

Cases of Workplace Bullying & Sexual Harassment and Disciplinary Committee Decisions

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I. Summary

Last month, I received a request from a public institution (hereinafter referred to as the “Company”) to participate as a member of their disciplinary committee. A female fixed-term worker (applicant) submitted a grievance counseling application stating that the male team leader (defendant) had repeatedly engaged in workplace harassment, sexually harassed her, and abused his authority, all of which led to her resignation. On August 16, 2022, the Company received the grievance counseling application, formed a grievance handling committee, and investigated the applicant's workplace harassment and sexual harassment claims. They investigated the applicant, the witness, and the alleged perpetrator, in that order. On September 15, 2022, the grievance handling committee requested convening of a disciplinary committee after determining that the allegations were indeed workplace harassment and sexual harassment. On October 18, 2022, the company convened a disciplinary committee consisting of two internal and three external members according to the procedures in Company disciplinary regulations. The disciplinary committee dismissed the case, judging that while the defendant's actions were inappropriate, they could not be regarded as workplace harassment or workplace sexual harassment as stipulated in labor law. Most disciplinary committees lead to a process for disciplinary action, but in this case, the details presented by the applicant alone could not be regarded as workplace harassment beyond the appropriate scope of work, and although the alleged sexually harassing words and actions were inappropriate, a third party could not feel sexual shame. Accordingly, the committee dismissed the claim. The facts and criteria are described in the following.

II. Workplace Bullying & Sexual Harassment

1. Workplace bullying and sexual harassment described by the applicant

The applicant is a team member who was hired by the Company as a two-year contract intern, and the defendant is the leader of the team where the applicant was placed. The details of the claims of harassment and sexual harassment in the workplace by the applicant were as follows.

(1) Bullying at work

1) During working hours on March 22, 2022, the defendant said to the applicant, "In the second-half evaluation of 2021, your evaluation was the lowest among your co-workers who were hired during the same period. If you wish to receive a full-time position, you will need to smile and otherwise be cheerful at work and greet people well. Then the senior executives will give you a good evaluation." The applicant claimed that the team leader, who has the right to decide on contract extensions, made unnecessary comments under the guise of performance evaluation, which caused her a lot of stress.

2) Between May and July 2022, the defendant took the applicant and other team members to a place where he went to smoke on the roof of the office building. The applicant did not want to go to the place, but she had to because the defendant made announcements or wanted to discuss work-related things there. Later, the frequency decreased after some co-workers resisted going to the rooftop together. However, these meetings on the rooftop continued on occasion, where the defendant smoked.

(2) Sexual harassment in the workplace

1) On April 29, 2022, when visiting an eel restaurant with team members for lunch, the defendant remarked to the team, "Let's get some [sexual] stamina from eating eel today!" His remarks made me feel uncomfortable.

2) On July 14, 2022, during a business trip to the city, the applicant and the defendant visited the old downtown of Yongsan. While driving, the defendant made the statement, "*Ajumma* wouldn't be able to get here," in the sense that it would be difficult for inexperienced female drivers to drive the area due to its geographical characteristics. The applicant was offended by the defendant's "blatant stereotyping sexism."

3) During lunch at the Company cafeteria on August 5, 2022, the applicant said that she would not drink the *omija* tea on the menu. In response, the defendant asked, "Isn't *omija* tea good for women?" which the applicant claimed made her feel uncomfortable.

During the face-to-face investigation by the Company's grievance handling committee members, the applicant explained that the reason for her resignation was due to the bullying and sexual harassment by her superior at work. The applicant resigned on August 21.

2. Actions taken by the company

On August 16, 2022, after receiving an application for grievance counseling from the applicant for the related case, the Company immediately investigated things face-to-face, looking with the applicant at the claims she raised as well as interviewing three references, and then supplementing with other information. After further investigation, the Company reported the results to the Grievance Deliberation Committee on September 15. On September 29, the Grievance Deliberation Committee reviewed the case and determined that it amounted to harassment and sexual harassment at work, and asked the Disciplinary Committee to take disciplinary action.

III. Criteria for Determining Workplace and Sexual Harassment in Related Cases

1. Criteria

(1) Bullying at work

“No employer or employee shall (i) cause physical or mental suffering to other employees or deteriorate the work environment (ii) beyond the appropriate scope of work (iii) by taking advantage of superiority in rank, relationship, etc. in the workplace” (Labor Standards Act, Article 76-2). Only if these three requirements are met can a judgment be made that workplace harassment (bullying) has occurred.¹

The factors and criteria suggested by the court can be used to determine whether workplace harassment has occurred. This shall be decided by considering and evaluating the following collectively: “① the relationship between the alleged offender and alleged victim, ② the motive and intention of the act, ③ the timing, place, and situation, ④ the details of the alleged victim's explicit or presumed reaction, ⑤ the content and extent of the act, and ⑥ the repetition or continuity of the act.”² Simply put, it is possible for an employer to infringe on human and personal rights or worsen the employment environment with position (power relations), related work (work relations), or other actions unwanted by the receiving party that are outside the scope of the relevant work (harassment, abusive language, etc.).³

(2) Sexual harassment in the workplace

¹ Ministry of Employment and Labor, “Manual on Judgment, Prevention and Handling of Workplace Harassment,” Feb. 2019, pp. 10-14.

² Supreme Court ruling on Feb. 10, 1998: 95da39533.

³ Kim, Elim, “Gender Equality and Law,” Korea National Open University Press and Culture Center, 2013, p. 242.

“Sexual harassment in the workplace refers to the deterioration of the employment environment by employers, superiors, and workers using their positions in the workplace or by expressing towards other workers sexual language or behavior in relation to work, or by giving employment disadvantages or causing sexual humiliation as a condition thereof” (Article 2 of the Equal Employment Act). Sexual harassment in the workplace has the potential to occur anywhere inside or outside the workplace, and occurs when a superior uses his/her position or the actions/words are related to work. For example, sexual harassment that occurs in a car while on a business trip or at a business-related meeting is also sexual harassment in the workplace.

The decisive criteria for judging sexual harassment in the workplace: (1) Whether the alleged victim felt sexual humiliation or disgust due to the act is the main fact. It is considered sexual harassment if the alleged victim felt sexual humiliation and disgust due to the act. (2) At this time, whether or not the alleged perpetrator intended to sexually harass cannot affect the criteria for judgment. (3) A normal and average person must be able to feel sexual humiliation or disgust on the part of the alleged victim.⁴

2. Application to case

(1) Judgment on claims of workplace bullying

1) The defendant said to the applicant, “In the second-half evaluation of 2021, your evaluation was the lowest among your co-workers who were hired during the same period. If you wish to receive a full-time position, you will need to smile and otherwise be cheerful at work and greet people well. Then the senior executives will give you a good evaluation.”

Regarding this part, the applicant argued that it was equivalent to abuse of authority or harassment in the workplace. The applicant was about to switch to a full-time position just before the end of the two-year labor contract period. The defendant stated that, as her team leader, his words were supposed to help the applicant improve her working relations by correcting her negative attitude as a team leader, and that such remarks did not constitute an abuse of power. When judging the background to and purpose for the defendant's remarks and whether they were repetitively stated, it cannot be regarded as harassment in the

⁴ Supreme Court ruling on June 14, 2007: 2005du6461.

workplace, as it is judged that the senior gave advice in the process of leading the junior to a full-time job.⁵

2) “From May to July 2022, the defendant took me to a place on the roof of the office building where the defendant could smoke and talk about work. As there work-related announcements were given or group discussion took place there, I felt peer pressure to go too.” As a non-smoker, the applicant must have felt uncomfortable attending a meeting while a senior and other team members smoked on the roof of the office building. However, judging from the grounds such as the continuity of the rooftop meetings, coercion using power relations, and the subordinate's intention to reject, the defendant's behavior was undesirable, but doesn't lend well to a definition of workplace harassment. Because these rooftop meetings did not last, and considering that they were to change the mood, it is difficult to see it as bullying in the workplace.⁶

(2) Criteria for judging claims of sexual harassment in the workplace

1) When the team members visited an eel restaurant for lunch, the team leader said to the team members, "Let's get some [sexual] stamina by eating eel today!" His remarks made the applicant feel disgust. Regarding this, the criteria for determining sexual harassment in the workplace is based upon the feelings felt by the victim. Also, if a person with common sense feels sexual humiliation from the victim's point of view, it can be called sexual harassment. However, in this case, going to an eel restaurant during lunchtime cannot be seen as sexual harassment from a general point of view, considering that it is to rejuvenate the body through a special health food.⁷

2) On a business trip to the city, the applicant and the defendant visited the old downtown of Yongsan. While driving, the defendant made the statement, “*Ajumma* wouldn't be able to get here,” during their conversation, meaning it would be difficult for inexperienced drivers to drive there due to the geographical characteristics. *Ajumma* refers to full-time housewives and middle-aged women.⁸ The defendant's words mean, generally speaking, that the average woman drives too cautiously, but it is difficult to say that women would reasonably feel sexual humiliation in response.

⁵ Similar case: Supreme Court ruling on July 22, 2003: 200do7225.

⁶ Similar case: Supreme Court ruling on Feb. 10, 1998: 95da39533.

⁷ Similar case: Supreme Court ruling on June 14, 2007: 2005doo6461.

⁸ Internet encyclopedia 'Namu Wiki' keyword search for “Ajumma.” *Ajumma* refers to middle-aged women. In everyday life, if a woman looks middle-aged, people often call her *ajumma*.

3) During lunch at the in-house cafeteria, the applicant said that she would not drink *omija* tea on the menu. In response, the team leader remarked, “Isn’t *omija* tea good for women?” This part is generally based on the fact that *omija* is good for women.⁹ This remark does not fall under workplace bullying, as it was merely recommending *omija* tea for the purpose of drinking together.

IV. Disciplinary Committee's Decision to Dismiss

1. Main details of the Disciplinary Committee’s decision meeting

On October 25, 2022, the Company Disciplinary Committee held a hearing according to the Company's disciplinary regulations. The committee consisted of 5 members: 2 internal and 3 external. As internal members, the employee representative of the labor-management council and the head of the Company's Audit Office attended, and as external members, the head of the audit office of an external public company and two certified labor attorneys attended. This labor attorney was appointed as the chairman. The chairman made a statement that disciplinary action should be aimed at punishing workers who violate the company's regulations, thereby preventing recurrence and restoring order in the company.¹⁰ In addition, I suggested to the committee that they should decide whether the defendant's actions amounted to workplace harassment and workplace sexual harassment. The head of the Audit Office, an in-house disciplinary committee member, also gave the opinion that this case could not be viewed as bullying because it did not meet the requirements for workplace bullying, and that it could not be thought that an ordinary person would have felt sexual humiliation. Regarding this, some disciplinary committee members said that the defendant's actions amounted to sexual harassment in the workplace and bullying in the workplace. In this regard, there was sufficient discussion among the committee, which reached the view that the defendant’s actions were not to the extent of bullying in the workplace and sexual harassment in the workplace as a whole.

The disciplinary committee gave the defendant an opportunity to explain himself at the hearing before a final decision was made. The defendant took an attitude of self-reflection, saying that he would gladly accept any decision because he had caused psychological injury to the applicant due to his undesirable behavior.

⁹ Reporter Jang In-seon, “Omija Tea Instead of Ice Coffee – A Wise Summer for Menopausal Women,” Health Trend, July 8, 2019, and many other related materials.

¹⁰ Jung, Bong-soo, “Lawful Dismissal Manual”, 2nd ed., K-Labor Press, June 2022, p. 39.

The defendant was asked about the reasons for her resignation. He replied that the applicant had said many times that she wanted to be hired by a large company that paid a lot more because this public institution didn't pay enough, and that he had heard that she'd passed the entrance exam and would be hired by a large company.

2. Background to Decision

The Company's rules of employment cover dismissal, suspension, demotion, salary reduction, and reprimand as appropriate disciplinary actions. And if disciplined, the employee wouldn't be able to resume team leadership for 1 year, nor be eligible for promotion during that period. In this case, any disciplinary action would result in the defendant losing his position and eligibility for promotion for one year, during which his salary would be frozen. While the defendant's conduct could not be regarded as desirable, the level of punishment in the Company's disciplinary regulations were seen as excessive in this case.

The Disciplinary Committee decided on the fundamental content of whether the conduct actually corresponded to workplace harassment or sexual harassment in the workplace. Of the 5 disciplinary committee members, 3 concluded that the defendant's actions were not workplace bullying or workplace sexual harassment, while the remaining 2 members were of the view that the inappropriate behavior was not serious, but reason for minor disciplinary action. In the end, the disciplinary committee decided that this case was not worthy of disciplinary action with a 3:2 opinion, and dismissed the call for disciplinary action.