

Korean labor law: Review of Dismissal of a Full-time Union Officer

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I. Summary (LRC decision: Case No. 2006buhae708)

1. Company E dismissed a full-time labor officer (hereafter referred to as “the Employee Concerned”) for violence to his senior manager. In his belief that he was dismissed unfairly, the Employee Concerned filed a remedy application to the Regional Labor Relations Commission on March 6, 2018. The Regional Labor Relations Commission determined on July 21, 2018 that the dismissal was unfair, judging that it was too severe of a punishment for the charge. In opposition, Company E, with legal support of a labor attorney, appealed to the National Labor Relations Commission on August 7, 2018 to repeal the judgment.
2. The Employee Concerned entered Company E’s newsletter editorial office on the 8th floor of its Head Office building at 12:20PM (lunch time) on January 17, 2018. There he distributed Union newsletters to female employees of the editorial team against the will of the editorial manager (who is handicapped). In anger, the editorial manager ran after the Employee Concerned in the corridor to reprimand him. In this process, the Employee Concerned grabbed and took the editorial manager down the stairs by force. As a result, the editorial manager slipped and fell down the steps between the 7th floor to the 6th floor, which caused him injury that required 6 weeks of medical care. To handle the situation, the company formed a disciplinary committee and dismissed the Employee Concerned.

II. The Verdict (First judgment) of the Regional Labor Relations Commission

1. The major points of the case depend upon whether violence took place, and whether the dismissal was appropriate in the severity of punishment and disciplinary process. Considering these factors, the following conclusion has been drawn, on basis of opinions of both parties, evidence data submitted, and contents of the judgment hearing.
2. The Employee Concerned insisted that the Union officers and he were verbally attacked with abusive language and assaulted by the editorial manager while they were distributing the union newsletters in the editorial office at 12:20PM, during lunch time on January 17, 2018. However, a review of medical records, witness statement, and summary deposition (financial penalty) indicates there was violence made against the editorial manager. Given these facts, Company E’s disciplinary action for this case is justifiable.
3. However, considering that the Employee Concerned was a full-time union officer in charge of union activities and operations, and the incident occurred while conducting union activities during lunch time on Jan 17, 2018, and the manager’s injury was not serious enough for dismissal, the disciplinary action cannot be accepted fair although its process is justifiable.

III. Employee's Claim

1. This incident is not a case of the lower-ranking employee inflicting violence to his senior manager, but a case in which union members have been interrupted during their union activities. Moreover, the union members were verbally assaulted by the editorial manager who had always disliked the union even when its members were conducting lawful union activities under the protection of current labor laws. The incident occurred in response to the editorial manager's abusive language and behavior towards female union officers. The Employee Concerned was trying to keep the manager from pushing his female colleagues on their shoulders.
2. The injury incurred on the manager was not only exaggerated but occurred largely in part because the editorial manager chased after the union officers to the stairs. Even though the Employee Concerned and the union officers tried to prevent conflict, the editorial manager acted in a provoking manner. As a result, he lost his balance and slipped and fell down the stairs. The company held a disciplinary meeting and rendered too severe a punishment. The Concerned Employee's dismissal is evidently unfair and was rendered without justifiable reason. This case is in a line of continuous disciplinary actions taken by the company against union officers and members under hostile relations with the labor union. Hence the dismissal of the Employee Concerned is unfair practice because the company tried to weaken union activities and interfere with and dominate operations of the labor union.

IV. Company E's Claim

1. Upon investigation, the Employee Concerned intruded into an off-limit office of the company without prior notification or permission to distribute union newsletters. The Employee Concerned conducted violence twice to the editorial manager who reacted against the prohibited entrance. The editorial manager suffered an injury that required a six-week medical treatment. He has taken medical treatment until recently and will be making regular hospital visits to receive pain treatment for the next six months.
2. The editorial manager, who is the victim of the case, is legally identified as a 1st level, severely handicapped person who has no resistant capability. Due to his speech impediments, he carries a notebook with him to convey effective communication in case of very important conversations. He can hardly walk on stairs due to polio, and his right leg, which is one third of his left leg in thickness, provides subsidiary support to the weight of his body. The Employee Concerned dragged the editorial manager from the stairs on the 8th floor, grabbing his belt and collar in an attempt to take him to the union office located on the 5th floor. The purpose was to discipline the editorial manager who yelled at the union chairman without

thinking. Even when it was evident the editorial manager could no longer support himself on top of the 6th floor stairs while being dragged down by force, other full-time union officers showed negligence and failed to interrupt. The editorial manager finally collapsed and fell down the stairs as a result of the violent behavior incurred by the Employee Concerned. He was particularly very humiliated that he was assaulted in front of his subordinate employees. Due to injury and pain from this incident, the manager has been taking pain-killers and relies on poultice to relieve pain.

3. In compliance to the company's procedures, the Employee Concerned is technically still a non-titled employee even though he is currently a full-time union officer, and has been in employment for five years including irregular employment. In contrast, the editorial manager is a very senior employee who has been promoted to a general manager through his 19-year employment. The victim is also twelve years senior than the Employee Concerned in age.
4. In summary, this case is certainly unprecedented and reveals an act of incomprehensible violence. In review of the fact, including obstructive behaviors, overpowering of a senior employee by juniors, and merciless violence inflicted upon the handicapped, the dismissal is justifiable.

IV. The Decision of the National Labor Relations Commission

1. Considering the claims of both parties during the appeal process, records of Regional Labor Relations Commission, and contents of the judgment hearing, the judgment is as follows. The Employee Concerned argued that his dismissal was unfair because the editorial manager lost his balance and fell by himself, and the company exaggerated the account of the Employee concerned's assault.
2. However, a comprehensive review of all the factors shows that the company's dismissal is not too severe. In terms of socially accepted idea, the Employee Concerned behaviors are too wrongful to continue employment in the company. First, the editorial manager collapsed on the stairs while the Employee Concerned was attempting to drag the editorial manager to the union office, by means of grabbing his belt and collar. This resulted in a serious injury to the manager that required a six-month pain-treatment. Second, the editorial manager is legally classified as a 1st level, severely handicapped person who has low capacity to handle dangerous situations, has limited communication skills, and cannot work comfortably due to polio. Third, dragging a person down the stairs by grabbing his belt and collar is clearly an act of force and violence. Fourth, the manager was humiliated terribly in front of his subordinates by the Employee Concerned who is 12 years his junior in age.

3. In conclusion, we repeal the relief order of the Regional Labor Relations Commission which previously ruled that this dismissal was unfair and too severe as a punishment. Thus, we deny the remedy application for unfair dismissal.