

CASE NO. 2844

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS**Complaint against the Government of Japan
presented by**

- the Japan Airlines Flight Crew Union (JFU) and
- the Japan Airlines Cabin Crew Union (CCU)

supported by

- the National Confederation of Trade Unions (ZENROREN)
- the National Trade Union Council (ZENROKYO)
- the International Federation of Airline Pilots' Associations (IFALPA) and
- the International Transport Workers' Federation (ITF)

Allegations: The complainant organizations allege that the dismissal of workers by Japan Airlines International was carried out in such a way as to discriminate against workers who are members of certain trade unions. They further allege that the Enterprise Turnaround Initiative Corporation intervened in the strike voting procedures

594. The complaint is contained in communications dated 23 March, 12 May, 14 July and 8 August 2011 from the Japan Airlines Flight Crew Union (JFU) and the Japan Airlines Cabin Crew Union (CCU). The National Confederation of Trade Unions (ZENROREN) and the National Trade Union Council (ZENROKYO) supported the complaint in a communication dated 23 March 2011. The International Federation of Airline Pilots' Associations (IFALPA) supported the complaint in a communication dated 12 May 2011. The International Transport Workers' Federation (ITF) supported the complaint in a communication dated 23 May 2011.

595. The Government sent its observations in a communication dated 21 October 2011.

596. Japan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

597. In their communication of 23 March 2011, the JFU and the CCU indicate that Japan Airlines International (hereafter the company) is a consolidated subsidiary of a holding company, Japan Airlines System (hereafter the JALS) and together with seven other affiliate subsidiaries it has operated air transport business, mainly utilizing its regular flight networks as the largest air carrier in Japan. The complainants state that, due to the Government's distorted aviation policies, airports in Japan have remained expensive and the company has been forced to operate in loss-making routes necessitated by excessive local airport facilities. In addition, the management has adopted lax business strategies and the company was forced to buy an excessive number of aircrafts due to strong pressures to correct bilateral trade imbalance. All these factors had combined to deteriorate the financial situation of the company. The sharp drop in air travel, the surge in fuel costs and

fuel surcharges and the global financial downturn made the financing of the company even more difficult. On September 2009, the Minister of Land, Infrastructure, Transport and Tourism set up the JALS Rehabilitation Task Force (hereafter the Task Force) as a private advisory body with the aim of revitalizing the company. On October 2009, the Task Force submitted a conclusion of its examination to the Minister that the company should be rehabilitated under the programme of Enterprise Turnaround Initiative Corporation (hereafter the ETIC).

- 598.** Subsequently, on 19 January 2010, the company, together with another JALS affiliate subsidiary, filed for bankruptcy protection under the Corporate Rehabilitation Law. The Tokyo District Court approved the start of the rehabilitation process on the same day and appointed a bankruptcy administrator, as well as the ETIC, as bankruptcy administrators. The ETIC is a court-appointed rehabilitation administration organization and a joint-stock corporation, established on October 2009, whose purpose is, in collaboration with financial institutions, to provide support for the revitalization of businesses that have turnaround potential but are carrying excessive debts. The ETIC is described by the complainants as an impartial and neutral organization that aims to revitalize local economies by supporting indebted businesses. It is also described as an organization that has strong public characteristics and its support measures are taken from the perspective of protecting public good. The paid-in capital totalling ¥20 billion was half contributed by the Government of Japan and the other half came from private sector financial institutions.
- 599.** The complainants add that, in January 2010, the ETIC decided to support the company, and two other affiliate companies, subject to the following prerequisites: that the Government provides necessary support continuously, the company and the two other affiliate companies ask for the understanding and cooperation of business partners, both home and abroad, and concerned nations about the fact that the companies' continued payments of commercial claims and lease liabilities are secured and the frequent flyer miles held by customers, and discount certificates issued to shareholders, are honoured so that business operations will continue; and the Government draws up concrete and comprehensive aviation policies expeditiously so that Japan's aviation industry continues to be competitive in the global market. Based on this, on the same day, the Japanese Government officially announced that it would take the necessary measures to ensure the continuation of the operation and turnaround of the corporations, including continuously providing sufficient financial support until the companies have been revitalized, and calling for the understanding and cooperation of foreign governments. Considering the above process, the complainants' view is that the company and the two other affiliate companies became public entities under the direct control of national authorities, namely the Government, the ETIC and the court upon the start of the rehabilitation process.
- 600.** On August 2010, the administrator and the ETIC, as bankruptcy administrators, submitted their rehabilitation plan with the names of the concerned to the Tokyo District Court. Following the plan, the administrators, in close cooperation with the management of the company, started to take drastic structural reform of the company and encourage the employees to take early retirement and stopped renewing labour contracts of fixed-term employees in March 2010. It started the second round of early retirement offers targeting cockpit crew in July 2010, stopped providing training to pilot trainees and encouraged trainees without licences to transfer to ground-based positions or to take special early retirement packages.
- 601.** In the aforementioned rehabilitation plan, the ETIC mentioned that, at the time of the submission of the rehabilitation plan, it had the ability of raising up to ¥3 trillion in government-guaranteed funds and it expected that the organization would be the driving force in viable and drastic turnaround initiatives of the company and that, with its characteristics as a public organization, appropriate cooperation and coordination with the

Government would be achieved. The ETIC has established a committee that comprises members, including outside academics, and makes support decisions according to the criteria based on the notification of competent ministers.

- 602.** The rehabilitation plan set out that the number of employees would be cut from 48,781 at the end of the fiscal year 2009 to 32,600 by the end of the fiscal year 2010 in the Japan Airlines group companies including the three rehabilitated corporations. At the briefing for employees held on 3 September 2010, the company announced that its goal was to cut a total of 1,520 employees (370 cockpit crew members, 570 cabin attendants, 480 machinists and 100 ground staff members). Since September 2010, the administrator, the ETIC and the company offered two separate early retirement schemes to cockpit and cabin crew. By 22 October 2010, the closing date of applications for the second round of offers, 1,545 employees (257 cockpit crew members, 649 cabin attendants, 524 machinists and 115 ground staff members) had applied for the Voluntary Retirement Programme, which well exceeded the redundancy goal of 1,520 workers originally set by the company.
- 603.** Nevertheless, on 15 November 2010, the administrator, the ETIC and the company announced that they would need to shed another 200 employees (110 cockpit crew members and 90 cabin attendants) and it would dismiss a total of 250 workers (200 workers mentioned above plus another 50 taking leave of absence). The administrator, the ETIC and the company, on 9 December 2010, notified the CCU and the JFU that they would dismiss 202 crew members (108 cabin attendants, including 34 on leave, and 74 aged 53 and over, as well as 94 cockpit crew members (those aged 55 and over for pilots and those aged 48 and over for co-pilots) including 4 on leave) on 31 December 2010.
- 604.** The company sent a dismissal letter to the 250 workers telling them that their employment would be terminated on 31 December 2010. In the meantime, the company continuously encouraged the targeted workers to take the voluntary redundancy scheme during the period 10–27 December 2010. Eventually 81 pilots and 84 cabin attendants were dismissed as of 31 December 2010. Dissatisfied with the dismissal, 74 cockpit crew members and 72 cabin attendants formed a group of plaintiffs and brought the case to the Tokyo District Court on 19 January 2011 to challenge their dismissal. In the complainants view, the dismissal enforced by the administrator, the ETIC and the company was fraught with serious issues, which infringe standards set by ILO Conventions.
- 605.** The company set the criteria for dismissal, targeting employees in descending order of age until the job reduction targets had been reached. There are two trade unions that represent cabin crew employed by the company, the CCU and the Japan Airlines Friendship & Improvement Organization (JALFIO). Among the 64 cabin attendants dismissed on the basis of age, 57 are CCU members, including six incumbents. Among the dismissed workers are Executive Committee (EC) members of the CCU and many ex-EC members. The complainants consider that the dismissals constitute a company's attempt to undermine the CCU under the guise of setting age as the criteria for dismissal. The CCU has demanded that age requirements for the voluntary retirement scheme should be abolished as it is not only unfair but also for the reason that without any age requirements, more voluntary retirees are expected to apply and there would be higher probability of attaining the payroll reduction targets. However, the administrator, the ETIC and the company refused to consider the proposal, claiming that their goal was to rejuvenate the company and make it a more strongly built one with an employee structure resistant to any possible emergencies in the future. The criteria for dismissal set by the administrator, the ETIC and the company discriminate against workers who are members of certain trade unions in determining who will be kept on the payroll, and therefore it clearly prevents workers from exercising freely the right to organize as enshrined in Convention No. 87.

- 606.** In spite of the fact that the company forcibly announced its decision to dismiss workers on December 2010, no sincere negotiations have taken place to date between the company, the JFU and the CCU in order to discuss the necessity of dismissal for the purpose of the corporate reorganization, sincere fulfilment of duty by the employer to make efforts to avoid dismissal, and the setting up of the objective and reasonable criteria for dismissal, including an appropriate disclosure of information and introduction of mutually agreeable counter proposals. Therefore, issues raised by the JFU and the CCU, as well as points of conflict between the two unions and the company have remained completely unsolved. The complainants' report that the company's operating revenue of ¥109.6 billion in the first half of the fiscal year 2010, and operating profit of ¥114.8 billion (¥146 billion for the consolidated Japan Airlines group) in the period of April–November 2010, well exceeded the company's rehabilitation plan profit target for the fiscal year 2010 (¥64.1 billion). Under the circumstances, the complainants consider that sufficient consultation and negotiations with trade unions were all the more essential in considering the very necessity of the dismissal. However, despite repeated requests by the JFU and the CCU, the administrator, the ETIC and the company refused to disclose detailed financial information that could lead to such discussions with the trade unions.
- 607.** According to the complainants, the dismissal by the administrator, the ETIC and the company is controversial in that it constitutes discriminatory treatment of employees on the basis of age as well as illustrates the employers' failure to ensure that there is the fullest possible opportunity for each cockpit and cabin crew to use his/her skills and endowments. Despite the fact that the administrator, the ETIC and the company should have negotiated with workers in order to avoid potential conflicts, the employers have categorically refused to have any sincere collective bargaining with employees. This is in breach of Convention No. 98. According to the complainants, the ETIC said that if the original job reduction target was not reached after selecting employees for dismissal based on criteria pertaining to sick leave, absence from work and performance evaluation, more employees were to be selected from each job and position in descending order of age until the reduction target was reached. This clearly constitutes discriminatory treatment of employees on the basis of age.
- 608.** The complainants assert that the lack of dialogue has had the consequence that the fullest possible opportunities have not been guaranteed for cockpit and cabin crew to utilize their skills and endowments. The administrator, the ETIC and the company announced that as of 31 December 2010, cockpit and cabin crew were to be dismissed for reorganization. However, prior to that, no consideration was made in order to guarantee the employment opportunity where cockpit and cabin crew would be well suited to use their special skills (such as temporary layoff or work sharing among employees) under the pretext of optimizing personnel size. Cockpit and cabin crew aboard airplanes perform duties in which their work experiences are an important consideration in fulfilling their job of ensuring safety and providing services. However, the administrator, the ETIC and the company failed to take measures to guarantee employment opportunities for them to use their skills and endowments, nurtured over many years of their work experiences.
- 609.** Furthermore, the company managed to reduce costs by nearly ¥700 million after a total of 1,860 employees applied for and took unpaid leave of absence on a monthly basis in the period between February 2009 and January 2010. As one of the measures to avoid dismissals, the CCU made a proposal to implement another round of this measure, but the administrator, the ETIC and the company refused to consider the proposal.
- 610.** The complainants denounce some remarks made by an official from the ETIC during negotiations with the JFU and the CCU on November 2010. These remarks were as follows:

- if union members voted in favour of a strike, and the right to strike was subsequently exercised, flights would be suspended, thereby increasing the risk of undermining the corporate value;
- if the risk for the union members to exercise the right to strike still existed after the approval of the rehabilitation programme scheduled on 30 November 2010, the ETIC would not be able to dare to risk taxpayers' money;
- if the workers voted in favour of a strike, the ETIC would not carry out the planned public capital injection of ¥350 billion into the company, unless the strike was called off.

611. In the first place, the ETIC was to give the company a pay-in of ¥350 billion in exchange for ¥175 million worth of new shares, which was part of the rehabilitation programme based on paragraph 1, article 31, of the Enterprise Turnaround Initiative Corporation Law, subject to the company's creditors approving the proposed rehabilitation programme submitted by the bankruptcy administrator under the bankruptcy protection proceedings pending in Tokyo's District Court, as well as the permission from Tokyo's District Court to go ahead with its rehabilitation programme. In making this decision, in accordance with the said law, the ETIC sought the opinions of the Prime Minister; the Minister of Public Management, Home Affairs, Posts and Telecommunications; the Finance Minister; the Minister of Health, Labour and Welfare; the Minister of Economy, Trade and Industry, and none of them raised an objection to the injection of public capital into the company. In the complainants' view, the ETIC publicly notified stakeholders including the creditors that the ETIC was going to inject the abovementioned capital once its rehabilitation programme had been approved. Hence, it has never been envisioned that, after the approval of the rehabilitation programme, the voting for the strike by the trade unions representing workers at the company in an effort to demand the withdrawal of the dismissal would constitute a legitimate reason not to carry out the financing. In fact, on 1 December 2010, the ETIC carried out the public injection of ¥350 billion as scheduled.

612. The ETIC is the bankruptcy administration organization of the company, and therefore as prescribed in article 72 of the Corporate Reorganization Act, the ETIC exclusively possesses "the right to manage the business and property of the company undergoing the rehabilitation", and thus the ETIC should be in the position of an employer. Therefore, the ETIC and its staff in charge are required to abide by trade union laws as an employer and remarks as such made during the November 2010 negotiations were intended to unfairly intervene in the strike voting procedures of the trade unions by hinting at not carrying out the planned public capital injection of ¥350 billion.

613. The complainants recall that the right to strike is one of the basic human rights of workers guaranteed in article 28 of the Constitution of Japan. Whether to exercise the strike right or not should be solely left with the decision of union members based on their free will. Furthermore, ILO Convention No. 98, ratified by Japan, specifies that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. The complainants, considering that this interference by the ETIC constitutes unfair labour practices, have filed a complaint with the Tokyo Metropolitan Labour Relations Commission.

614. The complainants allege that the company and the bankruptcy administrators dismissed 81 cockpit crew members and 84 cabin attendants as of 31 December 2010. Among those dismissed, 74 cockpit crew members and 72 cabin attendants filed a lawsuit challenging their dismissal with the Tokyo District Court on 19 January 2011. The complainants denounce the fact that the President of the company, Mr Kazuo Inamori, admitted that the

dismissal was not necessary when he stated “the financial situation of the company is getting better day by day. It may not be impossible for the company to survive without firing the 160 people but it was not possible for the company to scrap the rehabilitation plan we promised financial institutions, creditors and the court that we would pursue only one year ago.”

615. The complainants add that the plaintiffs of the abovementioned lawsuit include a considerable number of officials and Council members of the complainants, the JFU and the CCU as well as officials of various industry-wide trade union organizations (such as KOHKUREN, the Japan Federation of Civil Aviation Workers’ Unions for Air Safety and ALPA-Japan) to which the JFU and the CCU are affiliated.

616. According to the complainants, among the 74 dismissed cockpit crew members, 12 were holding office as officials of their own unions and/or industrial organizations that the JFU is affiliated to. One of those was an official of the JFU. Twenty-five among the 74 dismissed had in the past held responsible positions in their respective unions and/or industrial organizations that their respective unions are affiliated to. With regard to cabin crew, 72 plaintiffs include all of the three key officials (chair and two vice-chairs) of the CCU as well as three of the 13 EC members. Among a total of 70 Council members, 17 were dismissed. In addition, another 20 among the dismissed had experiences in serving as officials of the CCU. In conclusion, as of the date of dismissal, among the 72 cabin attendant plaintiffs, 23 were either officials of the CCU and/or industrial organizations which the CCU is affiliated to.

617. The complainants request the Committee to recommend that:

- the Government takes necessary measures to instruct the bankruptcy administrator, the ETIC and the company to retract their decision to dismiss workers, since the criteria used in practice discriminates against workers on the basis of trade unions they belong to and also includes a large number of current and former officers of unions and/or industrial organizations that their respective unions are affiliated to;
- the Government takes necessary measures to prompt the administrator, the ETIC and the company to have sincere negotiations with the trade unions, based on the fact that the employer failed to hold full consultation with the JFU and the CCU in good faith on issues such as the necessity of dismissal, the employer’s faithful execution of obligation to avoid dismissal and the establishment of objective and reasonable criteria for dismissal including the disclosure of proper information and the presentation of agreeable alternative offers to the unions;
- the Government takes necessary measures to urge the administrator, the ETIC and the company to rectify existing unfair labour practices.

618. In a communication of 8 August 2011, the complainant provided the relief order issued by the Tokyo Metropolitan Labour Relations Commission concerning the complaint on unfair labour practices by the ETIC. The relief order instructs the company to post an apology on the grounds that the words and deeds of the company on 16 November 2011 against the unions to restrict the unions’ right to strike was judged by the Tokyo Metropolitan Labour Relations Commission as an unfair labour practice. The relief order regards the ETIC and the bankruptcy administrators to be responsible for the employment of the employees in terms of labour and management relations as it decides the working conditions of the employees. The remarks in question, that if the strike is staged, the ETIC will stop the investment of ¥350 billion that was most indispensable for the rehabilitation of the company, were made with the intention to pressure the unions to voluntarily refrain from voting for a strike, which should be utterly internal union matters to be decided by the

unions. Furthermore, the relief order noted that the remarks were made by Director Iizuka who played a central role in the corporate rehabilitation process during the period when the strike ballot was being conducted. Consequently, these remarks certainly worked to threaten union members and the process of union operation and therefore constituted interference in violation of article 7(3) of Japan's Trade Union Law that forbids employers to commit acts to control or interfere with the management of a trade union by workers.

B. The Government's reply

- 619.** The Government submits its observations in a communication dated 21 October 2011. It recalls that the Labour Union Law prohibits as unfair labour practices disadvantageous treatment such as dismissals due to being a member of a trade union, refusal of collective bargaining without due reason, controlling or interfering with the management of a labour union and giving financial assistance, and disadvantageous treatment due to filing a complaint with the Labour Relations Commission, etc. In cases in which an employer carries out those actions, labour unions or members of labour unions concerned can file a complaint with a Labour Relations Commission, which comprises members representing employers, workers and the public interest and has the authority to issue a remedial order after consideration. Concerning remedial orders issued by the Prefectural Labour Relations Commission, employers can appeal for review to the Central Labour Relations Commission or file an action for rescission of the remedial order with a court. Furthermore, trade unions can directly file a lawsuit with a court not through examination of the Labour Relations Commission.
- 620.** Concerning the complaint for remedy for unfair labour practices filed with the Tokyo Prefectural Labour Relations Commission by the JFU and the CCU on December 2010, the Government states that it is aware that, on 5 July 2011, the Labour Relations Commission ruled the alleged actions by JALS as unfair labour practices and, on 3 August 2011, the Commission issued a remedial order which commended the company to distribute and post a written apology to the two trade unions. The company filed an action for rescission of the remedial order with the Tokyo District Court on September 2011, and the case is pending in the court.
- 621.** With regard to the allegations on dismissal, the Government recalls that in Japan, article 16 of the Labour Contract Act provides that a dismissal shall, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of rights and be invalid. A worker who claims that his/her dismissal infringes article 16 of the Act can file a lawsuit requesting confirmation by the court of the existence of a legally binding contract between the worker and the employer. Concerning a dismissal as unfair labour practice, workers can also file a complaint for remedy with the Labour Relations Commission, in addition to the judicial settlement.
- 622.** With regard to the situation of 148 workers (two persons were added on 6 May 2011) dismissed by the company, including members of both the JFU and the CCU, who filed a lawsuit against the company with the Tokyo District Court, on January 2011, to request confirmation by the court of the existence of legally binding contracts between themselves and the company, the Government states that the case is pending in the court.
- 623.** The Government states that the Constitution of Japan explicitly divides governing authority into legislative power, judicial power and administrative power, exclusively entrusting judicial power with the courts and administrative power with the Cabinet (Government). Therefore, the Government is not in a position to indicate its view or judgment concerning an actual lawsuit which is still pending in the court. It considers that the cases will be fairly and independently examined and judged in the court based on the

arguments and proof brought by the parties concerned. Once it is ruled on, both parties will be bound by the judgment.

- 624.** The Government specifies the position of the ETIC and of the company pursuant to the decision to start the corporate rehabilitation process. The decision of enterprise supported by the ETIC is not made by the Government, since the ETIC is a corporation independent from the Government. Although the Government can state an opinion on the decision of support by the ETIC, the ETIC is not bound to the opinion of the Government; and, in the end, the opinion of the ETIC Committee becomes the decision of the ETIC (the decision of support by the ETIC shall be made by the ETIC Committee composed of the directors of the ETIC, following the support criteria provided by the competent ministers based on article 24, section 1 of the Act of the ETIC. The criteria only indicate objective standards such as profitability, etc., and the ETIC Committee is responsible for making a decision of support for each individual case).
- 625.** Concerning the allegations from the complainants that “it is appropriate to consider that the company and the two other affiliate companies became public entities under the direct control of national authorities, namely the Government, the ETIC and the court upon the start of the rehabilitation process”, the Government explains that there is no evidence that the Government had placed the company under its control, so it is not appropriate to consider that the company became a public entity. The Government asserts that in January 2010, the corporate rehabilitation process of the company started, accompanied by the decision of support for the company by the ETIC. During the process, the company was put under the control of the court, not of the Government. Incidentally, the corporate rehabilitation process of the company came to an end, and now, the company is not controlled under the court any longer.
- 626.** The Government also provided the observations received from the employer’s side, in particular from the company to explain the reasons why it believes that the dismissal does not violate principles of freedom of association set out by ILO Conventions, and why it will not retract the redundancy decision.
- 627.** With regard to the dismissal, the company acknowledges that 146 people among the redundant employees filed, on 19 January 2011, with the Tokyo District Court a petition seeking for an order to reinstate the position is currently pending before the court.
- 628.** The company further asserts that while it is true that the ETIC is an organization with “public characteristics” and that its support measures should be taken “from the perspective of protecting public good” as stated by the complainants, the ETIC’s support is not necessarily provided in accordance with the Government’s policies. The ETIC is first of all a company independent of the Government. The ETIC’s decision to support or not to support is made with objective criteria, and there is no room for arbitrary thoughts to be applied by the ETIC Committee in examining whether or not the subject company satisfies the given criteria. The ETIC Committee is authorized by the Board of Directors of the ETIC to play an important role in making final decisions in relation to a business turnaround plan. Such decision-making by the ETIC Committee is operated fairly and independently, without any interference by the Government, its agencies or bodies.
- 629.** The company explains that it has never been under the control of the Government, as alleged by the complainants. The corporate reorganization procedure is a legal measure to turn around companies, in which the company and two other affiliates of the Japan Airlines group have been placed under the court supervision and the ETIC plays as a corporate trustee or sponsor.

- 630.** The ETIC gave a high regard to the company's role to operate a public transportation, and decided, even though the company was under extremely difficult financial conditions, to support the company by means of the corporate reorganization procedure. The most challenging problem with the ETIC making the decision to provide the support was that the company was placed under the corporate reorganization procedure, so the role of public transportation was to be sustained and no flight was to be grounded. Although the ETIC was willing to support the company without any flight being grounded and with the credit trading and aircraft lease rights being sustained, it was almost impossible to obtain the understanding of the traders and to wipe away all concerns. Under such circumstances, if the court order of the commencement of the corporate reorganization procedure was rendered and followed by news of the company's bankruptcy, unwelcoming events were predictable to occur, for example that an aircraft in an overseas airport may encounter difficulties for its refuelling. To avoid such events occurring, explanations to the world by the company as a mere private enterprise were considered unconvincing; hence, the undertaking by the Government was essential. That made the ETIC ask the Government to release a statement that it would support the company to obtain sufficient funds. The "Government statement" was released for such purpose. The statement, however, merely stated that the Government would provide necessary support to the reorganization of the company, and did not at all state that the Government would have direct control over the latter. However, the Government statement worked well to avoid any unwelcoming events from occurring overseas in the wake of the court order of the commencement of the corporate reorganization procedure, and the company was able to operate every flight for international routes as well as domestic routes.
- 631.** The company considers that the redundancy is lawful since it satisfied the conditions provided by legal precedents, in which validity of redundancy in Japan was the issue, which are: (i) necessity to reduce the number of the employees; (ii) necessity to resort to redundancy as a means to reduce the number of the employees (whether or not efforts were made by other means to avoid the redundancy); (iii) reasonableness in selecting employees to be made redundant; and (iv) reasonable process. The company reports that consultations were engaged with the trade unions on measures to avoid the redundancy or to postpone it. However, it was not possible to reach any agreement. The company asserts that the redundant employees in the present case were selected by an objective criterion for redundancy, not by any discriminatory criteria against workers who were union members, as alleged by the complainants.
- 632.** The company explains that the reason why the members of the CCU who were made redundant by the age criterion amounted to 57, was because more members of the other trade union affected by the redundancy, namely JALFIO, had actually applied for the Voluntary Retirement Programme proposed by the company, which was more advantageous than usual retirement. Concerning the cabin attendants, there were 159 CCU members and 93 JALFIO members of 53 years of age and above on the record who were to be made redundant by the age criterion. However, 98 CCU members and 76 JALFIO members applied for the Voluntary Retirement Programme. Consequently, a higher percentage of JALFIO member cabin attendants than CCU member cabin attendants applied for the Voluntary Retirement Programme, which made fewer JALFIO member cabin attendants redundant by the age criterion than those of CCU member cabin attendants. That was the reason why 57 CCU member cabin attendants were made redundant, without any discrimination against the union members. The company explains that more than 2,600 JALFIO members in total, in all job areas, applied for the Special Early Retirement Program and the Voluntary Retirement Programme.
- 633.** With regard to the alleged lack of sincere negotiations, the company asserts that it informed the redundancy criteria to each union, and negotiations and consultations with each trade union (including the JFU and the CCU) subsequently took place. Although

some unions made the remark that they were not in the position to discuss on the redundancy criteria, the company continued negotiating and consulting, until the implementation of the redundancy (with some unions, negotiations were maintained even after the implementation of the redundancy). During the negotiation sessions with the JFU and the CCU, the company explained the necessity of the redundancy, possible measures to avoid the redundancy, presented the target reduction number and the redundancy criteria, and negotiated on them, with the JFU 30 times during the period from 27 September 2010 to the end of December 2010 and with the CCU 27 times during the same period. During the negotiations with each union, some unions offered suggestions on the redundancy criteria and the new job-finding programme, which constructively brought amendments to the redundancy criteria and the creation of, or the additions to, the new job-finding programme. The negotiations and consultations with the unions were fruitful. Therefore, in the company's view, the redundancy was implemented after consultations and sincere negotiations with each union.

- 634.** The company further explains why it considers the age criterion for the redundancy as valid and lawful. The redundant employees were first decided based on objective records to show the degree of contribution, i.e. sick leave, suspended period from flight duty ("flight duty suspended period") (for flight crew only), temporary retirement period, conditional period on flight duty ("conditional flight duty period") (for flight crew only) and "personnel and performance evaluation", and only where the aimed number of redundancy is not achieved by such measures, the older age employees were made redundant, that is, the age criterion was applied. The age criterion does not allow any arbitrary treatment by the employer and would ensure fairness in choosing the employees to be redundant, while there seemed no other reasonable criterion acceptable by the employees. That brought the decision to adopt the age criterion. The company further explains, that in the light of future contribution and keeping the younger generations as the future driving force for the reorganization of the company, the age criterion seemed reasonable to adopt.
- 635.** The company recalls that the JFU and the CCU filed on 8 December 2010 a petition seeking remedies with the Tokyo Metropolitan Labour Relations Commission against acts that the trade unions describe as "unfair labour practices by the Enterprise Turnaround Initiative Corporation (ETIC)". The order of remedies was rendered on 3 August 2011. However, the company believed that there were no unfair labour practices by the ETIC, and appealed on 1 September 2011 to the Tokyo District Court requesting the remedies be set aside. The company confirms that the case is currently pending before the court.
- 636.** In the view of the company, the remarks from the ETIC official made to the JFU and the CCU were made from a fund provider's (sponsor) perspective. These remarks, therefore, should not be considered as an act from the employer under section 7 of the Japanese Labour Union Act which prohibits employers' from exercising unfair interference on the employees' union activities. Although the remarks were made by the employer, they were a mere expression of the ETIC's view, not an act of control and interference. The company asserts that for the employees and the employers to express views to each other is essential to build a healthy relationship, and for the employer to inform on the actual status of business or management policy to the employees and ask for understanding and cooperation on the part of the employees, to express opinions, criticism, objection against the management policy of trade unions, or to ask trade unions to avoid exercising the right to dispute. In the company's view, these acts do not themselves constitute unfair interference.
- 637.** The ETIC, having considered the seriously difficult situation of the company, was concerned with the significant risk that where it provided funds, inconveniences might occur by the exercise by the unions of the rights to dispute, which might lead the company

to bankruptcy again. The ETIC decided to convey orally to the JFU and the CCU the concerns as the prospective fund provider, and to inform the situation the company was in, at the working-level negotiation where the employer and the employees officially discuss. The remarks were a candid view of the prospective fund provider on the exercise of the right of dispute and informed on the situation of the company, but not an expression of hatred or slander toward the unions' activities or a forcible interference beyond reasonable extent on the internal decision-making processes of the trade unions. The views of the ETIC were expressed at the working-level negotiations with the trade unions, but not by the measures or manners that would be unfair and unlawful interference on the freedom of association, for example, contacting union members individually by trying to influence them, or forcing employees to listen to the views of the employer.

C. The Committee's conclusions

- 638.** *The Committee notes that this case concerns allegations that the dismissal of workers by Japan Airlines International (hereafter the company) was carried out in such a way as to discriminate against workers who are members of certain trade unions. The Committee also notes the alleged intervention of the ETIC in the strike voting procedures of trade unions.*
- 639.** *The Committee notes from both the complainants and the Government the rationale of the rehabilitation process of the company under the programme of the ETIC. The Committee notes in particular that in January 2010, the company, together with another JALS affiliate subsidiary, filed for bankruptcy protection under the Corporate Rehabilitation Law. The Tokyo District Court approved the start of the rehabilitation process on the same day and appointed a bankruptcy administrator as well as the ETIC as bankruptcy administrators. The Committee observes that the ETIC is described as a court-appointed rehabilitation administration organization and a joint-stock corporation which purpose is, with collaboration with financial institutions, to provide support for the revitalization of businesses that have turnaround potential but are carrying excessive debts. The complainants also describe the ETIC as an impartial and neutral organization that aims to revitalize local economies by supporting indebted businesses. The paid-in capital totalling ¥20 billion is half contributed by the Government and the other half came from private sector financial institutions.*
- 640.** *The Committee notes that in January 2010, the ETIC decided to support the company subject to the following prerequisites: the Government provides necessary support continuously; the company asks for the understanding and cooperation of business partners both home and abroad; lease liabilities are secured and the frequent flyer miles held by customers and discount certificates issued to shareholders are honoured so that business operation will continue; and the Government draws up concrete and comprehensive aviation policies expeditiously so that Japan's aviation industry continues to be competitive in the global market. Based on this, the Japanese Government officially announced that it would take necessary measures to ensure the continuation of operation and the turnaround of the corporations, including continuously providing sufficient financial support until the companies have been revitalized and calling for the understanding and cooperation of foreign governments. In August 2010, the administrator and the ETIC, as bankruptcy administrators, submitted their rehabilitation plan with the names of the concerned to the Tokyo District Court. Following the plan, the administrators, in close cooperation with the management of the company, started to take drastic structural reform and encourage the employees to take early retirement and stopped renewing labour contracts of fixed-term employees. It started the second round of early retirement offers targeting cockpit crew, stopped providing training to pilot trainees and encouraged trainees without licences to transfer to ground-based positions or to take special early retirement packages.*

- 641.** *The Committee observes that the ETIC has established a committee that comprises members including outside academics and makes support decisions according to the criteria based on the notification of competent ministers. The Rehabilitation Plan set out the number of employees that would be cut – from 48,781 at the end of the fiscal year 2009 to 32,600 by the end of the fiscal year 2010 in the Japan Airlines group companies, including the three rehabilitated corporations. In September 2010, the company's goal was to cut a total of 1,520 employees (370 cockpit crew members, 570 cabin attendants, 480 machinists and 100 ground staff members). Since September 2010, the administrator, the ETIC and the company offered two separate early retirement schemes to cockpit and cabin crew. By October 2010, the closing date of applications for the second round of offer, 1,545 employees had applied for the Voluntary Retirement Programme, which exceeded the redundancy goal of 1,520 workers originally set by the company. However, in November 2010, the administrator, the ETIC and the company announced that they would need to shed another 200 employees (110 cockpit crew members and 90 cabin attendants) and it would dismiss a total of 250 workers (200 workers mentioned above plus another 50 taking leave of absence). In December 2010, the administrator, the ETIC and the company notified the CCU and the JFU that they would dismiss 202 crew members (108 cabin attendants including 34 on leave and 74 aged 53 and over, as well as 94 cockpit crew members (those aged 55 and over for pilots and those aged 48 and over for co-pilots) including 4 on leave) on 31 December 2010.*
- 642.** *The Committee notes that, according to the complainants, the dismissal enforced by the administrator, the ETIC and the company was fraught with serious issues infringing standards set by ILO Conventions. The company set the criteria for dismissal, targeting employees in descending order of age until the job reduction targets had been reached. The Committee notes the fact that there are two trade unions that represent cabin crew employed by the company, the CCU and the JALFIO. The complainants question the fact that among 64 cabin attendants dismissed on the basis of age, 57 are CCU members, including six incumbents. Among the dismissed workers are EC members of the CCU and many ex-EC members. The complainants consider that the dismissals constitute the company's attempt to undermine the CCU under the guise of setting age as the criteria for dismissal, and therefore consider that this clearly prevents workers from exercising freely the right to organize as enshrined in Convention No. 87. Furthermore, among the dismissed cockpit crew members, several were allegedly holding office as officials of their own unions and/or industrial organizations that the JFU is affiliated to. Many among the dismissed had in the past held responsible positions in their respective unions. With regard to cabin crew, the dismissed include all of the three key officials (Chair and two Vice-Chairs) of the CCU as well as members of the EC.*
- 643.** *The Committee also takes note of the company's assertion that the reason why the members of the CCU who were made redundant by the age criterion amounted to 57, was because more members of the JALFIO had applied for the Voluntary Retirement Programme proposed by the company, which was more advantageous than usual retirement and had the targeted number of redundancy by job category. The Committee takes note of the detailed statistics provided by the company concerning the cabin attendants (either CCU members or JALFIO members) who were to be made redundant by the age criterion or who applied for the Voluntary Retirement Programme. More JALFIO member cabin attendants than CCU member cabin attendants applied for the Voluntary Retirement Programme, which, according to the company, gave rise to fewer JALFIO member cabin attendants being made redundant by the age criterion than those of CCU member cabin attendants. According to the company, that was the reason why up to 57 CCU member cabin attendants were made redundant without any discrimination against the union members.*

644. *The Committee notes that, in this case, collective dismissals appear to have affected a large number of employees, including union leaders and unionized workers of several trade unions, including the CCU, the JFU and the JALFIO. In this regard, the Committee recalls that it has emphasized the advisability of giving priority to the workers' representatives with regard to their retention in employment in case of reduction of the workforce, to ensure their effective protection [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 833]. The Committee requests the Government to ensure that, during the process of workforce reduction, measures are taken in consultation with the parties concerned, for the functioning of the union and the continuing representation of workers. However, in view of the information available, the Committee is not in a position to conclude, as alleged in the complaint, that the age criterion was employed with anti-union intention. Noting that 148 workers dismissed by the company, including members of both the JFU and the CCU, filed a lawsuit against the company before the Tokyo District Court in January 2011 to request confirmation by the court of the existence of legally binding contracts between themselves and the company, the Committee requests the Government to provide information on the outcome of the pending cases in court.*
645. *The Committee further notes that the complainants denounced the alleged absence of sincere negotiations between the company and the trade unions in order to discuss the necessity of dismissal for the purpose of the corporate reorganization. According to the complainant, issues raised as well as points of conflict between the two unions and the company have remained completely unresolved. The complainants consider that sufficient consultation and negotiations with trade unions were all the more essential in considering the very necessity of the dismissal. However, despite repeated requests by the JFU and the CCU, the administrator, the ETIC and the company allegedly refused to disclose detailed financial information that might lead to such discussions with the trade unions.*
646. *The Committee notes the company's statement that it informed the redundancy criteria to each union, and negotiations and consultations with each trade union (including the complainants) subsequently took place. Although some unions made the remark that they were not in the position to discuss on the redundancy criteria, the company continued negotiating and consulting, until the implementation of the redundancy period from 27 September 2010 to the end of December 2010. The company alleges that it negotiated with the JFU 30 times and with the CCU 27 times during that period. It also argues that during the negotiations, some unions offered suggestions on the redundancy criteria and the new job-finding programme, which constructively brought amendments to the redundancy criteria and the creation of, or the additions to, the new job-finding programme. The negotiations and consultations with the unions were fruitful. Therefore, according to the company the redundancy was implemented after consultations and sincere negotiations with each union.*
647. *The Committee observes that discrepancies exist as to the interpretation of the facts between the allegations and the company's reply on the issue of consultation with the trade unions. In this regard, the Committee wishes to emphasize that it is not within its purview to pronounce itself on allegations relating to restructuring programmes, even when these involve collective dismissals, unless they have given rise to acts of anti-union discrimination or interference. However, the Committee stresses the importance of engaging into full and frank consultation with trade unions when elaborating such programmes, since they have a fundamental role to play in ensuring that programmes of this nature have the least possible negative impact on workers. The Committee hopes that the Government will ensure full respect for this principle.*

648. *With regard to the order of remedies rendered on 3 August 2011 by the Tokyo Metropolitan Labour Relations Commission on “unfair labour practices by the Enterprise Turnaround Initiative Corporation (ETIC)”, the Committee requests the Government to provide information on the outcome of the appeal lodged by the company on 1 September 2011 to the Tokyo District Court requesting the remedies being set aside.*

The Committee's recommendations

649. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) The Committee requests the Government to ensure that during the process of workforce reduction, measures are taken in consultation with the parties concerned, for the functioning of the union and the continuing representation of the workers.*
- (b) Noting that 148 workers dismissed by the company filed a lawsuit against the company before the Tokyo District Court, in January 2011, to request confirmation by the court of the existence of legally binding contracts between themselves and the company, the Committee requests the Government to provide information on the outcome of the pending cases in court.*
- (c) The Committee stresses the importance of engaging in full and frank consultation with trade unions when elaborating restructuring programmes, since they have a fundamental role to play in ensuring that programmes of this nature have the least possible negative impact on workers. The Committee hopes that the Government will ensure full respect for this principle.*
- (d) With regard to the order of remedies rendered on 3 August 2011 by the Tokyo Metropolitan Labour Relations Commission on “unfair labour practices by the Enterprise Turnaround Initiative Corporation (ETIC)”, the Committee requests the Government to provide information on the outcome of the appeal lodged by the company on 1 September 2011 to the Tokyo District Court requesting the remedies be set aside.*