

護理人員無法輪值夜班 遭撤正職之侵權訴訟

Lawsuit over Infringement of Rights: Nursing
Staff Dismissed from Full-time Positions
for Refusing Night Shift Rotations

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令和5(壬)年第569號損害賠償等請求事件

令和7年1月22日名古屋地方裁判所



摘要

原告X任職於被告Y院擔任正職護理師，因其丈夫轉調外地工作，夜間將無人看顧小學四年級之子女，是原告向被告申請夜班勤務申請。被告以原告申請不符院內減免規定為由拒絕之，並詢問原告無法夜班執勤之期間多長、得否至少每月兩次夜班執勤，但均未獲原告正面回應。是被告表示若無法夜班執勤，且尚無可能調動至無夜班之職務部門，僅能轉為約聘或兼職員工。原告以被告違反職場環境配慮義務，且違法勸誘或強迫退職，而依債務不履行請求被告賠償損害。法院認為，原告情形確實不符院內減免夜班勤務規定，且被告亦提出減免夜班之方案，係因原告不為確答而始被告無法履行其義務，是原告請求並無理由。

關鍵詞：夜班執勤 (night shift)、勞動契約 (labor contract)、勞資爭議 (labor dispute)、職場環境配慮義務 (duty of care)、護理師 (nurse)

DOI: 10.53106/241553062026010111006

Plaintiff X was employed as a full-time nurse at Defendant Y Hospital. In the context of her husband's job transfer to a different location, the issue arose of her fourth-grade child being left unattended at night. Consequently, the plaintiff submitted an application to the defendant for exemption from night shift assignment. The defendant rejected the request, asserting that it didn't satisfy the hospital's exemption criteria. The defendant inquired as to the duration of the plaintiff inability to work night shifts and whether she could perform at least two night shifts per month, but received no clear response. The defendant then asserted then if the plaintiff was unable to work night shifts and no transfer to a department offering night shifts was feasible, she could only be converted to a contract or part-time employee. The plaintiff alleged that the defendant had violated its duty of care and had unlawfully induced or coerced resignation, seeking damages for breach of contract. The court determined that the plaintiff's circumstances didn't align with the hospital's stipulated criteria for exemption from night shifts. Moreover, the defendant had proposed an exemption plan, but the plaintiff's failure to provide a definitive answer prevented the defendant from fulfilling its obligation. Consequently, the plaintiff's claim was adjudged to lack reason.

壹、事實概要

一、事件概要

原告X於名古屋市立大學醫院（被告醫院，以下簡稱Y院）擔任加護病房（Intensive Care Unit, ICU）正職護理師，因丈夫將轉調外地工作，當時育有一名小學4年級子女的X難

以繼續輪值夜班，向Y院提出本件免除夜班勤務申請。但Y院未予同意，表示若無法輪值夜班則無法續任正職員工，僅能轉任契約或兼職員工，並提交退職申請書。X主張在過程中Y院涉及違法退職勸誘或強迫辭職，違反勞動契約上的職場環境配慮義務，依債務不履行之損害賠償請求權，請求賠償220萬日圓（慰撫金200萬日圓及律師費20萬日圓），及自訴狀送達翌日起至清償完畢之日止，按民法所定年利率3%計算之遲延損害金。

根據本件勞動契約，Y院於新聘正職護理師時，明確以「可輪值夜班」作為應聘資格，X亦以此條件受聘。此外，根據Y院「員工加班或夜班的限制規定」（下稱「本件免值夜班規定」）第8條第1項規定：育有小學入學前子女之員工，符合以下任一條件或同住配偶無法於深夜常態照顧子女者，只要提出申請，除非妨害法人業務正常運作，不得令其從事夜班勤務：（一）不上夜班者（每月上夜班3次或更少）。（二）非因負傷、疾病或身心障礙而無法照顧子女者。（三）員工非於預產期前8週（多胎妊娠為14週）以內。（四）員工非於產後8週以內。在判斷是否有「妨害法人業務正常運作」情事時，應綜合考量申請時期之工作內容、工作量及替代措施之難易度等。

表1 X提出本件免除夜班勤務申請及退職願之經過

日期	經過
8月22日	X提出本件免除夜班勤務申請，ICU護理長告知X聘用正職護理師之條件即為可輪值夜班，僅因家庭因素無法免除，詢問X無法輪值夜班之期間是否有明確期限？每月能否至少輪值兩次夜班？X回答，無法確定期間，現狀下連每月輪值2次夜班亦無法配合。ICU護理長回覆將向護理部確認是否能調動至無夜班的單位。對此，護理部表示目前調動非常困難，指示確認X能否透過家人協助或夜間托育，每月至少輪值兩次夜班，並告知無法配合輪值夜班之期間。Y院護理部護理長指出，若希望無夜班而繼續於醫院工作，則必須轉為契約職員或兼職職員。

（續下頁）