an abuse of power".

It was a revolutionary court decision, approved unanimously by the five judges who examined the

case. The case broke new ground with the acknowledgement that an employer is not legally permitted to defer his right to punish his employees without justifiable grounds.

According to the counsel for the plaintiffs, the Supreme Court ruling will serve as "a safeguard for workers by deterring their employer from resorting to punitive threats against workers in a labor dispute.

The two plaintiffs were both activists and officers of the Nestle Japan Labor Union (the first union). Their dismissal was the culmination of an unseemly pattern of anti-union practice, typical of the hostile Nestle management. In fact, Nestle, using false testimonies of its managers, fabricated the case of violence that allegedly occurred seven years ago.

Although the public prosecutors decided to drop the case on insufficient grounds, management tried to disguise the plaintiffs' dismissal as a disciplinary measure. This is only one of myriads of examples of anti-union discrimination that has been prevailing in Nestle Japan over the last quarter of the century.

A 25 Year-Long Labor Dispute

In early 1980s, Nestle Japan attempted to take over the Nestle Japan Labor Union (NJLU) by manipulating some sympathetic employees. At the time, the NJLU had a membership exceeding 2,000 and was exerting its strength for improving pay levels and protecting workers' rights. After it had failed to take over the union, the management in 1983 created a company union (the second union) with the aim to split the NJLU.

Since then, management has used all possible means, including subterfuge and coercion, to induce members of the first union to defect or resign. It has not hesitated to violate the human rights of the workers who refused to leave the original union. By resorting to methods such as workplace ostracism, physical violence, discrimination in pay and job content, management eventually succeeded in reducing the first union to minority status with less than 100 members.

Retribution by the Nestle management against workers who organized has been degrading, aggressive and archaic. Examples include "banishment" to menial and unrelated tasks such as weeding under a boiling sun or to cleaning toilets, verbal and psychological harassment through employee thugs who would encircle NJLU employees during lunch time and shout at them with humiliating words, putting them in an isolation room, demoting or transferring some of them to other workplaces as a warning to others, denying them promotion and retaining them forever in posts with the lowest pay level.

Although many of them go unpublicized and unlitigated, there are myriads of similar such cases of underhanded and cruel harassment. Major corporations that adopt such an unenlightened management policy are rarer and rarer.

The Nestle Japan Labor Union, though being reduced to a minority union, has courageously fought against unfair labor practices and human rights violations perpetrated by the management and won more than 80 court decisions and Labor Relations Committee orders.

In particular, the Supreme Court in 1995 ruled that refusal by Nestle management to recognize the union and to negotiate with it collectively constituted an unfair labor practice. Especially noteworthy about Nestle management is that it does not show any inclination to respect Japanese law.

More recently, two male workers of the Himeji Plant in Hyogo prefecture (both members of the first union) were abruptly transferred to a distant location, posing hardships for immobile family members who required care. The two employees filed a suit to dispute the validity of the transfer.

The Osaka High Court in April 2006 rejected an appeal made by Nestle and ordered the company to pay back salaries to the workers, deeming the transfer order to have been invalid.

The court acknowledged that the workers had a compelling reason to refuse relocation in their social obligation to care for their incapacitated family members. In its brief it stated that "in the event that a

transfer inflicts disadvantage and hardship that significantly exceeds the limit of what is usually considered acceptable, the order of such transfer shall be considered invalid".

With no reasonable hope of winning an appeal, Nestle nonetheless filed one as a means of delaying the inevitable, with the hope perhaps of wearing down the plaintiffs in the process. It was a prime example of its bullying tactics.

In the meantime, having won their case, the two workers reported to the Himeji Plant, expecting to return to their jobs. The plant manager and the second union mobilized nearly 50 workers every day to surround them and shout at them "go home, go home". It was so menacing that the even the supporters of the two workers felt themselves in danger.

In Nestle, any worker who does not show loyalty to the management and the second union cannot even take the exam for getting promoted; and if he is not promoted, he will not get any pay raise. The difference in pay is between some 30,000 yen and 100,000 yen. Money matters aside, it is hard to believe that the coworkers of the two men could attack them in such an inhumane way. But this is the reality at Nestle.

Exploitation of Developing Countries and Assassination of Union Leaders

Nestle, a giant Swiss-based multinational company, has about 500 plants in 84 countries around the world and employs 247,000 people. Its total sales amount to about 70 billion U.S. dollars. It manufactures drinks including instant coffee, dairy and nutritive products, sweets and medicines. It boasts an overwhelming market share, leaving its closest competitor far behind. As its logo with mother and child birds symbolizes, it has an advertising strategy targeted at families and has succeeded in achieving a rapid growth in sales through a vigorous M & A policy.

However, contrary to its corporate image, Nestle is severely criticized in many places around the world. This fact is not well known in Japan. The labor dispute in Nestle Japan could not have been as aggravated and protracted as it has been had it not been supported by the head office in Switzerland. In this sense, the Japanese case testifies to Nestle's aberrant corporate culture.

NPOs in different parts of the world have reported complaints against Nestle capital. Listed below are some of the major cases:

Aggressive Milk Powder Sales Strategy

Nestle claims more than 50% of the world powdered milk market. Since the beginning of the 1970s, it has been accused of contributing to malnutrition and infant mortality rates in developing countries in Africa as a result of unfair business practices.

Boycott campaigns are underway in many countries where necessary ingredients and accessories such as clean water, sanitation equipment and cold storage are essentially unavailable, making Nestle's aggressive marketing in those areas an absurd redundancy.

Heavy Drop in Coffee Beans Price

Nestle is also criticized for controlling the coffee beans market. The price of coffee beans on the international market varies according to the futures market. In 2002, as a result of large excesses in supply, the price dropped to a quarter of what it used to be in 1960. Coffee bean farms, most of whom are very small companies, have seen their margin being reduced from 30% of the market price to 10% during the past ten years. This means that in the price of a cup of coffee, what goes to them is less than 1 percent. For Nestle, instant coffee is a highly profitable product: the profit margin is between 26 and 30 percent.

Trying to Monopolize Water Resource and False Label Indications

On the rapidly growing bottled water market, water is sold at a price more than 1000 times higher than tap water. Since 1999, Nestle has been expanding its business in North America. Many citizens and

consumers in the states of Michigan, Florida, Texas and Illinois are collectively suing Nestle in a class-action case for taking water illegally, depleting water springs and for false advertising.

In addition to these cases, children trafficked like slaves are used for growing cacao in Western Africa, and international human rights groups are now suing Nestle, as the major manufacturer in the chocolate industry. Because of these problems, Nestle has the dubious distinction of being nominated every year for the "Public Eye Award" (presented by NGOs to significant anti-social and anti-environmental corporations) and for actually winning the award last year.

What should be noted is that Nestle is causing labor conflicts in many places around the world. In Columbia, 8 Nestle workers have been killed since 1986. In the Philippines, last year, the leader of Nestle's labor union was shot to death on his way home. Concrete evidence that the company was involved in these cases has not surfaced, but as the tally mounts and the timing and other circumstances surrounding their deaths increasingly points toward foul play, the plot continues to thicken.

The International Food Union (IUF) protested against the governments of the two countries and demanded a thorough investigation into these cases. Labor conflicts are also frequent in Nestle's operations in South Korea, France, U.S. and U.K. as a result of plant closures and layoffs as well as due to unfair labor practices.

Mr. Shuji Hisano, assistant professor at Kyoto University and researcher in agricultural economics, who knows well the behavior of multinational companies in the food sector says: "There are many problematic corporations such as Mac Donald, but there is no company in agribusiness other than Nestle that has been accused so many times for its labor management". He advises civil society to work in partnership with international organizations such as the IBFAN (International Baby Food Action Network) to strengthen international criticism against Nestle.

About the fact that Nestle has declared its commitment to the Corporate Social Responsibility by adhering to the U.N. Global Compact, he thinks that if Nestle is really fulfilling its commitment to CSR, it would not have caused so many problems around the world, including the labor conflict in Japan. Therefore he believes that such a declaration is nothing but another PR tactic aimed at refurbishing its tarnished corporate image.

Can Food Safety be Secured?

Can we expect that a food company that denies even legitimate rights of workers and their unions is keen on securing consumers' food safety?

In the past, Nestle Japan was found recycling expired instant coffee grounds. It was also discovered to have falsified data about industrial waste water discharged by its Himeji factory into a nearby river. These violations were exposed and publicized by the original labor union. Though these illegal practices were halted, it is hard to believe that such a dangerous corporate culture has changed.

In the current context, the management-sanctioned company union (the second union), which represents an overwhelming majority of employees, does not have the ability to check Nestle Japan's management. Mr. Keiichi Furukawa, the lawyer for the plaintiffs in the case of unfair dismissal affirms: "In Nestle, the management has not allowed the second union to develop normally as a labor union nor has it the intention to change such practice. As the company union does not have the power of negotiation, the mechanism for ensuring healthy checks and balances cannot function properly".

According to the NJLU, the second union is more like a second personnel management division than a company union. As management's lapdog, it is viewed as a devious means for an unethical management to supplant a legitimate labor organization and to preempt any challenges to their often questionable practices (Yasutaka Sasaki, NJLU President).

In fact, many officers of the second union have been promoted to high managerial posts in personnel management division. In addition, in union voting on a corporate rationalization plan, a foreman and a

worker usually make up a pair and show their vote to each other. This is why any proposal by the management to reduce worker benefits is accepted by the union with more than 90 percent of members voting in favor.

The NJLU in June 2004 submitted a counter-report to the U.N. Human Rights Committee on the issue of unfair dismissal and forced transfer. In August 2005, it filed together with Zenroren (National Confederation of Trade Unions) a suit against Nestle Head Office and its Japan subsidy for violation of "OECD Guidelines on the conduct of multinational enterprises".

If Nestle wants to claim that it is an enterprise that observes international rules it must first apologize for all its unfair labor practices it committed in the past including anti-union discrimination and human rights abuses, make just compensation and immediately normalize labor-management relations. This is what the NJLU is demanding.

(*) 10 principles regarding human rights, labor and environment proposed by U.N. General-Secretary Kofi Anan at the World Economic Forum in Davos in 1999. The U.N. Secretary General called on corporate leaders to adhere to these principles. There are 4 principles regarding labor including "to make effective the freedom of forming trade unions and the right to collective bargaining".

Kyosuke MURAKAMI

Journalist