

Judgment Criteria for Justifiable Disciplinary Action: Reasons for Disciplinary Action, Severity of Disciplinary Punishment and Disciplinary Process

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The employer exercises his right to take disciplinary action by punishing an employee who violates company regulations in order to maintain managerial order and promote productivity. The purpose of this disciplinary action is to prevent reoccurrence of identical violations by properly punishing the employee who violates company service regulations, and to restore company order. The employer's authority to take disciplinary action is discretionary, but shall be exercised within boundaries set by the Labor Standards Act. That is, "No employer shall dismiss, lay off, suspend, or transfer an employee, or reduce wages, or take other punitive measures against an employee without justifiable reasons" (Article 23 (1) of the Labor Standards Act). Therefore, disciplinary action without justifiable reason is null and void, as it is an abuse of the employer's right.

In cases where an 'application for remedy from unfair dismissal' is made at the Labor Relations Commission, judgment criteria for justifiable disciplinary action may be classified under the following three principles: 1) Whether there was a justifiable reason for disciplinary action, 2) Whether disciplinary process was observed, and Whether the severity of punishment was appropriate. In judging the criteria for disciplinary action, there has been no dispute over the "reasons for disciplinary action," but there has been a lot of dispute over "the severity of punishment" and the "disciplinary process." I would like to look at some concrete guidelines and labor cases related to the three judgment criteria for disciplinary action.

I. Reasons for Disciplinary Action

1. Justifiable reasons

The employer shall clearly stipulate reasons for disciplinary action related to company service regulations in the Rules of Employment or other appropriate document, in order to implement disciplinary action. This regulation of disciplinary action shall satisfy the need for justifiable reason under the precondition that "the employer cannot discipline the employee without justifiable reason" from Article 23 (1) of the Labor Standards Act.

2. Classification of disciplinary reasons

(1) Individual behaviors

- 1) Misrepresentation of career
- 2) Absence without permission
- 3) Poor personal work evaluation
- 4) Verbal/physical violence, or causing injury
- 5) Interference of business
- 6) Neglecting to protect company secrets
- 7) Embezzlement, misappropriation and diversion
- 8) Sexual harassment at work
- 9) Falsified reports or documents
- 10) Character defamation
- 11) Disregard for rules
- 12) Stealing company property
- 12) Accepting or offering bribes
- 13) Use of company facilities without permission

(2) Disobedience to company directions

- 1) Refusing to be assigned to another workplace
- 2) Refusing a job transfer or transfer to another division or subsidiary
- 3) Refusing to work overtime
- 4) Refusing to submit a written apology
- 5) Refusing to follow company directions

(3) Delinquency in private life

- 1) Causing a traffic accident
- 2) Gambling
- 3) Arrest, detention, indictment for a criminal offense
- 4) Scandalous criminal offense

(4) Illegal group activities or union activities

- 1) Union activities during working hours
- 2) Distribution or posting of leaflets
- 3) Wearing a union ribbon or armband
- 4) Obstructing other employees from working
- 5) Illegal occupation of company facilities

II. Disciplinary Process

1. Written notification of reasons for dismissal

An employer who wants to dismiss an employee should give written notice as to the cause for dismissal, the date of dismissal, etc. If the employer dismisses the employee without giving such written notification, the dismissal shall be rendered null and void. (Labor Standards Act (Article 27))

2. Observation of disciplinary process

An employer shall observe the disciplinary process guidelines described in the Collective Agreement and Rules of Employment to guarantee fair implementation of disciplinary action and to promote rational operation of the disciplinary system.

- (1) In cases where the disciplinary process has been regulated in the Collective Agreement, Rules of Employment, etc., the disciplinary process must be observed. If there is no procedural provision stipulated, disciplinary punishment may still be valid. (Supreme Court Jan 24, 1989, 88daka7313)
- (2) According to disciplinary regulations based on collective bargaining and the Rules of Employment, the company shall include the union chairman in the disciplinary action committee and shall give the employee in question opportunity to attend, state his/her opinion, and submit verification documents. However, if the company dismisses an employee without observing the disciplinary process guidelines, even if disciplinary punishment is justifiable, this dismissal is invalid because the company did not follow the disciplinary process. (Supreme Court Jul 9, 1991, 90da8077)
- (3) The Rules of Employment stipulate that the employee in question shall be given an opportunity to express his/her opinions in the disciplinary process, which means that the company shall give the employee opportunity to attend and state his/her opinion at the disciplinary action committee. Therefore, the company shall inform the employee of the time and place of the disciplinary meeting so as to provide the employee ample time to prepare his/her statement and verification documents. When a specific disciplinary action committee met at 2pm on January 26, 2001 and concluded with disciplinary dismissal, the employee in question received notification of the disciplinary hearing by mail, just that day. This did not give the employee

enough time to prepare his statements or verification documents, so such delayed notification is illegal. (Supreme Court Jun 25, 2004, 2003du15317)

- (4) The Collective Agreement includes guidelines for disciplinary dismissal if an employee is absent without permission or leaves early without permission. If a company dismisses an employee for these behaviors, without engaging in the decision-making process through a disciplinary action committee (thereby following the entire disciplinary process), disciplinary dismissal cannot be recognized as a valid course of action. (Seoul Appellate Court Jul 8, 2008, 2007nu34776)

III. Severity of Disciplinary Punishment

1. Principles

- (1) In regulating reasons for disciplinary action in the Rules of Employment, the company can stipulate various levels of disciplinary punishment for identical cases. The company can regulate standard types of disciplinary punishment for violations, but it can also stipulate heavier punishment according to the severity of the violations. For the most part, it is up to the company what disciplinary punishment they wish to give. However, this discretion requires a socially acceptable balance between the reasons for disciplinary action and the disciplinary punishment. In cases where the employer gives a very heavy punishment for a light violation, the disciplinary action becomes an abuse of the employer's right and becomes null and void. (Supreme Court, Jan 11, 1991, 90daka21176)
- (2) In cases where there are several violations of company regulations that the employee should be punished for, whether disciplinary dismissal is justifiable shall not only be determined by each individual violation. Instead, the employer shall include all violations when considering dismissal, and reach a decision based on whether the violations are serious enough to discontinue employment relations in terms of socially acceptable common sense. (Supreme Court Dec 9, 1997, 97nu9161)
- (3) In choosing a type of disciplinary punishment, an employer shall first review the employee's previous attitude, performance results, and severity of the violations. (Supreme Court Feb 12, 2004, 2003du127578)

2. Related cases

(1) An employer dismissed an employee for a minor violation, even though the employee had received awards several times. As this disciplinary action was the heaviest form of punishment, it went beyond the employer's right to take disciplinary action. (Supreme Court Sep 13, 1978, 76nu228)

(2) An employer dismissed an employee for one incident of misbehavior. From all the options available, the employer chose what appeared to be the heaviest form of punishment. Furthermore, as this employee's one incident of misbehavior was not judged to be a common sense reason to discontinue employment relations, the disciplinary dismissal was determined to be an abuse of the employer's right to take disciplinary action, and was null and void. (Supreme Court, Mar 22, 1996, 95nu3763)

(3) After a transfer to another department, an employee did not show any improvement in attitude over a long period, and despite receiving repeated warnings for negligence at work, so dismissal was justifiable. (Seoul District Court, Oct 20, 2006, 2005guhap35810)

Since having been transferred to the Business Department, an employee's intentionally negligent behavior at work became reason for disciplinary punishment under the company's service regulations. Providing labor is the most fundamental obligation that an employee has, and his high position as a general manager would make him more likely to become a target for criticism. Although the company had warned him several times directly and indirectly, through transfer, reprimand, and employment without a specific job, etc. for his repeated negligence, he did not show any regret or improvement. His behavior infringed seriously enough on the need for mutual reliability with the company that it decided to break the employment contract. In considering motives, causes, and process of the employee's negligence, it was judged that the dismissal of this employee was within the realm of the employer's right to take disciplinary action. Accordingly, the Seoul District Court agreed with the National Labor Commission's ruling that this dismissal was justifiable.