

Case Study: Non-payment of Severance Pay to a Foreign Lawyer

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I. Summary

A foreign lawyer joined a law firm on March 17, 2013 and worked for two consecutive years and eleven months until February 11, 2016. After resigning from the law firm, he requested for payment of severance pay, but his request was rejected by the law firm on grounds that he had been treated as a partner lawyer of the law firm. The foreign lawyer, through the help of a labor attorney, filed his appeal to the Labor Office, and eventually successfully received the Severance Pay.

I would like to examine the arguments of the foreign lawyer and the law firm regarding the unpaid severance pay case involving the foreign lawyer's resignation, and then explain the criteria for resolving this case based on relevant law and precedent.

II. From the perspective of the foreign lawyer

As the foreign lawyer was legally employed under the Labor Laws, and had been receiving fixed monthly salary from the law firm, and had also been regularly attending its weekly meeting in addition to reporting to and receiving instructions from the law firm's representative lawyer in the carrying out of his duties and responsibilities, in accordance with Korean Labor Law, the foreign lawyer should be paid a Severance Allowance as with any Korean employee.

III. From the perspective of the law firm

The foreign lawyer did not satisfy the definition under the Labor Standards Act of an employee as he was a director of the law firm, and he therefore should not be entitled to a Severance Pay as prescribed under the Labor Standard Act. Based on the facts presented below, it was evident that as the foreign lawyer was a director, he was drawing a salary and holding a position much higher than other of his peer lawyers in the same law firm.

- A. He had a secretary directly hired by himself.
- B. He was provided with a corporate card for use at his absolute discretion, and was additionally provided with a designated parking area.
- C. His salary was much higher than that of his other peer lawyers including that of the representative lawyer.
- D. His annual leave was also scheduled at his absolute discretion, without the need to seek prior approval from anyone in the law firm.
- E. He also enjoyed absolute liberty in the starting and ending time of work, in working hours and work venue.
- F. Above all, the applicant has not, in the conduct of his duties and responsibilities, received instructions in a defined or subordinating manner from any of the law firm's lawyers, including that of the representative lawyer

IV. Related Act and Judicial Ruling

1. Related Act: The Lawyers Act

Article 4 (Qualification as lawyer) Any person who falls under the following shall be eligible to become a lawyer.

- ① *Any person who passes the Bar Examination and completes the required courses at the Judicial Research and Training Institute; and*
- ② *A person who has the qualification for a judge or public prosecutor.*

➔ A foreign lawyer can only be employed and not be a partner of a law firm. A foreign lawyer is not allowed to establish his own business in Korea to provide legal service. Hence, from a legal perspective, the employment of a foreign lawyer should only be for the purpose of providing consultancy on foreign laws applicable to foreign countries.

2. Judicial Ruling: A lawyer who belongs to the law firm maintains the employee status. (Seoul Regional Court ruling on Nov 11, 2005, 2005 Kahop 33355)

According to the Lawyers Act, on registration of professional qualification and business establishment, every lawyer, including even legally affiliated lawyers, can individually conduct legal service as an independent and professional attorney at law

However, a law firm shall be established by membership lawyers, and its membership lawyers may operate its decision making process exclusively. Individual lawyers of a law firm can perform his/her law practices only under name of the law firm, and the substantial contents of his/her law practices shall be determined by the membership lawyers. Further more, the conduct of its business process also shall be under the direction and supervision of the law firm. In consideration of aforementioned facts, a lawyer belonging to the law firm shall therefore be regarded as the employee who offers work under subordinate relations to the law firm for the purpose of earning wages.