

How Successful is Japan's Labor Tribunal System?: The Labor Tribunal's Limited Scope and Effectiveness

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I. INTRODUCTION

When simply comparing the number of labor cases filed in Japanese district courts¹ with those filed in German and French courts, it gives an impression that Japan has significantly fewer labor cases than its counterparts.² However, this does not mean that Japan has significantly fewer labor disputes. On the contrary, Japan has just as many labor disputes as European countries and a wider variety of labor dispute mechanisms.³

This article will primarily discuss the administrative and judicial mechanisms for individual labor dispute resolution, namely the Labor

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¹ The district courts (*chihō saibnsho*) are the principal courts of the first instance, which accounts for 80–90 percent of all adjudicated cases. The Japanese Judiciary: Maintaining Integrity, Autonomy, and the Public Trust, in *Law in Japan: A Turning Point* (Daniel H. Foote, ed. 2007) 99, 100.

² In 2002, there were 3,271 cases filed in Japanese district courts while 642,440 cases and 163,218 cases were filed in German and French courts, respectively. See Takashi Araki, *Changing Employment Practices, Corporate Governance, and the Role of Labor Law in Japan*, 28 COMP. LAB. L. & POL'Y J. 251, 274 (2007).

³ *Id.* at 274-75.

³ *Id.* at 274-75.

Dispute Promotion System, the Equal Employment Office, and the Labor Tribunal System. The purpose of this article is to assess the performance and issues of the Labor Tribunal System (the “LTS”), and evaluate it in relation to performance of the administrative mechanism. The LTS was established in 2006 and has received positive feedback. This paper will argue that the Labor Tribunal System has generally been successful⁴ but only in adjudicating specific categories of labor disputes such as the confirmation of status and compensation due to the practical limitations of the system, and that the LTS should be utilized in addition to other available administrative mechanisms to achieve effective dispute resolution.

II. ADMINISTRATIVE MECHANISM

The administrative mechanism includes the Labor Commissions, the Labor Dispute Resolution System, and the Equal Opportunity Division. The Labor Commissions are quasi-judicial administrative agencies that are established to resolve collective labor disputes through conciliation, mediation, and arbitration. For individual labor disputes, the Law to Promote Resolution of Individual Labor Relations Disputes (the “Labor Dispute Promotion Law”) was enacted in 2001 “to promote the prompt and appropriate resolution” of individual labor disputes with respect to working conditions and other matters concerning labor relationships through mediation (*assen*).⁵

A. Labor Dispute Promotion System

Under the Labor Dispute Promotion Law, the General Labor Consultation Corner (“GLCC”) within the prefectural Labor Offices of the Ministry of Health, Labour, and Welfare⁶ provides a “one-stop service” to resolve individual labor disputes from either employees or employers.⁷

⁴ See Ronald C. Brown, *Comparative Alternative Dispute Resolution for Individual Labor Disputes in Japan, China, and the United States: Lessons from Asia?*, 86 ST. JOHN’S L. REV. 543, 573 (2012).

⁵ Kobetsu rōdō kankei funsō no kaiketsu no sokushin ni kansuru hōritsu [kobetsu rōdō funsō sokushin hō] [Law to Promote Resolution of Individual Labor Relations Disputes], Law No. 112 of 2001, art. 1 (Japan). Translation available at <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=02&dn=1&x=50&y=14&co=01&ia=03&ky=the+act+to+promote+resolution+of+individual+labor+disputes&page=4>.

⁶ The Ministry of Health, Labor, and Welfare, which was established in 2001 as a result of the merger of the Ministry of Labor and the Ministry of Health and Welfare. RONALD C. BROWN, EAST ASIAN LABOR AND EMPLOYMENT LAW: INTERNATIONAL AND COMPARATIVE CONTEXT 312 (2012) (providing a description of the Ministry and an organizational chart of the Ministry).

⁷ Law to Promote Resolution of Individual Labor Relations Disputes, *supra* note 5, art. 3.

When a claim is submitted to the GLCC, the GLCC then resolves minor disputes arising out of simple misunderstandings or redirects cases to either the Director of the Prefectural Labor Bureau (the “Labor Director”), the Dispute Coordinating Committee within the Labor Office, or other appropriate labor dispute resolution systems including courts and other administrative agencies.⁸

The Labor Director compels the parties to voluntarily resolve their labor disputes by pointing out issues and showing ways to overcome the conflict.⁹ The scope of labor issues subject to the Labor Director’s advice and guidance encompasses matters related to working conditions, *e.g.*, dismissal, non-renewal of employment contracts, transfer, promotion and demotion, workplace conditions, *e.g.*, harassment,¹⁰ bullying, labor contracts, *e.g.*, assignment of labor contracts, non-compete clauses, recruitment and hiring, and any other labor-related disputes such as the refunding of training fees upon resignation and damages to the company’s equipment.¹¹ When parties are unable to reach a resolution through the Labor Director’s advice and guidance, the case may either be referred to the Dispute Coordinating Committee for mediation¹² or to a different dispute resolution mechanism.

The Minister of Health, Labour and Welfare appoints no less than three members who have expert knowledge in labor issues to the Dispute Coordinating Committee.¹³ The committee acts as a fair and neutral third party and reviews the assertions and contentions by both parties and presents a specific mediation proposal.¹⁴ Once the parties agree to the mediation proposal, it becomes a mediation agreement, which has the same binding effect as a civil settlement agreement.¹⁵ The committee mediates labor-related disputes that are subject to the Labor Director’s

⁸ *We Will Help Resolve Your Workplace Troubles*, MINISTRY OF HEALTH, LABOUR AND WELFARE, PREFECTURAL LABOR OFFICE, 2 <http://www.mhlw.go.jp/general/seido/chihou/kaiketu/dl/01a.pdf>. (last visited Nov. 1, 2014) [hereinafter “Labor Dispute Promotion Pamphlet”].

⁹ Rōdō shinpan hō [Labor Tribunal Act], Law No. 45 of 2004, art. 4 (Japan). Translation available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=2266&vm=04&re=02&new=1>.

¹⁰ Harassment does not include sexual harassment because sexual harassment is governed under the Equal Employment Opportunity Law. Section II. B. discusses the dispute resolution system that hears complaints concerning sexual harassment issues.

¹¹ Labor Dispute Promotion Pamphlet, *supra* note 8, at 3.

¹² *Id.*, at 7.

¹³ Act on Promoting the Resolution of Individual Labor-Related Disputes, *supra* note 5, art. 7. (The committee experts include lawyers, university professors, and “Labor and Social Security Officer”).

¹⁴ Labor Dispute Promotion Pamphlet, *supra* note 8, at 6.

¹⁵ Labor Dispute Promotion Pamphlet, *supra* note 8, at 6-8.

advice and guidance with the exception of matters related to recruitment and hiring.¹⁶ The Labor Director's advice and guidance and the Committee's mediation are not applicable to collective labor disputes, disputes that are already pending in the courts, or disputes already being discussed between the labor union and the employer.¹⁷

In 2012, a total of 254,719 requests for consultation were submitted to the GLCC.¹⁸ Of those requests, 10,363 were submitted for the Labor Director's advice and guidance.¹⁹ Of the 6047 requests for mediation, 2272 (37.5%) cases reached agreement and 2383 (39.3%) cases were terminated due to a responding party's refusal to participate.²⁰

Table 1: Number of Cases Filed with the Individual Labor Dispute Solution System (Types of Dispute)²¹

	2008	2009	2010	2011	2012
Dismissal	67,230 (25.0%)	69,121 (24.5%)	60,118 (21.2%)	57,785 (18.9%)	51,515 (16.9%)
Dehiring	22,433 (8.4%)	26,514 (9.4%)	25,902 (9.1%)	26,828 (8.8%)	25,838 (8.5%)
Change in work conditions	35,194 (13.1%)	38,131 (13.5%)	37,210 (13.1%)	36,849 (12.1%)	33,955 (11.2%)
Other labor condition	27,086 (10.1%)	27,765 (9.8%)	29,488 (10.4%)	37,575 (12.3%)	37,842 (12.4%)
Bulling and harassment	32,242 (12.0%)	35,759 (12.7%)	39,405 (13.9%)	45,939 (15.1%)	51,670 (17.0%)
Other	36,086 (13.4%)	35,630 (12.6%)	38,007 (13.4%)	40,010 (13.1%)	38,906 (12.8%)
Total ²²	268,401	281,901	283,141	305,124	304,058

¹⁶ Labor Dispute Promotion Pamphlet, *supra* note 8, at 6.

¹⁷ Labor Dispute Promotion Pamphlet, *supra* note 8, at 7.

¹⁸ Press Release, Statistics on the Individual Labor Dispute Solution System in 2012, Ministry of Health, Labour and Welfare, 2, <http://www.mhlw.go.jp/stf/houdou/2r985200000339uj-att/2r985200000339w0.pdf> (last visited Apr. 29, 2014). [hereinafter Individual Labor Dispute Resolution System Statistics].

¹⁹ *Id.*, at 15.

²⁰ *Id.*, at 13.

²¹ *Id.*, at 4.

²² A number of categories (non-renewal of employment contract, cancellation of job offer, resignation, transfer, labor management, recruitment) are omitted from the table. Totals indicate the number for all filed cases including omitted categories.

B. *Equal Employment Office*

In addition to the Labor Dispute Resolution System, the prefectural Labor Offices have a separate division, the Equal Employment Office (the “EEO”) dedicated to hearing labor disputes arising under the Equal Opportunity Law,²³ the Child Care and Family Care Leave Law,²⁴ or Part-time Labor Law (collectively the “Equal Opportunity, Child Care Leave, and Part-time Laws”).²⁵ This system was established in April 2010 within the prefectural labor offices and provides a fair and efficient dispute resolution system for labor issues arising out of unequal treatment of female and male workers, child rearing and family care leave, and the unequal treatment of part-time workers.²⁶

The EEO’s role is similar to that of the GLCC. It reviews individual labor disputes submitted by an employee, employer, or third party then explains the dispute resolution assistance system under the Equal Opportunity, Child-Rearing Leave, and Part-time Laws.²⁷ Once a claim is submitted, the EEO either launches an investigation or attempts to compel voluntary resolution by the parties. If voluntary resolution is unsuccessful, the EEO refers parties to the Labor Director, the Conciliation Conference within the Labor Office, or to other appropriate

²³ Koyō no bun’ya ni okeru danjo no kintō na kikai oyobi taigū no kakuho tō ni kansuru hōritsu [Koyō kintō hō] [Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment], Law No. 113 of 1972, arts. 17 and 18 (Japan). Translation available at <http://www.japaneselawtranslation.go.jp/law/detail/?re=02&dn=1&x=0&y=0&co=1&ia=03&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=%E7%94%B7%E5%A5%B3%E9%9B%87%E7%94%A8&page=1>.

²⁴ Ikuji kyūgyō kaigo kyūgyō tō ikuji matawa kazoku kaigo o okonau rōdōsya no fukushi ni kansuru hōritsu [Ikuji kaigo kyūgyō hō] [Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave], Law No 76 of 1991, art. 52 paras. 4 and 5 (Japan). Tentative translation available at <http://www.japaneselawtranslation.go.jp/law/detail/?re=02&dn=1&x=0&y=0&co=1&ia=03&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=%E8%82%B2%E5%85%90%E4%BC%91%E6%A5%AD&page=1>.

²⁵ Tanjikan rōdōsya no koyō kanri no kaizen tō ni kansuru hōritsu [Part-time koyō hō] [Part-time Labor Law], Law No. 76 of 1993, arts. 21 and 22 (Japan). Translation available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=84&vm=04&re=02&new=1>.

²⁶ *Dispute Resolution Assistance System Under the Equal Opportunity Law, the Child Care and Family Care Leave Law, and Part-time Labor Law*, MINISTRY OF HEALTH, LABOUR AND WELFARE, PREFECTURAL LABOR BUREAU EQUAL OPPORTUNITY OFFICE, 1-2 (Jan. 2010) <http://www.mhlw.go.jp/general/seido/koyou/woman/dl/data02.pdf>. [hereinafter *Dispute Resolution Assistance System Pamphlet*].

²⁷ *Id.*, at 4.

labor dispute resolution systems including courts and other administrative agencies.²⁸

Under the Equal Employment Opportunity Law, the Labor Director hears individual disputes concerning discriminatory treatment based on sex. Common disputes involve recruitment, hiring, duties, promotion and demotion, benefits, change in employment status, dismissal, and renewal of labor contract, indirect discrimination, termination for reasons of marriage or childbirth and other related disadvantageous treatment, sexual harassment, and maternity healthcare measures.²⁹ The Labor Director conducts necessary hearings with the parties and third persons to establish facts and provide necessary advice and guidance to resolve the dispute.³⁰ If the parties fail to resolve their dispute through the Labor Director's guidance, they may choose conciliation (*chōtei*) through the Equal Opportunity Conciliation Conference (*kikai kintō chōtei kaigi*).³¹

Under the Child Care and Family Care Leave Law, the Labor Director may hear individual disputes concerning the child-rearing leave and family care leave system, sick leave to care for a child, limits on overtime and late-night shifts, shortening of work hours, disadvantageous treatment for the reason of child-rearing leave, and consideration for job assignments.³² If the parties do not resolve issues through the Labor Director's guidance, they may be referred to the Work and Family Balance Assistance Conciliation Conference (*ryōritsu shien chōtei kaigi*) for conciliation.³³

Under the Part-time Labor Law,³⁴ the Labor Director may hear individual disputes concerning the issuance of documentation memorializing working conditions, prohibition on unfair labor treatment, training necessary for job duties, opportunity to use the company welfare facilities, measures to promote conversion to full-time status, and the explanation of compensation packages.³⁵ If the parties fail to resolve their disputes through the Director's guidance, they may be referred to the Fair Treatment Conciliation Conference (*kinkō taigū chōtei kaigi*) for

²⁸ *Id.*, at 3.

²⁹ *Id.*, at 4.

³⁰ *Id.*, at 5.

³¹ Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment, *supra* note 23, art.18 para. 1.

³² *Id.*, at 15.

³³ *Id.*, at 17.

³⁴ Part Time Labor Law, *supra* note 25.

³⁵ Pāto taimu koyōhō, *supra* note 26, art. 21.

conciliation.³⁶ At any of the three Conciliation Conferences, the conciliation agreement has the same binding legal affect as the civil settlement agreement.

In 2012, of the 20,677 cases concerning the Equal Opportunity Law submitted to the EEO, 9981 cases (almost half) involved sexual harassment³⁷ and another 3186 cases were matters concerning unfair treatment for reasons of marriage, pregnancy and child birth.³⁸ Of the total cases, employees filed 52.3%, employers filed 27.6%, while others filed 20.1%.³⁹ A total of 504 cases were filed with the Labor Director for guidance, of which 381 were resolved.⁴⁰ Considering the large volume of cases submitted to the EEO, the number of cases submitted to the Labor Director for advice and guidance are relatively small, and cases filed for conciliation are significantly minimal. Of the sixty-three cases filed for conciliation, twenty-eight were resolved.⁴¹ The EEO investigated 5490 employers and issued a total of 4087 administrative guidances (*gyōsei shidō*).⁴²

As for the Child Rearing and Family Care Leave Act, 87,334 cases were submitted to the EEO for consultation in 2012.⁴³ What is notable here is that employers filed 62,035 cases or 71.0% of the total while employees filed 10,350 cases or 11.9% of the total number of cases.⁴⁴ Two hundred twenty-six cases were filed with the Labor Director for advice, of which 80.0% were resolved.⁴⁵ Only sixteen cases were filed with the Conciliation Conference and seven of those cases reached agreement.⁴⁶ The EEO investigated 9238 employers and issued 8766 administrative warnings.⁴⁷

³⁶ Pāto taimu koyōhō, art. 22.; Dispute Resolution Assistance Pamphlet, *supra* note 26, at 25.

³⁷ *Statistics of the Equal Employment Office*, MINISTRY OF HEALTH, LABOUR AND WELFARE, 2 (May 30, 2013) <http://www.mhlw.go.jp/stf/houdou/2r985200000335p5-att/2r985200000335qm.pdf>.

³⁸ *Id.*, at 2.

³⁹ *Id.*, at 2.

⁴⁰ *Id.*, at 3.

⁴¹ *Id.*, at 4.

⁴² *Id.*, at 4.

⁴³ *Id.*, at 5.

⁴⁴ *Id.*, at 5.

⁴⁵ *Id.*, at 9.

⁴⁶ *Id.*, at 8.

⁴⁷ *Id.*, at 9.

For matters related to the Part-Time Labor Law, 7485 cases were submitted to the EEO for consultation.⁴⁸ Similar to the Child Care and Family Care Leave Act, employers filed 3685 cases, or half of the total, while part-time employees filed 1419 cases.⁴⁹ Four cases were filed for the Labor Director's advice and no cases filed for conciliation.⁵⁰ The EEO investigated 8059 employers and issued administrative guidances to 7485 of those employers.⁵¹

These statistics may suggest several important characteristics of the EEO system. The Labor Director and Conciliation Conferences are not as heavily utilized despite a large volume of cases submitted to the EEO. This could mean that the EEO's advice is so effective that cases do not move forward to the Labor Director or the Conciliation Conference, that most of these cases submitted to the EEO are not ripe enough to require more assertive resolution methods, or a combination of both. The EEO seems to serve more as an administrative monitoring agency than a dispute resolution venue.

The greatest benefits to users of the GLCC and the EEO are cost-effectiveness and accessibility. In order to submit cases for an administrative resolution mechanism, filing fees are not required.⁵² The labor offices provide simple and self-explanatory filing forms, making the system accessible to anyone who wishes to bring matters to these offices without an attorney.⁵³ If an agreement were reached, the mediations and conciliations would have a legally binding effect and provide recourse to aggrieved parties.⁵⁴ Furthermore, claims submitted to the GLCC or the EEO do not need to be based on a full-blown dispute requiring the determination of the parties' legal rights and obligations.⁵⁵ On the other hand, since these systems cannot force parties to participate in dispute

⁴⁸ *Id.*, at 10.

⁴⁹ *Id.*, at 10.

⁵⁰ *Id.*, at 11.

⁵¹ *Id.*, at 12. More than 90% of those employers that received administrative guidance complied with such guidance within the fiscal year.

⁵² See Labor Dispute Promotion Pamphlet, *supra* note 8, at 2; Dispute Resolution Assistance System Pamphlet, *supra* note 26, at 2.

⁵³ See generally Labor Dispute Promotion Pamphlet, *supra* note 8, at 2; Dispute Resolution Assistance System Pamphlet, *supra* note 26. Claims can be filed not only by filing forms but also by visiting or calling labor offices.

⁵⁴ See Labor Dispute Promotion Pamphlet, *supra* note 8, at 6; Dispute Resolution Assistance System Pamphlet, *supra* note 26, at 6.

⁵⁵ See generally Labor Dispute Promotion Pamphlet, *supra* note 8, at 2; Dispute Resolution Assistance System Pamphlet, *supra* note 26. See also Act on Promoting the Resolution of Individual Labor-Related Disputes, *supra* note 5, art. 1 (stating one of the purpose of this act is to prevent individual labor disputes and to promote the voluntary resolution of such disputes.)

resolution, an administrative mechanism may be best utilized only when both parties are willing to seek a resolution for their conflict.

III. JUDICIAL MECHANISM

A. *Civil Courts*

The judicial mechanisms are comprised of the civil courts and the Labor Tribunal System (the “LTS”). The civil courts have general jurisdiction over any type of matter involving civil disputes including labor disputes; the LTS exclusively handles individual labor disputes. Unlike some other countries, Japan does not have specialized labor courts.⁵⁶ Workers can claim rights guaranteed by labor statutes, collective agreements, work rules, or employment contracts by filing lawsuits in an ordinary court that has jurisdiction of the first instance in accordance with the Code of Civil Procedure.⁵⁷ Generally, judges in ordinary courts do not have expertise in labor issues except for those in specialized labor divisions within the ordinary courts in metropolitan areas such as Osaka and Tokyo.⁵⁸

The statistics compiled by the Supreme Court of Japan (the “SCJ”) reveals several characteristics of labor-related lawsuits compared with all other civil lawsuits. In 2010, the average duration of all civil law suits was 6.8 months while the average duration of labor-related lawsuits was 1.7 times longer at 11.8 months.⁵⁹ Of the labor-related lawsuits, 31.3% concluded in less than six months while 7.5% lasted for more than two years.⁶⁰ Labor-related lawsuits have increased one and a half fold from 2119 cases in 2001 to 3135 cases in 2010.⁶¹ Compared with a 32.0% settlement rate for all civil lawsuits, 56.7% of labor-related lawsuits settled in 2010.⁶² The courts elected to conduct Preparatory Proceeding for Oral Argument (*sōten seiri tetsuzuki*)⁶³ while only 27.7% of all civil lawsuits

⁵⁶ Ryuichi Yamakawa, *Systems and Procedures for Resolving Labor Disputes in Japan*, 34 COMP. LAB. L. & POL’Y J. 899, 903 (2013).

⁵⁷ Kazuo Sugeno, *The Birth of the Labor Tribunal System in Japan: A Synthesis of Labor Law Reform and Judicial Reform*, 25 COMP. LAB. L. & POL’Y. J. 519, 520 (2004).

⁵⁸ Yamakawa, *supra* note 56, at 903.

⁵⁹ *Supreme Court of Japan Statistics 2011*, SUPREME COURT OF JAPAN, (Apr. 15, 2011) http://www.courts.go.jp/vcms_lf/20509007.pdf.

⁶⁰ *Id.*, at 95.

⁶¹ *Id.*, at 95.

⁶² *Id.* at 96.

⁶³ This is a preparatory evidentiary proceeding where the court, parties, and any other interested parties meet outside the public forum to discuss the issues and the potential settlement of the case. This is to avoid unnecessary delay in oral hearings. See Carl F. Goodman, *Japan's New Civil Procedure Code: Has It Fostered A Rule of Law*

went through such a proceeding.⁶⁴ The SCJ attributes this high percentage of preparatory proceedings in labor-related lawsuits to the substantially large amount of fact finding and intense hostility between the parties.⁶⁵ The lower settlement rate and longer duration of labor-related lawsuits may also suggest parties are unwilling to reach mutually agreed-upon resolutions and may reflect their strong pursuit of court rendered judgment.

In addition to the ordinary courts, the judiciary also provides another mechanism for labor dispute resolution: the LTS. As discussed below, the LTS was established to achieve more efficient and speedy labor dispute resolutions because lengthy labor lawsuits have always been problematic.⁶⁶ Interestingly enough, the establishment of the LTS has not necessarily contributed to alleviating the heavy burden of labor cases on civil courts. As Figure 1 indicates, the number of labor lawsuits filed with the civil court system between the years 2003 to 2012 had increased by 25.0% from 2443 to 3221 respectively.⁶⁷ The number of cases dipped in 2006 when the LTS was first instituted, but has since increased steadily.

Compared to the modest increase of cases experienced by courts, the LTS has witnessed a substantial growth in the number of cases since its inception. In its first year, the LTS had 877 cases, which then increased to 3719 in 2012. In a mere seven years, the number of cases filed more than quadrupled.⁶⁸ This may mean that the LTS is not necessarily an alternative to litigating labor disputes in civil courts, but rather, a new type of dispute resolution mechanism, providing a venue for people who would otherwise not have sought any resolution mechanism. It may also mean that notwithstanding a high volume of labor disputes adjudicated by the labor tribunal system, ordinary courts will continue to function as the last resort for labor disputes. The next section will delve deeper into the operation of LTS and its practical implications.

Dispute Resolution Mechanism?, 29 BROOK. J. INT'L L. 511, 539 (2004).

⁶⁴ *Supreme Court of Japan Statistics 2011*, *supra* note 59, at 97.

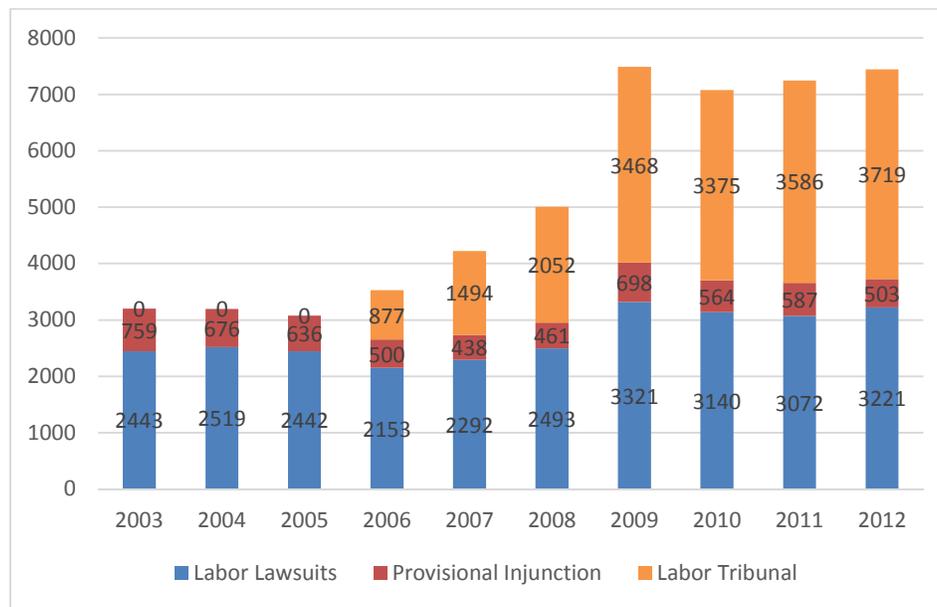
⁶⁵ *Supreme Court of Japan Statistics 2011*, *supra* note 59, at 4.

⁶⁶ Labor Tribunal Act, *supra* note 9, art. 1 (Japan).

⁶⁷ *Summary of Civil Court of First Instance*, SUPREME COURT OF JAPAN, 95 http://www.courts.go.jp/vcms_1f/20524003.pdf.

⁶⁸ *Id.*, at 102.

Figure 1: Cases Filed with Courts, Labor Tribunals, and the Number of Injunction Cases



B. Labor Tribunal System

In the aftermath of the economic bubble burst and expanding globalization, Japan undertook several administrative and economic reforms in the 1990s.⁶⁹ This was followed by major judicial reform, including the formation of the Justice System Reform Council, which was established through legislation enacted by the parliament in 1999.⁷⁰ One of the goals of justice reform is to make judicial procedures more expeditious, effective, and accessible.⁷¹ Against this backdrop, the LTS was established within district courts to address the rapid increase in individual employment disputes, changing labor markets and corporate structure under the Labor Tribunal Act of 2004.⁷²

1. Labor Tribunal Procedures

Under the Labor Tribunal Act, an employer or employee files a complaint with the district court. Once the court determines that the complaint complies with the act it appoints a three-member labor tribunal panel to begin a proceeding.⁷³ This panel is intended to achieve “prompt, proper, and effective dispute resolution” through conciliation or by

⁶⁹ Sugeno, *supra* note 57, at 519.

⁷⁰ See Daniel H. Foote, *Introduction and Overview*, in *LAW IN JAPAN: A TURNING POINT* xxi (Daniel H. Foote ed., 2007).

⁷¹ Sugeno, *supra* note 57, at 527.

⁷² Labor Tribunal Act, *supra* note 9.

⁷³ *Id.*, arts. 5 and 7.

rendering a labor tribunal decision.⁷⁴ The panel hears any civil disputes between an individual employee and an employer regarding the existence of a contract and other matters involving labor relations.⁷⁵ Collective labor disputes between a labor union, an employer, and a civil servant seeking revocation of disciplinary termination are not subject to the LTS.⁷⁶ Except under extraordinary circumstances, the panel must complete the procedure in three or less hearing sessions.⁷⁷

The tribunal has developed a common pattern in its hearing procedures. In the first hearing session, parties present their positions and brief testimonies, clarify issues, and submit documentary evidence.⁷⁸ In the second hearing session, the panel hears additional testimony and proposes an agreement upon conducting mediation to reach voluntary resolution.⁷⁹ And in the final hearing session, the panel asks the parties whether to accept the mediation agreement upon further mediation.⁸⁰ If the parties fail to reach an agreement, the panel then renders an award consistent with the rights and interests of the parties.⁸¹ The tribunal award is legally binding unless a party files a challenge with the district court within two weeks from the day of receiving the tribunal award in writing.⁸²

As such, the tribunal proceeding is extremely brief. Evidentiary hearings are usually concluded within one hearing session with more emphasis on mediation between the parties. The SCJ advises that labor disputes concerning discriminatory treatment and changes of working conditions may not be suitable for the tribunal adjudication because the tribunal's speedy adjudication process is insufficient to unravel complicated factual relations to reach a fair and just conclusion.⁸³ However, cases involving complicated factual relations such as sexual

⁷⁴ *Id.* art. 1.

⁷⁵ *Id.* art. 1.

⁷⁶ Civil servants seeking revocation of disciplinary termination must be heard by ordinary courts as an administrative suit. *Lawsuit Process, Civil Case Q & A*, SUPREME COURT OF JAPAN, http://www.courts.go.jp/saiban/qa_minzi/qa_minzi_45/ (last visited May 1, 2014).

⁷⁷ Labor Tribunal Act, *supra* note 9, art. 15 para. 2 (Japan).

⁷⁸ Yamakawa, *supra* note 56, at 906.

⁷⁹ Yamakawa, *supra* note 56, at 906.

⁸⁰ Yamakawa, *supra* note 56, at 906.

⁸¹ Labor Tribunal Act, *supra* note 9, art. 20 para. 1.

⁸² *Id.*, art. 21 para. 1.

⁸³ *Lawsuit Process, Civil Case Q & A*, SUPREME COURT OF JAPAN, http://www.courts.go.jp/saiban/qa_minzi/qa_minzi_45/ (last visited May 1, 2014).

harassment cases, are not prohibited from being adjudicated under the LTS.⁸⁴

2. Matsubuse Sexual Harassment Case

In 2010, the Matsubuse Sexual Harassment case was a labor tribunal case before the Saitama district court and concerned sexual harassment in the workplace.⁸⁵ In this case, a female part-time employee of Matsubuse municipal office brought a claim against Matsubuse town, alleging that the Matsubuse municipal office terminated her employment without conducting any investigation on circulation of fabricated sexual harassment documents.⁸⁶ While she sought 2,000,000 JPY⁸⁷ in damages, the tribunal panel awarded her 300,000 JPY⁸⁸ in damages. It concluded that the Matsubuse municipal office exacerbated the complainant's distrust in the municipality by failing to disseminate information regarding rules to prevent sexual harassment and information on the workplace counseling office and not conducting ex post measures such as investigation.⁸⁹

3. Types of Labor Cases Decided by the Tribunal

Table 1: Number of Cases Filed with the Labor Tribunal (Types of Dispute)⁹⁰

	2008	2009	2010	2011	2012
Non-pecuniary	1078 (52.5%)	1793 (51.7%)	1693 (50.1%)	1814 (50.6%)	1818 (48.9%)
Confirmation of status	1022 (49.8%)	1701 (49.0%)	1633 (48.3%)	1747 (48.7%)	1735 (46.7%)
Others	56 (2.7%)	92 (2.7%)	60 (1.8%)	67 (1.9%)	83 (2.2%)
Pecuniary	974 (47.5%)	1675 (48.3%)	1682 (49.8%)	1772 (49.4%)	1901 (51.1%)
Compensation, etc.	620 (30.2%)	1059 (30.5%)	1100 (32.6%)	1179 (32.9%)	1255 (33.7%)

⁸⁴ *Id.*

⁸⁵ *Matsubuse cho sekuhara rōdō shinpan de 30 man'en shiraharai Saitama [Matsubuse-City Ordered to Pay 300,000 Yen in the Sexual Harassment Labor Tribunal in Saitama]*, SEIBAN AREA UNION BLOG, <http://seibanlocalunion.blog45.fc2.com/blog-entry-5507.html> (citing Mainichi shinbun, Jan. 29, 2011).

⁸⁶ *Id.*

⁸⁷ Approximately 18,300.00 USD.

⁸⁸ Approximately 2,750.00 USD.

⁸⁹ *Matsubuse cho sekuhara rōdō shinpan de 30 man'en shiraharai Saitama*, *supra* note 85.

⁹⁰ *Cases Filed with the Labor Tribunal System*, RENGO KYOTO, 6 (Mar. 23, 2012) <http://www.labor.or.jp/rengo/wp-content/uploads/2012/03/120323-rodosinpan.pdf>.

Severance pay	114 (5.6%)	205 (6.0%)	161 (4.8%)	162 (4.5%)	170 (4.6%)
Others	240 (11.7%)	411 (11.9%)	421 (12.5%)	431 (12.0%)	476 (12.8%)
Total	2052	3468	3375	3586	3719

The Matsubuse Sexual Harassment Case is likely one of a very small number of sexual harassment cases heard by the tribunal. The statistics show a vast majority of the cases adjudicated by the tribunals involve the confirmation of status,⁹¹ compensation, and severance pay. As Table 1 indicates, in 2012, those three categories constituted 85.0% of all cases filed with the LTS. Discriminatory treatment and changes of working conditions fall under the non-pecuniary others category, which comprised 2.2% of the 3586 cases filed with the LTS in 2011. As indicated by Table 1, the composition and ratio of types of disputes heard by the LTS have had minimal fluctuation between 2008 through 2012. During these periods, confirmation of status and compensation cases are dominant in the LTS. One may argue this is simply a reflection of the overall composition of the different dispute types that generally exist. However, the composition of cases in the LTS are probably not proportionate to that of overall labor disputes.

One way to determine whether the LTS cases are disproportionate to the general trend is to compare the number of different types of cases filed in the LTS with those in other resolution venues. Table 1 for the Individual Labor Dispute Solution System (the “ILDSS”) indicates that the ILDSS had 51,515 cases involving dismissal and 51,670 cases involving bullying and harassment in 2012. Of the total 304,058 cases filed, they make up 16.9% and 17.0%, respectively. Aside from bullying and harassment cases at the ILDSS, the EEO received 9981 sexual harassment cases in 2012.⁹² The combined total of cases involving sexual harassment and bullying and harassment exceeded the cases involving dismissal by 10,136 cases.⁹³ At the ILDSS, the compensation disputes are not even counted as a distinct category.⁹⁴

⁹¹ The confirmation of status claims is where an employee who was dismissed by his/her employer seeks the court to confirm the existence of the employment status and payment of unpaid compensation on the grounds of invalid dismissal.

⁹² Press Release, Statistics on the Individual Labor Dispute Solution System in 2012, Ministry of Health, Labour and Welfare, 2, <http://www.mhlw.go.jp/stf/houdou/2r985200000339uj-att/2r985200000339w0.pdf> (last visited Apr. 29, 2014). [hereinafter Individual Labor Dispute Resolution System Statistics].

⁹³ Sexual harassment cases are not heard by the ILDSS so that “bullying and harassment” does not include sexual harassment.

⁹⁴ See Table 1.

In contrast, compensation and dismissal cases alone constitute 80.4% of cases filed with the LTS.⁹⁵ It is fair to say that the cases on confirmation of status and compensation are the dominant cases filed with the LTS while other cases are significantly underrepresented. The SCJ's suggestion that the LTS is not suitable for disputes requiring extensive fact-finding is certainly well reflected in the actual number of cases filed with the LTS. Although the LTS hears a disproportionate number of cases concerning dismissal and compensation, its success rates are remarkable. Of the cases submitted to the LTS in 2011, 71.2% were resolved through conciliation and 18.2% through adjudication.⁹⁶ Table 3 also suggests an important factor about the LTS: the non-pecuniary others category has a higher rate of withdrawal and resolution by adjudication than any other category but it has a lower resolution rate by conciliation. As mentioned above, the non-pecuniary others category includes disputes concerning harassment, discriminatory treatment and changes in working conditions.⁹⁷ These cases require extensive fact-finding and tend to be more emotionally charged, thus parties may have difficulty reaching an agreement solely based on conciliation.

Table 2: Number of Cases Concluded in 2011 (Reasons for Conclusion)⁹⁸

	Adjudication	Conciliation	Art. 24	Withdrawal	Dismissal
Non-pecuniary	321 (18.0%)	1274 (71.6%)	53 (3.0%)	122 (6.9%)	9 (0.5%)
Confirmation of status	302 (17.6%)	1242 (72.4%)	49 (2.9%)	114 (6.6%)	8 (0.5%)
Others	19 (29.7%)	32 (50.0%)	4 (6.3%)	8 (12.5%)	1 (1.6%)
Pecuniary	320 (18.5%)	1228 (70.8%)	66 (3.8%)	15 (0.9%)	15 (0.9%)
Compensation, etc.	214 (19.5%)	757 (69.1%)	41 (3.7 %)	7 (0.6%)	7 (0.6%)
Severance pay	25 (14.5%)	124 (72.1%)	6 (3.5 %)	1 (0.6%)	1 (0.6%)
Others	81 (17.4%)	347 (74.5%)	19 (4.1%)	7 (1.5%)	7 (1.5%)
Total	641 (18.2%)	2502 (71.2%)	119 (3.4%)	227 (6.5%)	24 (0.7%)

4. Costs

The costs of bringing a labor dispute to the LTS include the tribunal filing fees and attorney's fees. The tribunal filing fees are half of that of filing a civil law suit in the district court. For a claim in the amount of 1,000,000 JPY, the court fee is 10,000 JPY in a civil court and 5000

⁹⁵ See Table 1.

⁹⁶ See Table 2.

⁹⁷ See Outline of Civil Procedure in Japan, SUPREME COURT OF JAPAN, (last visited November 27, 2014) http://www.courts.go.jp/english/judicial_sys/civil-contents/civiltext/index.html (In non-pecuniary claims, non-monetary remedies are sought while in pecuniary claims, monetary damages are sought.).

⁹⁸ *Cases Filed with the Labor Tribunal System*, RENGO KYOTO, 2 <http://www.labor.or.jp/rengo/wp-content/uploads/2012/03/120323-rodosinpan.pdf>.

JPY in the LTS.⁹⁹ For a 5,000,000 JPY claim, the court fee is 30,000 JPY in a civil court and 15,000 JPY in the LTS.¹⁰⁰ The attorney's fees vary among different firms. Table 4 shows several examples of attorney fees found in the LTS. For civil labor litigation, the fee structures are similar except in the case of Firm 3. Firm 3 delineates a firm that sets a lower retainer deposit for the LTS among the other firm examples.

Table 4: Sample Attorney Fees in the LTS

Firm	Retainer Deposit	Contingent Fees
Firm 1 (>100 attorneys) ¹⁰¹	129,000 JPY	27.0%
Firm 2 (Solo) ¹⁰²	8.0%	16.0% (<3,000,000 JPY)
Firm 3 (Solo) ¹⁰³	105,000 JPY	25.2% (pecuniary comp); 2-mo salary (reinstatement)
Firm 4 (low income) ¹⁰⁴	126,000 JPY	10.5%

To better illustrate how much it would cost to bring a labor dispute to the Labor Tribunal, the Matsubuse Sexual Harassment Case can be used as a case study. In the Matsubuse case, the claimant sought 2,000,000 JPY¹⁰⁵ in damages and was awarded 300,000 JPY.¹⁰⁶ Under the Firm 1 formula, the total costs excluding miscellaneous expenses equals to 217,500 JPY [= 7500 (court fee) + 129,000 (deposit) + 81,000 (contingency)]; the total for Firm 2 is 215,500 JPY [= 7500 + 160,000 +

⁹⁹ *Court Fees*, SUPREME COURT OF JAPAN, http://www.courts.go.jp/vcms_lf/315004.pdf.

¹⁰⁰ *Id.*

¹⁰¹ *Attorney's Fees*, ADIRE LAW OFFICE, <http://www.adire-roudou.jp/fee/> (last visited Apr. 20, 2014).

¹⁰² *Description of Attorney's Fees*, AYUNO KAZE LAW OFFICE, <http://www.ayunokaze.jp/category/1417217.html> (last visited Apr. 20, 2014).

¹⁰³ *Attorney's Fees*, WADAKIN LAW OFFICE, <http://www.kaiko-bengo.com/hiyou.html> (last visited Apr. 20, 2014).

¹⁰⁴ *Attorney's Role in the Labor Tribunal*, ATTORNEY YOSHITOKU ITŌ. For civil suits, the deposition is 210,000 JPY. <http://www.shomin-law.com/roudoushinpanbengoshi.html> (last visited Apr. 20, 2014).

¹⁰⁵ *Supra* note 99, the court fee is 7,500 JPY.

¹⁰⁶ *See* Section III. B. 2., *supra* (describing the case in more detail.)

48,000]; the total for Firm 3 is 188,100 JPY [= 7500 + 105,000 + 75,600]; and the total for Firm 4 is 165,000 JPY [= 7500 + 126,000 + 31,500]. Because of the fixed retainer deposit, the attorney's fees are proportionately higher against a relatively smaller recovery of 300,000 JPY. If the recovery is expected to be less than 200,000 JPY, the LTS may not be ideal from the standpoint of overall costs.

As illustrated in the example of Firm 2, the attorney's fees are potentially high because of the amount of recovery alleged. Firm 2 calculates the retainer deposit based on a percentage of the amount of recovery alleged instead of a flat fee like other firms. This fee structure is especially disadvantageous for claims such as sexual harassment cases where correctly assessing the actual amount of damages is difficult. On the other hand, claims seeking confirmation of status and unpaid compensation are relatively easy to assess the actual amount of recovery because they are calculated based upon the plaintiff's actual wages.

5. Recusal of Judges

A challenge of a tribunal decision is brought before an ordinary court in which the tribunal proceeding took place.¹⁰⁷ Because a tribunal panel must always have one judge appointed from the court under the jurisdiction of which the panel is established, it is fairly common that the judge from the panel also presides over the suit challenging the panel's decision in an ordinary court.¹⁰⁸ Japan's Code of Civil Procedure prohibits the judge from a preceding court procedure to hear appeals on the decision.¹⁰⁹ However, the notion that a judge from a lower court should not adjudicate appeals on his or her own decision is not present in challenges against the tribunal panel decisions.

In 2011, the SCJ concluded that the LTS is not construed as proceeding of "the prior instance"¹¹⁰ within the meaning of the Code of Civil Procedure when a challenge on the tribunal award is brought before an ordinary court under the Labor Tribunal Act art. 22.¹¹¹ The SCJ distinguished the LTS from ordinary judicial processes and found that "the prior instance" recusal requirement only applies to the proceedings of lower courts. This decision allows judges who serve on the tribunal panel

¹⁰⁷ Labor Tribunal Act, *supra* note 9, art. 22.

¹⁰⁸ *Id.*, art. 8.

¹⁰⁹ MINJI SOSHŌHŌ [MINSHŌ] [C. CIV. PRO.] art. 23, para. 1 (Japan).

¹¹⁰ *Id.*, translation in TRANSPARENCY OF JAPANESE LAW PROJECT, KYUSHU UNIV., 11 <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/legislation/ccp.pdf>. ("[A] judge shall be disqualified from performing his/her duties...where a judge has participated in making an arbitral award in the case or participated in making a judicial decision in the prior instance against which an appeal is entered.")

¹¹¹ Saikō Saibansho [Sup. Ct.] May 25, 2010, Hei 21 (o) no. 1727, 234 SAIKŌ SAIBANSHO MINJI HANREISHU [Minshu] 99 (Japan).

to also hear challenges on his or her own panel's decision as a presiding judge in an ordinary court. The SCJ simply looked to the language of the Civil Procedure Code and quickly dismissed potential issues concerning a judge's objectivity in deciding on a challenge against his or her own award.

IV. CONCLUSION

The LTS faces several challenges such as its effectiveness in only limited categories of labor issues, questionable cost-effectiveness in cases in which recovery is difficult to assess, and issues involving a judge's recusal when the tribunal award is being challenged notwithstanding its proven success in the confirmation of status and compensation disputes cases. The LTS is by no means an alternative resolution mechanism to ordinary courts and administrative mechanisms. Compared to these two venues, the scope of the LTS is much smaller, but in those limited categories of issues the LTS provides unprecedented effectiveness and speediness in dispute resolution. For disputes concerning status of confirmation and compensation that could expect pecuniary recovery of more than 300,000 JPY, the LTS may be the best dispute resolution system.

On the other hand, if a dispute has not ripened to the level that requires formal determination of the parties' rights and obligations, neither judicial mechanism can provide any recourse.

Administrative mechanisms offer a wide variety of services for all labor and employment issues. These services are provided free of charge and designed to be accessible to anyone, making it particularly easy for employees to utilize. Administrative agencies not only provide a post-conflict resolution system but also a pre-conflict investigative system, preventing labor conflicts from developing into a full-blown disputes.

Especially in cases that involve extensive fact-finding such as harassment issues, it may be efficient and cost-effective to seek administrative review if both parties are willing to reach a resolution. It is important for employees, employers, and the attorneys assisting them to understand these essential characteristics of each dispute resolution mechanism in order to determine which system will provided the most efficient and effective labor dispute resolution.