

# Conflict between Global Standards and Local Corporate Culture: Dismissal of a Finance Director at a Foreign Company

Bongsoo Jung, Korean labor attorney at KangNam Labor Law Firm

## I. Introduction

While handling the dismissal of a finance director at a foreign company, we encountered a case where the mindset of foreign companies clashed with the paternalistic culture of Korean companies. Foreign companies strictly monitor compliance with company regulations and laws according to global standards, and impose severe punishments for violation. Korean companies also monitor compliance rigorously but often make exceptions. They may tolerate some illegal activities if they believe it contributes to the company's growth. The case of the finance director at this foreign company is a prime example.

In March 2023, the Labor Commission ruled that the dismissal of a finance director for legal violations and false reporting was justified. The finance director had been sternly warned by the headquarters' CFO about issuing illegal tax invoices and had promised not to repeat the violation. Despite this, the finance director continued to issue tax invoices in advance. Over the six months prior to investigation, the finance director had consistently manipulated the accounting books. Consequently, the company dismissed the finance director. The Labor Commission deemed the dismissal justified, but the finance director requested a re-examination.

In June 2023, the National Labor Commission ruled that the dismissal procedure had been violated, rendering the dismissal unjust. The decision was influenced by petitions from 35 of the 50 employees at the foreign company, which argued that the finance director's pre-issuance of tax invoices was intended to increase the sales of the Korean branch and did not harm the company. The company then filed an administrative lawsuit.

In June 2024, the Administrative Court ruled that while there were no procedural violations in the disciplinary dismissal and the reasons for the dismissal were valid, the dismissal itself was too severe of a consequence, thus deeming it unfair. During this administrative lawsuit, the finance director submitted a petition signed by 32 employees. The petitions requesting leniency significantly influenced the court's decision on the dismissal case. Consequently, the company appealed.

The submission of numerous petitions by colleagues significantly impacted the decisions of both the National Labor Commission and the Administrative Court

regarding the unfair dismissal of the finance director. The core issue is that while global companies prioritize compliance as a key value, the Korean legal culture is heavily influenced by paternalism. This case aims to examine the specific details and understand the cultural differences reflected in the court's rulings.

## **II. Facts of the Case**

### **1. Summary**

A multinational advertising company has a branch office (hereinafter referred to as “the Foreign Company”) in Korea and conducts business independently of the parent foreign company. The Foreign Company saw its sales halved during the COVID-19 pandemic that began in 2020, and to cope with this, it froze wages and employment insurance subsidies and took other key management actions. As COVID began easing at the end of 2021, advertisement purchasing companies requested advance tax invoices from the Foreign Company in order to secure their advertising budgets that had not been used during the COVID-19 shutdowns. The branch manager of the Foreign Company asked the finance director to issue these tax invoices. The finance director was well aware that issuing tax invoices in advance violated tax law and the head office's accounting guidelines. However, the finance director knew that if she refused to issue tax invoices in advance, advertising from these companies would go to other companies. Accordingly, the director agreed to issue these tax invoices in advance.

In April 2022, the CFO (chief finance officer) at the head office confirmed that the Korean branch had issued advance tax invoices amounting to KRW 3 billion, and sternly warned the head of the Korean branch and the director of finance that this was not to happen again. The finance director promised that it would not. However, the Korean branch continued to issue tax invoices without receiving payment. In September 2022, the head office audited the Korean branch through an external accounting firm, which revealed that tax invoices had been issued again in advance to the tune of KRW 2.8 billion as of the end of 2021 and KRW 2.3 billion as of June 2022, which the finance director had not reported to the headquarters finance team. In mid-November 2022, a strict written warning was issued to the Korean branch manager, and a decision was made to dismiss the finance director.

### **2. Claims of the Two Parties**

#### **(1) The employee's claims**

The dismissed finance director argued that the company's dismissal was unfair because it violated the disciplinary dismissal criteria for reasons, severity and procedures.

The company dismissed the finance director for disciplinary reasons due to the illegal act of issuing tax invoices in advance and the related false financial reporting. The Korean branch accepted the request from major clients for advance tax invoices in 2021 and early 2022 to secure sales, and not due to personal corruption of the finance director. Due to the global COVID-19 crisis that began in January 2020, consumption plummeted and advertising was not being purchased at anywhere near the levels of previous years. The company saw a 40% drop in sales in 2020 and 2021. As the COVID-19 crisis began to subside at the end of 2021, the Foreign Company's customers asked for tax invoices in advance so they could secure the advertising budget before their deadlines. If such requests were rejected, the advertising would go to other advertising companies, so the Foreign Company was not in a position to refuse their requests. The finance director mentioned the risk related to issuing tax invoices in the company's decision-making process, but the employee could not blindly oppose it because she felt it was necessary to ensure sales and survive in the advertising industry. The advance tax invoices issued in the second half of 2021 and the first half of 2022 were all accounted for in subsequent sales throughout 2022, and as a result, the company achieved its highest sales volume in its history, amounting to KRW 20 billion.

The finance director argued that the illegal act of issuing tax invoices in advance and the resulting tax risks should not be regarded as personal corruption by the finance director. The false report given to the headquarters was done as follow-up in light of headquarters policy and decision on issuing tax invoices in advance, and no malice was intended nor personal gain sought. For the past 14 years since being hired by the company in November 2008, the finance director had done her best to help the company, and had never had any disciplinary action taken against her. Rather, when the company was in trouble, the finance director returned part of her salary and shared in the pain of the company as it overcame the difficult challenges. Considering these circumstances, the harshest disciplinary action – dismissal – is excessive.

A provision in the company's employment rules states, "The company has the right to form a disciplinary committee and deliberate on specific issues in order to determine reasonable disciplinary measures." The company did not abide by

its own disciplinary procedures in that it did not form a disciplinary committee and did not give the employee an opportunity to explain. The Korean branch manager, who is the company's authority over personnel, was also excluded. Instead, on November 7, 2022, the CFO of the Asian regional headquarters sent an e-mail notifying that the finance director would be fired, and then sent a notice of dismissal through the labor attorney hired by the company.

## (2) The Foreign Company's claims

The financial director in this case is in charge of finance and accounting for the Korean branch of a global foreign company. In a global company, the reporting system is separate for each area of business, with the person in charge of the relevant area at each branch reporting directly to the person in charge in the upper organization and receiving orders. The finance director signed on to the Global Code of Ethics as well as the company's rules of employment. The Code of Ethics includes the duty to abide by the laws of each country, and the duty to report to the company on finances and accounting in an honest manner.

According to Article 17 of the *Value-Added Tax Act*, in principle, a business operator issues a tax invoice before the goods or services are provided and then receives the payment within 7 days from the date the tax invoice was issued. In unusual cases the funds can be received within 30 days from the date the tax invoice was issued. If the funds are not received within this 30-day period, a penalty of 1% of the total cost of the goods/services will be payable, if pointed out in an audit by the National Tax Service. These violations will cause the company to be subject to audits for the next five years. If the issued tax invoice is canceled or not converted into income, the National Tax Service considers this a false tax invoice, which is punishable in accordance with the *Punishment of Tax Offenses Act*. Punishment can include imprisonment for up to one year or a fine equivalent to a maximum of twice the tax amount calculated by applying the value-added tax rate to the supply price (Article 10 of the Act).

It is argued that providing tax invoices in advance is a practice in the advertising industry. However, the presence of such practices cannot justify the employee's violations of the law. This company is a global company, and through its code of ethics, it stipulates what should not be done. In other words, while it had not been discovered by the tax authorities yet, the act of issuing tax invoices so far in advance is in violation of the relevant laws.

The employee claims that the company has not suffered any material damage. However, if the company were to be audited by the tax authorities in the next five years, the company would be fined and/or otherwise punished under the *Punishment of Tax Offenses Act* if the tax invoice were ultimately canceled.

KRW 2.8 billion had accrued by December 2021 in tax invoices issued in advance and were not reported by the finance director. Separately, in March 2022, the head office's accounting team became aware that the Foreign Company had issued KRW 3 billion in advance tax invoices, and the head office's CFO had explained to the head of the Korean branch and the finance director that issuing tax invoices this far in advance was illegal, and they were clearly informed that this was to never occur again and the finance director promised to comply. Nevertheless, as of June 30, 2022, an additional KRW 2.3 billion had been issued in advance tax invoices, making it clear that the illegal practice had continued, as had the manipulation of accounting data and false reporting. Therefore, the head office cannot continue the employment relationship because it can no longer trust the finance director, who is in charge of accounting for Korea.

The financial director claims that the company did not form a disciplinary committee and did not give him an opportunity to explain. Regarding this, there are no provisions in the Korean branch office's rules of employment that a disciplinary committee must be formed before disciplinary action is taken, nor does it stipulate the composition or procedures for a disciplinary committee. Nevertheless, the company gave sufficient opportunity to the finance director to explain the reasons for issuing tax invoices so far in advance during the four-week accounting audit in September 2022.

### **III. Judgment of the Labor Commission**

#### **1. Statements made by the parties**

On January 27, 2022, a hearing took place at the Labor Relations Commission on this dismissal case. The summary of the financial director's statement is as follows. She had never received any disciplinary action during his service period with the company, and had dedicated herself to development of the company. It was a desperate situation for the company during the COVID-19 crisis, and the branch manager had requested that advance tax invoices be issued, as this was a common practice in the advertising industry. Regarding this, the finance director was not in a position to refuse the Korean branch manager. "...I admit that my

omissions in the report to the head office were wrong, but I cannot agree that the harshest discipline – dismissal – is appropriate....”

In response, the company acknowledged that the finance director had worked hard for the past 14 years and had contributed greatly to development of the company. The financial director's argument that the illegal act was recognized as a practice in the industry or for the benefit of the company can be seen as a domestic sentiment. However, as a multinational company with a long tradition, the company prioritizes laws and principles over immediate profit according to its global regulations. The direct reason for dismissal of the financial director was not that they put the company at risk through the fraudulent issuance of tax invoices. On April 22, 2022, the CFO gave the finance director the opportunity to confirm and cease the advance issuance of tax invoices. Nevertheless, even after that, in the accounting report at the end of the month and in the semiannual accounting report at the end of June were false and fabricated, and only after an audit revealed this fact did the finance director admit a failure to comply. Through this series of events, the head office's CFO lost trust in the work of the Korean branch's finance director. The company suggested the finance director resign with a bonus package, but this was refused, forcing the company to dismiss the finance director.

## **2. Decision of the Labor Relations Commission**

The Labor Relations Commission postponed its judgment and gave the parties a week to settle. The company suggested resignation again with an early retirement package (ERP) bonus, but the finance director refused this and insisted on reinstatement. On February 6, 2022, the Labor Relations Commission dismissed the case.

The precedent criteria for such dismissals are as follows. (1) When disciplinary action is to be taken with an employee, it is left to the discretion of the disciplinary authority to decide what kind of disposition to take. However, the disposition is illegal only when it is acknowledged that the discretionary power entrusted to the person with the right to discipline is abused in that the disciplinary action taken by the person with the right to discipline has significantly little validity in terms of social norms.<sup>1</sup> (2) Disciplinary dismissals are justified only when there is a cause attributable to the worker to the extent that the

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<sup>1</sup> Supreme Court ruling on Aug. 23, 2002, 2000da60890.

employment relationship cannot continue according to social norms. Whether or not the employment relationship with the worker cannot be continued according to social norms depends on a comprehensive review of the various circumstances, such as the business purpose of the employer, conditions of the workplace, the worker's status and duties, the motive for and details of the misconduct, the status of the company as a result related to the risk of disorder, and past work attitude.<sup>2</sup>

Looking at this case based on the above legal principles, the recognized facts are as follows. (1) The financial director oversaw the accounting at the Korean branch and, as an executive, had the authority to tell the branch manager that she would be unable to issue illegal tax invoices. (2) Although issuing tax invoices so far in advance was customary in the Korean market, the finance director was aware that it was in violation of tax laws and was not in line with the company's accounting policies. (3) The financial director intentionally manipulated accounting data in the financial reports to the head office's finance team for about a year, to hide that advance tax invoices had been issued. (4) Taking into account the fact that the financial director on April 22, 2022 promised the head office's CFO that she would no longer issue advance tax invoices, when this continued to occur, the trust between them was damaged to the extent that the working relationship could no longer be maintained, despite the various circumstances claimed by the financial director. Therefore, the financial director is responsible for this outcome.<sup>3</sup>

#### **IV. Administrative Litigation Judgment**

##### **1. Details of the administrative litigation judgment**

There are no illegalities in the disciplinary dismissal process in this case, and the reasons for the disciplinary action are recognized. However, based solely on these disciplinary reasons, it cannot be concluded that the company can no longer continue the employment relationship with the finance director from a social common-sense perspective. Therefore, this disciplinary dismissal is excessively heavy and constitutes an abuse of discretion. The judgment criteria are as follows:

The company claims that it was at risk of a loss amounting to KRW 1.5 billion due to the pre-issuance of tax invoices. However, no actual financial loss occurred,

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<sup>2</sup> Supreme Court ruling on May 28, 2009, 2007du979.

<sup>3</sup> Labor Commission decision: Seoul2022buhae2826 000 Unfair Dismissal Case.

and the audit report issued by the accounting firm was an “appropriate opinion.” Additionally, there is insufficient specific evidence to suggest that such a loss may occur in the future as claimed by the company.

There are no special provisions related to disciplinary measures in the company's employment regulations. Article 64 of the employment regulations outlines the grounds for dismissal, and the only applicable clause for the finance director in this case is Article 64(7) (Employees who violate company policies or regulations causing hindrance to the company's operations). However, the primary reason for disciplining the finance director was that the act violated company policies intended to prevent negative impacts on the company, not that it caused specific hindrances to company operations. Therefore, even from the perspective of grounds for dismissal, it cannot be concluded that the reasons for disciplinary action are sufficient for dismissal.

It is true that the finance director, being in charge of the finance department, bears responsibility for the issuance of tax invoices. However, the pre-issuance of tax invoices was not for the finance director's benefit but to increase company sales. The actual contract scale and issuance details were discussed with the company's CEO and sales department. Notably, even after the email regarding whether to continue the pre-issuance of tax invoices, the CEO continued the false financial reporting and pre-issuance of tax invoices for the Asia branch.

Thus, the finance director cannot be held primarily responsible for the pre-issuance of tax invoices, and the CEO, who decided to continue this practice, should bear the greatest responsibility. Despite this, only a written warning was issued to the CEO at the Asia branch level. Considering this balance, the disciplinary dismissal of the finance director is excessively heavy.

## **2. Criticism of the administrative Court judgment**

The Administrative Court ruled that this dismissal case was an unfair dismissal. The reasons provided above are summarized as follows:

First, the company did not suffer any damage. Second, there are no direct provisions in the company's employment regulations regarding dismissal for compliance violations. Third, the finance director's pre-issuance of tax invoices was to benefit the company, not for personal gain, and the false reports to the Hong Kong headquarters were under the Korean branch manager's instructions. Fourth, while only a written warning was issued to the Korean branch manager



for the same violation, the finance director was dismissed—an action which lacks fairness.

However, these four reasons provided by the Administrative Court seem influenced by Korean paternalism and reflect a misunderstanding of the compliance obligations of global companies.

First, compliance is a fundamental value for foreign companies because their local operations can be shut down if they do not adhere to a host country's laws. In Korea, there is a prevalent belief that illegal actions can be tolerated if they are for the company's benefit. In this case, the employee's illegal actions did not cause damage to the company, but that was simply by mere chance.

Second, the court argued that the company's employment regulations do not directly mention compliance violations as grounds for dismissal. However, employees sign a compliance pledge and receive continuous compliance training when entering into employment contracts. Despite this, the court deemed the dismissal excessive because the employment regulations did not explicitly list loss of trust between employee and employer as grounds for dismissal, which appears to be a unilateral interpretation by the court.

Third, the finance director argued that his illegal actions were for the company's benefit, not personal gain. The finance director annually signed a compliance pledge and was in a position to oversee the company's compliance. Global companies cannot accept illegal actions taken for company benefit.

Finally, the court ruled that it was unfair to dismiss the finance director while only issuing a written warning to the branch manager. The written warning to the Korean branch manager stated it was the final warning, and the branch manager's spending authority was revoked. The finance director reported directly to the headquarters CFO and was in a position to correct the branch manager's wrongdoings. Therefore, in terms of accounting, the illegal actions fall under the finance director's responsibility.

#### **IV. Lessons from this Dismissal Case**

This case is currently being contested in the High Court following the company's appeal. In summary, this case involves a legal judgment between the global standards of a foreign company and the paternalistic legal culture of Korean companies.

There are many cases where companies take risks to increase sales, some of which can be outright illegal. This may be beneficial to the company in the short

run, but in the long run can jeopardize the company's entire operations. The code of ethics of a global company is to abide by local laws and principles and conduct business legally. Although this policy may hinder immediate sales, it is essential to long-term business survival in that it builds the company's credibility and consumer trust.

I believe that if the finance director at the Foreign Company herein had complied with the basic principles of global standards, this dismissal would not have happened. In this respect, Korean companies should keep in mind that conducting sales or business operations in compliance with laws and principles is the foundation for global competitiveness.