

Dismissal of the Finance Director of a Foreign-invested Company

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I. Summary

There are cases in which workers are fired for violating the company's code of ethics even though they have done their best to develop the company. This article covers a case that serves as a warning against the mistaken idea that legal violations in business practice can be justified by increasing sales.

A multinational advertising company has a branch office (hereinafter referred to as "Company D") in Korea and conducts business independently of the parent foreign company. Company D saw its sales cut in half due to 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 Company D in order to secure their advertising budgets that had not been used during the COVID-19 shutdowns. The branch manager of Company D 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, such a practice was common for Korean advertising companies, and the finance director knew that if they refused to do the same, 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.

The main issue in this case is whether a disciplinary dismissal of the finance director was appropriate and whether the procedure for disciplinary dismissal was followed.

II. 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.

(1) Reasons for the disciplinary dismissal

The reasons the company dismissed the finance director for disciplinary reasons were because of 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, Company D's customers asked for tax invoices in advance so they could secure the advertising budget before their deadlines. In the past, this had been the practice in the advertising industry, and if such requests were rejected, the advertising would go to other advertising companies, so Company D 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 they 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.

(2) Disciplinary action procedures were improperly followed and dismissal did not suit the finance director's actions

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 the headquarters' policy and decision on issuing tax invoices in advance, and no malice was intended or personal gain sought. For the past 14 years since being hired by the company in November 2008, the finance director had done their best to help the company, and had never had any disciplinary action taken against them. Rather, when the company was in trouble, they returned part of their 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. Company D's claims

(1) Reasons for disciplinary dismissal

The applicant in this case is in charge of finance and accounting for the Korean branch of a global 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 Offenders 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 PoTOA)).

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 Offenders Act if the tax invoice were ultimately canceled.

(2) Regarding the employee's claims that disciplinary procedures were not followed and that disciplinary action was excessive

KRW 2.8 billion had accrued by December 2021 in tax invoices issued in advance and were not reported by the financial director. Separately, in March 2022, the head office's accounting team became aware that Company D 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 applicant 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 Relations 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 applicant's statement is as follows. They had never received any disciplinary action during his service period with the company, and had dedicated themselves to development of the company. It was a desperate situation for the company's survival 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. However, the applicant'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 applicant 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.¹ (2) Disciplinary dismissals are justified only when there is a cause attributable to the worker to the extent that the 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 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.²

Looking at this case based on the above legal principles, the recognized facts are as follows. (1) The applicant oversaw the accounting at the Korean branch and, as an executive, had the authority to tell the branch manager that they 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 applicant intentionally manipulated accounting data in the financial reports to the head office's finance team for about a year, to hide

¹ Supreme Court ruling on Aug. 23, 2002, 2000da60890.

² Supreme Court ruling on May 28, 2009, 2007doo979.

that advance tax invoices had been issued. (4) Taking into account the fact that the applicant on April 22, 2022 promised the head office's CFO to no longer issue advance tax invoices, when this continued to occur, the trust between them had been damaged to the extent that the working relationship could no longer be maintained, despite the various circumstances claimed by the applicant. Therefore, the applicant is responsible for this outcome.³

IV. Lessons from this Dismissal Case

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 entire company's operations. The code of ethics of a global company is to abide by the 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 Company D 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.

³ Labor Commission decision: Seoul2022buhae2826 000 unfair dismissal case.