



Insight #4



LABOUR DISPUTE: IMPOSITION OF A DISCIPLINARY SANCTION



In Brief

Article 123 of the Labour Law of Mongolia ("**Labour Law**") regulates labour disciplinary misconduct and the corresponding disciplinary sanctions. In practice, disputes arising from the imposition of disciplinary sanctions constitute a noticeable share of labour disputes adjudicated by the courts.

In this insight, we highlight a decision of the Supreme Court of Mongolia concerning a labour dispute over the invalidation of a disciplinary sanction and summarize the key legal points that are particularly relevant for employers when imposing a disciplinary sanction.



Factual Background

The employer, Company X ("**Employer**"), imposed a "warning" disciplinary sanction on Employee O ("**Employee**") by an order dated 19 June 2024. Subsequently, by an order dated 17 July 2024 of the same year, the Employer imposed another disciplinary sanction of a 20% reduction in basic salary for one month ("**Second Disciplinary Sanction**"). The Employee filed a claim with the court seeking to invalidate the order imposing the Second Disciplinary Sanction, arguing that the Employer had unlawfully imposed multiple disciplinary sanctions for a single misconduct and had failed to obtain any explanation or statement from the Employee prior to imposing the sanction. At the time the Second Disciplinary Sanction was imposed, the Employee was on annual leave and only became aware of the disciplinary sanction after returning to work. On this basis, the Employee argued that the Employer had breached Articles 123.3 and 123.6 of the Labour Law.

In response, the Employer argued that the imposition of the disciplinary sanction was justified, as the Employee had committed additional misconduct instead of rectifying previously identified violations.



Court Decisions

The dispute was reviewed at three levels of the court. The First Instance Court fully upheld the Employee's claim, whereas the Appellate Court reached a contrary decision, dismissing the claim in its entirety. Ultimately, the Supreme Court of Mongolia ("**Supreme Court**") upheld the decision of the First Instance Court, thereby invalidating the Employer's order imposing the Second Disciplinary Sanction.



Supreme Court Resolution

On this basis, the Supreme Court found that the Appellate Court had misinterpreted and misapplied the Labour Law, set aside its decision, and upheld the judgment of the First Instance Court.

Key Conclusions of the Supreme Court

- *Imposition of a Disciplinary Sanction During Annual Leave:*

Article 123.6 of the Labour Law provides that the limitation period for imposing a disciplinary sanction is suspended for the duration of an employee's annual leave. In other words, an employee's annual leave is relevant only for the purpose of calculating the limitation period within which a disciplinary sanction may be imposed. However, the fact that an employee is on annual leave does not, in and of itself, constitute a ground prohibiting the imposition of a disciplinary sanction.

- *Duplicative Imposition of Disciplinary Sanctions:*

Based on the facts of the dispute, the Employer identified misconduct involving the failure to report a shortage of identical goods to management and finance, concealment of such shortage, and failure to stop the violation despite being aware of it. On this basis, the Employer considered that the Employee, as a department head, had failed to properly perform their supervisory duties as required under the job description, and imposed a closed warning on 19 June 2024. Subsequently, other misconducts were identified during an internal audit. However, the Supreme Court found that the Employer's decision, following the meeting held on 16 July 2024, to continue examining the initial misconduct and impose an additional disciplinary sanction breached Article 123.7 of the Labour Law. In essence, the Supreme Court concluded that where the misconduct was continuous in nature and originated from a single set of facts, the Employer had separated the findings during the investigation process and imposed two separate disciplinary sanctions for the same underlying misconduct.

- *Notification to the Employee and the Obtaining of an Explanation*

Article 123.3 of the Labour Law requires an employer to notify the employee and obtain the employee's explanation before imposing a disciplinary sanction. The Employee had attended a meeting on 2 July 2024 prior to taking annual leave, however, the Supreme Court found that this meeting could not be regarded as a meeting held to decide on the imposition of a disciplinary sanction, as it only concerned whether misconduct had occurred and the underlying circumstances and reasons. By contrast, the decision to impose the Second Disciplinary Sanction dated 17 July 2024 was made at a meeting held on 16 July 2024, during which it was decided to impose a disciplinary sanction on the Employee. As the Employee was on annual leave at that time, the Employee did not attend the meeting. Accordingly, the Supreme Court concluded that there were no grounds to consider that the Employer had complied with its obligation under Article 123.3 of the Labour Law, and that the Employee had not been given a proper opportunity to provide an explanation prior to the imposition of the disciplinary sanction.

- *Evidentiary Considerations*

The Employer failed to substantiate, with evidence, that the Employee had committed an independent and new misconduct after the imposition of the prior disciplinary sanction. Although the Employer claimed that such misconduct were identified through a semi-annual financial inventory count, it did not submit to the court any supporting documentation relating to the inventory process or the internal audit review.



Considerations

While employers have discretion to impose disciplinary sanctions, non-compliance with due process and legal requirements may result in a potential invalidation of employer's decision. Accordingly, based on the Supreme Court's findings, employers should pay particular attention to the following issues.

Disciplinary Investigation

Misconduct

- A disciplinary sanction must be imposed within 6 months from the date the misconduct occurred, or, in the case of continuous misconduct, from the last day of occurrence, and within 1 month from the date it is detected.
- Once these statutory time limits expire, a disciplinary sanction may no longer be imposed.
- In practice, the pressure to comply with these deadlines may lead employers to make procedural errors or decisions without adequate documentation, increasing the risk of invalidation.
- To mitigate this risk, employers should carefully plan and conduct the investigation process in light of the nature and complexity of the alleged misconduct.
- In particular, "detection" should be based on objective findings supported by inspections, audit reports, or similar records, rather than assumptions.

Employee on Annual Leave

- An employer is required to maintain an employee's job position during the employee's annual leave.
- However, this does not prohibit the employer from imposing a disciplinary sanction during that period.
- The relevance of annual leave lies in the calculation of statutory time limits.
- Specifically, the time limits of 6-month period from the date the misconduct occurred and the 1-month period from the date of detection are suspended for the duration of the employee's annual leave.
- While a disciplinary sanction may be imposed during annual leave, employers should pay particular attention to whether the employee has been properly provided with an opportunity to give an explanation.

Notification and Opportunity to Provide an Explanation

- One of the most critical procedural steps when disciplinary misconduct is identified is notifying the employee and obtaining their explanation.
- A failure to adequately substantiate misconduct, or to properly notify the employee and provide an opportunity to explain, creates a direct risk of invalidation of a disciplinary decision.
- In this dispute, the Employer's failure to obtain the employee's explanation before imposing the Second Disciplinary Sanction was one of the key grounds for invalidating the order.
- Employers should therefore ensure that explanations are properly documented, including confirmation of the date provided and the employee's signature. Where an employee refuses to provide an explanation, such refusal should likewise be formally recorded.



Let's Talk!

If you have any issues or questions related to labour relations, please feel free to contact us. If you would like to read the full court decision, please click [here](#).

Munkhjargal Ragchaakhuu

Head of Legal Practice

Legal Services

munkhjargal.ragchaakhuu@pwc.com

Munkhnasan Otgontogtool

Senior Legal Associate

Legal Services

munkhnasan.otgontogtool@pwc.com

PwC Legal LLP

Suite 603, Central tower,

SBD-8, Ulaanbaatar, Mongolia-14200

T : + 976 70009089

www.pwc.com/mn