Case Study: Violating Company Policy Prohibiting Dual Employment

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I. Introduction

I would like to look at holding dual employment in breach of company policy, as discussed during a disciplinary review committee meeting at Company A that I attended as a committee member. Company A (hereinafter referred to as "the Company") had confirmed that an employee (hereinafter referred to as "the Employee") in a managerial position engaged in illegal loan sharking as a side business. It had also confirmed that the Employee had sent KakaoTalk text messages to push borrowers to repay the loans, including during working hours. This information came to light when someone (a borrower who felt threatened by the Employee) reported it on the Company's website.

The Employee's side gig, while a senior executive for the Company, not only involved profit-making activities during working hours but also meant he engaged in illegal activities (illegal loan sharking), causing significant damage to the Company's image as a public enterprise. However, in order to dismiss an employee, a company needs to determine specifically, and according to strict criteria, that an employee's actions warrant dismissal. The Company decided to dismiss the Employee for breach of contract and breach of the obligation to protect the dignity of the civil service. On the other hand, the Employee acknowledged his wrongdoing but refused to accept dismissal as a justified punishment and applied for a disciplinary committee review. Meanwhile, the Company reported the Employee to the police for illegal loan sharking. The disciplinary committee began a review committee on the supplementary materials from the police investigation regarding the Employee and upheld the decision for dismissal. In looking at this labor case, we will provide a case overview and summarize the parties' arguments, Company regulations, and related precedents.

II. Details of the Case

1. Confirmation of Facts and Decision to Dismiss for Disciplinary Reasons

In December 2023, the Company received a report, through its website, alleging that an employee in a civil service capacity had engaged in loan sharking and, in the process of collecting loans and interest, engaged in verbal abuse and threats. If this allegation were true, it would amount to the employee engaging in behavior unsuited to a civil servant and would have tarnished the Company's reputation. Consequently, from January 8 to January 15, 2024, the internal audit department conducted written and face-to-face interviews with the Employee. The investigation focused on whether he was involved in illegal loan sharking, particularly whether he had engaged in profit-making activities related to loans during working hours, and whether the Employee had threatened and verbally abused borrowers when seeking to collect interest on the loans.

The Employee was hired by the Company on July 1, 2018, and had been working as Team Leader of the Company's Busan regional management team. Since 2022, the Employee had been affiliated with a loan company under a friend's name. Using his own name, the Employee had issued loan contracts to 12-15 borrowers, for amounts ranging from ₩1 million to ₩5 million, charging 20% interest every three months to be sent to his personal bank account, after the Employee lent the money deducting a 5% initial interest from the principal. If a borrower failed to pay the interest by the due date, the Employee sent coercive messages and made threatening phone calls. In addition, the defendant exploited borrowers by charging an exorbitant interest rate of 80% per annum, far exceeding the legal limit set by the *Interest Limitation Act*.[1]

On March 14, 2024, the Company convened a disciplinary committee meeting and decided to dismiss the Employee, based on his breach of Company policy forbidding dual employment, for engaging in profit-making activities during working hours, and engaging in behavior unsuited to a civil servant (exploiting financially vulnerable individuals, who were ineligible for loans from financial institutions).

2. Basis for the Employer's Decision to Dismiss

The Employee stated that he had received regular training on diligent work and maintaining dignity in accordance with the Company's employment regulations. Meanwhile, Article 5 (Principle of Good Faith) of the employment regulations stipulated, "Employees of the public enterprise must adhere to the company's regulations, fulfill their assigned tasks faithfully and efficiently,

[1] The maximum interest rate for monetary loans in contracts, as stipulated by Article 2, Paragraph 1 of the *Interest Limitation Act*, is set at 20% per annum.

cooperate with each other in good faith, and maintain their dignity, ensuring that the company's reputation is not tarnished."

However, despite this, the Employee directly engaged in illegal loan sharking, coercing borrowers to comply with unreasonable loan terms, and directly involving himself in the collection of interest and principal. Threats included statements such as "I will come to your place to collect the money if the interest payment is more than 3 days overdue" made to borrowers who failed to pay the interest on time. Furthermore, the Employee sent multiple KakaoTalk messages and made multiple phone calls during working hours seeking to collect payments and extending loans.

In light of these facts, the Company decided to dismiss the Employee for the following reasons: First, the Employee breached Company policy forbidding dual employment by engaging in profit-making activities with a loan company; Second, the Employee violated the obligation to protect the reputation of the Company by engaging in verbal abuse and threatening borrowers while a civil servant; Third, the Employee breached his duty of diligence by engaging in dual employment-related activities during working hours.

III. Disciplinary Review Hearing and Employee’s Statement

1. Employee’s Assertions

(1) Facts Distorted during Disciplinary Committee Meeting

The Employee, in applying to the disciplinary committee for a review of the decision for dismissal, submitted the following information as a rebuttal to the decision.

1) Breach of Company policy prohibiting dual employment: The Employee argued that he did not knowingly breach Company policy against dual employment. He had found it difficult to refuse his friend's request for assistance, and he had been involved only about a year. Considering the relatively minor financial gain, the disciplinary committee’s decision to dismiss is unfairly harsh.

2) Verbal abuse of and threats to borrowers: The Employee claimed that he had never met the borrowers in person and only communicated with them via KakaoTalk or phone. Therefore, there had been no actual coercion or violence towards the borrowers. While the Employee did use profanity when borrowers failed to meet their obligations, the borrowers promptly apologized and acknowledged their failure to keep the agreement.

3) Profit-making activities during working hours: The Employee admitted to communicating with borrowers via phone or KakaoTalk during working hours. However, he argued that he had not neglected his duties while contacting borrowers, especially considering that most contact occurred before or after working hours or during lunch breaks. The Employee also emphasized that his communication with borrowers during working hours lasted only a few minutes of the 8-hour workday and should not be considered engaging in continuous profit-making activities during working hours. Additionally, the Company did not consider the fact that the Employee had never neglected his duties while communicating with borrowers.

(2) Weak Justification for Disciplinary Dismissal
According to the Company's disciplinary standards, in order to dismiss an employee for engaging in dual employment and for breaching the obligation to protect the Company's reputation, the action(s) must amount to "severe misconduct with intent." In relation to this, the Employee admitted that he provided loans and contacted borrowers during work hours. However, his involvement in these actions had lasted less than a year (10-11 months), and the communication with borrowers was brief and did not disrupt his core managerial duties. Furthermore, there was no exercise of violence; he only exerted pressure on borrowers who failed to keep their loan obligations, and there was no evidence of coercion. The decision to dismiss him was therefore excessively harsh. Moreover, the Employee deeply regrets his actions and seeks cancellation of the decision to dismiss, expressing a desire for leniency so he can return to working for the Company.

2. Company's Confirmation of Facts and Decision of the Disciplinary Review Committee

The Company convened a disciplinary review committee meeting for the Employee and presented additional evidence obtained by the audit team.
(1) Employee's Statements

The Employee stated that he had engaged in loan sharking for about a year after a friend asked him to do so, violating the Company's regulations against dual employment. He promised not to engage in loan sharking any further after realizing it amounted to such violation. The Employee stated, "In reality, there are only about 10 individuals involved in the loans I am currently handling, and I only spend a few minutes during working hours on loan management tasks. Most of the interactions occur during lunch break or after work. I have never threatened people who borrowed money from me, and I have never visited their homes or offices." However, it was confirmed that most of the Employee's statements were untrue.

(2) Disclosure of Additional Investigation by the Audit Team

The audit team reported the Employee's involvement in illegal loan sharking to the police and requested an investigation. Subsequently, the police conducted an investigation on the Employee and notified the Company of some of the findings. It was revealed that the Employee had engaged in loan transactions with approximately 40 individuals in the past and was currently engaged in loan transactions with about 20 individuals. Additionally, the transcripts provided by a witness contained conversations between the Employee and the witness. In these conversations, the Employee verbally abused the witness for not meeting the payment deadline and threatened to visit the witness's office, uttering clearly audible threats.

(3) Decision of the Disciplinary Review Committee

After confirming the additional facts and circumstances thus revealed, the disciplinary review committee made its final decision, which was to uphold the disciplinary dismissal. The primary reason for this decision was the Employee's continued dishonesty and failure to provide truthful answers. Furthermore, when asked to provide evidence regarding the current list of borrowers and the amounts loaned, the Employee responded with nonsensical answers, claiming ignorance due to his having to manage the bank accounts directly through the loan company. Additionally, the Employee falsely claimed ignorance about drafting loan contracts in his own name and managing interest payments through the bank account. Therefore, the disciplinary review committee confirmed that the Employee had indeed violated the Company's policy against dual employment, engaged in verbal abuse and threats towards borrowers, and engaged in personal profit-making activities during working hours over an extended period.

IV. Details of Relevant Precedents

1. Violation of Agreement against Dual Employment

It is unfair to entirely and comprehensively prohibit dual employment, which falls within the realm of an employee's personal capabilities and private life, as long as it does not disrupt corporate order or provision of labor. However, prolonged dual employment that significantly impedes labor provision or instances such as serving as a director in a competing company may be subject to prohibition, and dismissing an employee for such reasons can be deemed justifiable.[2]

2. Breach of Duty to Avoid Damaging Company Reputation

Even if an employee's real estate speculation is merely a personal matter, when considering various factors such as the purpose for establishment of the urban development corporation aimed at stabilizing and improving citizens' living conditions through land development and supply, which are the duties of the employee responsible for real estate compensation-related tasks, it can be evaluated that real estate speculation by an employee of the urban development corporation has a significantly adverse impact on social evaluation of the corporation.[3]

3. Employer's Discretion in Disciplinary Action

The dismissal of an employee is considered justified when there are reasons for which the employer cannot continue the employment relationship and for which the employee has responsibility, as recognized by societal norms. Whether the employer has reached the point where they cannot continue the employment relationship with the employee is determined by considering various factors such as the nature and purpose of the employer's business, conditions at the workplace, the employee's position and job duties, the motive and circumstances of misconduct, the potential impact on the company's organizational structure, past work attitudes, and other relevant factors in a comprehensive manner. In cases where there are various allegations against the employee, judgment should not be based solely on one or some of the reasons for disciplinary action, but rather on a holistic consideration of all factors. Moreover, even if misconduct does not amount to a reason for disciplinary action, it can serve as evidence for selecting the type of disciplinary action,

[2] Supreme Court ruling on Dec. 13, 1994, Case number 93nu23275.
[3] Supreme Court ruling on Dec. 13, 1994, Case number 93nu23275.

considering the employee's past conduct, work performance, and other relevant circumstances before and after the disciplinary decision.

V. Conclusion

This case involves a senior-level employee of a state-owned enterprise engaging in illegal loan sharking on the side, blatantly violating the policy against dual employment. While holding a public position, the Employee disregarded professional ethics and engaged in illegal activities. In response, the Company decided on disciplinary dismissal against the Employee. Despite the Employee's appeal for a review of the decision and leniency, the disciplinary panel realized that there was no justification for leniency due to the Employee's dishonesty during the initial investigation and his failure to protect the Company's reputation and upheld the decision for disciplinary dismissal.

In line with the proverb, "excessive or unnecessary actions can be counterproductive or harmful" [과유불급(過猶不及)], this case serves as a warning for civil servants against prioritizing their own interests above the public's. If they do, they risk not only their own dignity as civil servants but also, in an instant, the loss of their hard-earned reputation. To prevent such things from happening, it is essential for state-owned enterprises to provide ethics training to their employees on a regular basis and periodically monitor for any misconduct.