A Study on the Problem of Articles for Restraint on Competitive Practice Concerning the Laborers' Inventions or Copyright's Works During the Working Time

Tong-shuan Yang

Abstract

At present, every undertaking which has long-term investment in invention or every sorts of (spiritual) works and already get his profit, will try to stop his workers to use the know-how or other knowledge unlawfully or inappropriately. Otherwise, he could lose his business or clients, or his undertaking breaks down. For that reason it is a natural thing that employer try to make Articles for restraint on competitive practice with employee. But, on the other hand, the contractual justice might disappear when employer abuse the freedom of contract, therefore, the Articles for restraint on competitive practice must be restrained by right of work or freedom of movement. The reason is, that none of freedom or right which be protected by Constitution can ignore another freedom or right which also regulated in the Constitution. It means that every freedom or right must coordinate with another freedom or right. Especially because our labor law contain no regulations over the legality or criteria about the Articles for restraint on competitive practice, it seems it is necessary to try to solve this problem through freedom of profession or ratio principle which regulated in the Constitution. Only when we resolve this problem, then we can come to discuss the reasonable criteria which scholars should continue to research and courts should draw up the concrete criterion.

With respect to labor technical inventions or spiritual works, our Patent Act does not carry out Principle of Creator, and Copyright only carry out Principle of Creator conditionally. In this case, employer in principle has exclusive right of use or copyright of property. Nevertheless, employee can ask employer to give him another appropriate remuneration. Therefore, it is too rudely to say that because employer has exclusive right, so employee is forbidden to use inventions or spiritual works (especially when employee has given up his job). We must distinguish different occasions, and try to consider both sites' interest carefully, and find a reasonable solution. If employer really want to ban employee to use inventions or spiritual works to compete with him, then he cannot only depend on post-contractual loyal duty theory or post-contractual additional duty theory. It is not plausible.

In the case of laborer's inventions, especially when inventions are not within labor contractual obligation, whether employee has use employer's resources or experience or not, employer in principle can only get simple right of use (but when he make an agreement with employee, he can also get exclusive right of use). Then he must give employee another appropriate remuneration in order to forbid him to use the inventions which he invented, otherwise this restraint order or non-competitive request is invalid. We can equate the appropriate remuneration with compensation payment. In the case of laborer's spiritual works, especially when works are not within labor contractual obligation, the employer must also give employee another appropriate remuneration in order to use spiritual works continually, even though he originally has right to use spiritual works.

Keywords: Articles for restraint on competitive practice; contractual justice; business secrets; freedom of contract; right of work; freedom of migration (freedom of movement); compensation payment; Principle of Creator; post-contractual loyal duty