

Disciplinary Process: Justification for the dismissal by an order from the head office of a multinational company

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I. Summary

B company is a Korean branch office of the multinational company with its head office in Switzerland. The employee had been working in B company's head office and Korean branch office for 27 years. The employee was assigned to the Korean branch office as a senior director on December 1, 2016, and made a two year-long labor contract. He had been accustomed to B company very well and worked faithfully, but all of sudden he received a dismissal letter from B company on August 30, 2017. The reason for dismissal was the suspicion that when the employee was working at head office in 2016, he was involved in unfair price transaction with the customer. At that time he had just worked as an engineer in the sales department of the head office, and his former superiors who were involved in the case were also dismissed.

B company did not investigate the incident thoroughly. B company just dismissed the employee immediately pursuant to the dismissal request of the head office. Therefore, the employee visited a labor attorney to seek a remedy.

II. B company's perspective

1. B company shall not tolerate any cases when the employee revealed a secret, traded confidential information, or was involved in, neglected or did not report to the company giving or receiving bribes. When the company recognizes such behaviors from employees, it can terminate the employment immediately. Concerning these contents, when new or experienced employees are assigned to a new branch office in foreign countries, they shall read the 'code of conduct' at the time of employment and shall sign a confirmation agreeing to observe the 'code of conduct'. Also, employees are told during training that the employment would be terminated if the employee violates the code of conduct.
2. B company specifies reasons for disqualification in Article 9 (Limits to Employment) of the Rules of Employment, and its subparagraph 7 stipulates 'other persons who are not appropriate according to the company's discretion'. Although the incident had happened before he joined the company, the assigned employee's violation of

the 'code of conduct' was such severe misbehavior that the company could not have hired him if it had known the violation in advance. Therefore, this termination of the labor contract would be regarded as justifiable.

Where an employee is found to have falsified or concealed his education and experience when joining the company or where such truth is found during the course of his service to the company, if the company knows of such truth at the point of recruitment, it might choose not to hire him or at least might choose not to provide the same working conditions. This assumption justifies taking appropriate disciplinary dismissal actions. (Supreme Court June 23, '00, 98da54940)

III. Employee's perspective

1. Reason for dismissal

The employee was not a person in charge of the unfair price transaction while working at the head office, because he only worked as a technical advisor in the sales department. All he did was receive an email as a cc reference from the mediator concerned. B company did not have any evidence to verify the unfair transaction, but dismissed the employee immediately pursuant to an order from the head office in Switzerland.

2. Types of disciplinary punishment

Under the Rules of Employment, B company may take disciplinary punishments such as dismissal, discharge from one's duty, degradation, suspension from office, wage reduction, reprimand, etc. according to the severity of the violation. As the employee made a labor contract with B company and provided labor service under supervision and control of the employer, the company shall punish the employee based upon the severity of violation in accordance with the Rules of Employment. However, the company took the most severe punishment without considering the severity of the violation.

3. Disciplinary process

Article 113 of the Rules of Employment

2) The company shall establish a disciplinary action committee to determine punishments for violations.

Article 114 of the Rules of Employment

- 1) The disciplinary action committee shall be comprised of three members appointed by the representative director.
- 2) The disciplinary action committee shall be held whenever there is a necessary reason for a meeting call. The committee shall inform the relevant employee by written notice 7 days prior to the disciplinary meeting and the alleged violator will be provided with an opportunity to defend himself.

B company did not implement the disciplinary process in dismissing him. Furthermore, any opportunity to verify his version of events was not given. Such disciplinary punishment without going through the disciplinary process is null and void, even though there is a justifiable reason for the disciplinary punishment.

IV. Related administrative interpretations and judicial ruling

1. Reason for dismissal and types of disciplinary punishment.

Although the employee committed a violation of the rules of employment, if the violation is not too serious enough to be able to continue the labor contract, the dismissal becomes unfair. (May 26, 2005, Seoul Administration Court 2004 Guhap 22381)

Dismissal is justifiable only when the employee committed so serious a violation that the company could not continue the employment relation any longer. Whether the violation is terminable offence shall be decided after considering all factors like the business target and characteristics, workplace conditions, the employee's status and job responsibilities, the incident's motivation and context, possible danger to obstruct the corporate order, and his/her previous work attitude.

It is too serious to be justifiable when the employer dismissed the employee due to a few reasons such as using violent language against a representative of an apartment residents group, rejecting the submission of employee statement, and absence at the disciplinary action committee's meeting. (Aug 13, 2004, NLRC 2004, Buhae 215)

Misbehaviors such as using violent language against the representative of an apartment residents group, rejecting the submission of an employee statement, and the absence at disciplinary action committee's meeting, because such actions disturb company operations. The company's decision to choose dismissal, the most severe

punishment, due to the aforementioned reasons is too heavy when compared to the employee's violations. As these employee actions are not acceptable reasons for termination, this dismissal is considered an unfair dismissal and abuse of the employer's disciplinary right.

In terms of the employee's absences without permission, there exists a disciplinary reason, but the dismissal just because of this reason is so serious compared to his violation that it becomes an abuse of disciplinary right. (Jan 9, 2004, NLRC 2003 Buhae 587)

In considering that the employee has not been punished due to work negligence or other reasons before this dismissal case, such behaviors as the employee's two absences without permission and one deserting workplace are not enough to terminate the labor contract. Therefore, the employer's disciplinary dismissal was unreasonable compared to the severity of the violation.

2. Disciplinary process

Disciplinary punishment without observing the disciplinary process is null and void regardless of the justifiable reasons for dismissal. (Supreme Court July 9, 1991, 90da8077)

The reason why the disciplinary process is regulated in relation to disciplinary dismissal is to make sure of implementation of disciplinary rights and to promote effective operation of the disciplinary system. Therefore, disciplinary punishment in violation of the disciplinary process is null and void regardless of the justifiable reasons for discipline.

It is unfair to dismiss the employee when the company made a disciplinary decision based on an unclear rationale without going through the disciplinary process. (Jan 6, 2005, Seoul Administration Court 2004 guhap 17808)

The company states in the disciplinary operation manual that it shall issue an 'attendance request to appear in front of the disciplinary committee' to the employee and provide an opportunity for the employee to explain his position for the purpose of securing objectivity and fairness. Therefore, the disciplinary process is an effective tool. The company did not go through procedure of issuing an attendance request to the

employee and providing the employee an opportunity to state his case. Furthermore, the company made a disciplinary decision for an unclear reason without specifying reasons for dismissal. Accordingly, the dismissal cannot be justifiable. This problem cannot be recovered later with the employer's notification of the disciplinary result or no review application made by the employee concerned.

V. Conclusion

The judgment hearing at the Labor Relations Commission was held for this case in the afternoon on December 17, 2017. As the company dismissed the employee pursuant to a request from the head office, it did not have any clear evidence or data to verify that the employee had any connection with the unfair price transaction. The company could not also answer to the question of why it did not observe the disciplinary process stipulated in the Rules of Employment. Then, the Labor Committee Chairman suggested the parties settle the case. The employee had considered it seriously in relation to two options: reinstatement plus back pay and appropriate compensation. When he realized that there were only 11 months left in the labor contract and he was not sure of his continuous work in the head office after completing his assignment period, he decided to accept the compensation. Therefore, the employee received compensation of 9 month's average salary.