



The disciplinary responsibility of the employee about disclosing job secrets in Iraqi law

Bassim Mohsen Nayef, College of Law, Al-Muthanna University, Iraq.
Iqbal Abdel Abbas Youssef, College of Law, Al-Muthanna University, Iraq.

Abstract- This study deals with the topic (Disclosure of job secrets and disciplinary responsibility), as the act of disclosure is considered a behavior contrary to the provisions of the Discipline Law for State and Public Sector Employees, whereas the legal obligation to keep job secrets falls on the shoulders of the employee or the person charged with a public service.

Keywords: Disclosure of job secrets, Discipline Law for State, public service

I. INTRODUCTION

1. Study Subject:

This study deals with the topic (Disclosure of job secrets and disciplinary responsibility), as the act of disclosure is considered a behavior contrary to the provisions of the Discipline Law for State and Public Sector Employees, whereas the legal obligation to keep job secrets falls on the shoulders of the employee or the person charged with a public service. It was imperative that they keep all the secrets they know, whether they are documented in writing or electronically, this negatively affects the general interests of the state and the social interest, in addition to the foregoing, the subject of the study deals with the legal implications of the crime of divulging job secrets.

2. Study problem:

The problem of the study is represented in explaining the ambiguity and lack of clarity and the emergence of jurisprudential disagreement about the scope of these secrets. The matter that is required when a dispute arises over determining the secrets that have been revealed. The use of the judiciary or the administration, with their discretionary power, to rule with confidentiality of documents, or certain job information or not.

3. Study design and procedures:

This study relied on the analytical method for the purpose of clarifying the legal basis for the crime of disclosing job secrets, by comparing what is stated in the Iraqi law, judiciary and jurisprudence, as well as the position of the judiciary and jurisprudence thereof, in order to reach to draw conclusions and solutions to the issues and parts of the topic that are not clear, or those that were not legally addressed.

4. Definition of the disciplinary responsibility of the employee:

The laws regulating the provisions of the civil service did not directly address the definition of disciplinary responsibility (Al-Tamawi, 1995, p. 39).

As for jurisprudence, it is the other did not specify its definition. However, he gave several definitions of disciplinary offense to it, as the French jurisprudence defined it as: an act or omission from an act that is contrary to the duties imposed by the job (Abdel Aziz, 2005, p. 50), and it was known that it is every act or abstention from an act contrary to a legal rule or the requirement of duty issued by the worker during the performance of the job or outside it, which is reflected in it with an unacceptable excuse (Othman, 1973, p. 66).

Responsibility was defined as every act or abstention from an act committed by the worker and inconsistent with the duties of his position (Dussault, Borgeat, 1989, p383).

While others defined it as an interest of a professional nature undertaken by the administration to ensure the functioning of the public service facility (<https://dictionnaire.reverso.net/francais>).

This indicates that disciplinary responsibility is related to the act of violating job duties, it cannot include any of the persons outside the boundaries of the job work or its related relations, it can be said that the definition of disciplinary responsibility refers to the meaning of the act in violation of functional duties, and that disciplinary responsibility is an authority in accordance with the law granted at the disposal of the person with direct administrative jurisdiction. Enable him to hold his employees accountable or those working under his direction and supervision, and hold them accountable for the job mistakes attributed to them for committing during the work and on his occasion, what is termed a crime or disciplinary offense (Mahdi, 2009, p. 142).

The jurisprudence in the field of administrative law recognizes that the principle of disciplinary responsibility is its independence from the criminal responsibility that comes against the employee. This, in turn, leads to a difference between the disciplinary case and the disciplinary case, both for reason and subject. Judicial rulings have also gone to this (Al-Hanafi, 2001, p. 104).

And if there was an interdependence relationship that may exist between the two responsibilities, it does not prevent them from claiming their independence. The act attributed to the employee may entail disciplinary responsibility, and that the management authority is independent in formulating the legal description for the disciplinary offense issued by one of its employees. The assessment of this is left to the administrative body to decide afterwards what it deems appropriate (Ghaylan, 2001, p. 383).

5. Elements of the employee's disciplinary responsibility

The jurisprudence's views differed regarding the pillars of this disciplinary violation issued by the employee and among its elements. Some of them said that it consists of two pillars, namely: the employee to be disciplined, and the administrative error or guilt caused by him (Al-Otaibi, 2004, p. 18). As for the disciplinary responsibility elements, they are the employee, the administrative error, the causal relationship between the employee and the administrative error.

5.1. The employee:

The state exercises its activities, whether attached to or related to administrative control, through its employees who represent the human tool of the public administration to achieve its objectives. The public office enjoys the attention of legislators and jurists in various countries. The employee is also considered the main pillar upon which the state is built, and to him the credit goes to the goodness of the government tool if he performs his duty in a better way. He was also subject to disciplinary punishment as a result of corruption or negligence in performing his duty (Allawi, 2009, pp. 211-212).

5.2. Job error:

The employee may perform an illegal behavior as a result of negligence, error, or any other reason, with acts harmful to the public interest. Among these errors is disclosure of the professional secret, the employee must adhere to the professional secrecy. He was forbidden to disclose the content of any document in his possession or any event or news that he is aware of or acquainted with in connection with the exercise of his duties, except as required by the necessity of the interest. The employee shall not be freed from the duty of professional secrecy without written permission from the competent authority. As a result of the job, the employee's work allows him to see many secrets related to public service, or individuals through administrative documents, or individuals' grievances, or direct contact with them. The employee was obligated not to divulge these secrets. The basis of this commitment is to protect the public interest and prevent anything that hinders the normal course of its activity (Muhammad, 2009, p. 148).

5.3. Causal relationship:

It was a pillar of negligent liability, independent of error and damage, and represents the link between them. It means that the damage is a direct result of breaching the legal duty, it was in this crime that the harm caused to official bodies or individuals is related to the mistake, i.e. the act issued by the employee. Exemplified by the act of disclosing the functional secret as it is a direct result of this act, and proof of the government agency to which the employee belongs that the damage was caused by the

employee's disclosure. The occurrence of error is not sufficient for accountability unless it is proven that the harm was caused by this act. Consequently, tort liability is not incurred by the employee if this causal link between the injury and the act of disclosure is broken (Abdel Hafeez, 1999, p. 131). General rules are applied in connection with the discontinuation of the causal relationship (M. 211,1951). When the elements of negligent liability are fulfilled, the civil claimant, i.e. the governmental department, which may be a civil rights plaintiff, has the right if it is harmed by the crime or individuals. Filing a lawsuit for compensation for the damage resulting from the crime of divulging job secrets, with the aim of requiring the employee in breach of his duty to conceal its secrets. The rule is for this case to be brought before the civil court. However, the law permitted the establishment of it directly before the criminal court by extension (Article 9 / B, 1971).

6. Evidence of disciplinary responsibility:

The proof of disciplinary responsibility towards the employee, it came with legal provisions that dealt with discipline in the public office, stating that an investigative committee should be formed to undertake the task of conducting an administrative investigation with the employee, if violates a job duty or deviates from his requirements before being questioned from his department or imposing a disciplinary penalty on him. The administrative judiciary has decided that the disciplinary sanctions imposed on the employee as a result of his responsibility and the procedures that follow if taken without the formation of a committee to investigate the violation are invalid (Resolution 41, 2010).

It was a procedure taken by the administration after the occurrence of the violation of disclosure of secrets by the employee, and its purpose shall be to know the perpetrator of the violation and to ensure that it is attributed to him in order to reveal the truth and prove the disciplinary responsibility against the employee. An administrative investigation is a way to protect government institutions by holding the employee accountable for violating the duty to conceal his department's secrets, because this violation leads to harm to the public interest or leads to corruption in public money (Muhammad, 2009, p. 148).

The investigation committee formed by the governmental department undertakes the tasks of the administrative investigation in writing with the employee who disclosed the secrets of his department. After being referred to it by the head of the department, in order to perform this mission, it may hear the statements of the employee and witnesses and record them, and access to documents proving his commitment to the breach of divulging secrets, after completing the investigation with the employee, the committee should write a report recommending accountability for the employee, and imposing one of the disciplinary sanctions on him for violating the duty to conceal job secrets, but it must base this on sufficient evidence to attribute the act of disclosure to the employee or recommend that the investigation be preserved, and the issue was not in the event that it is not proven that the employee has committed the act of disclosure as a result of the investigation with him (Al-Hadithi, 1992, p. 323).

II. CONCLUSION:

After completing the research, we will discuss the most prominent results and what we were able to provide in terms of recommendations for unclear issues, as follows:

Results:

- a. Non-specification of job secrets in legal texts, it was clear that resorting to the courts to determine what is a job secret or not becomes an inevitable matter when a dispute over this issue arises.
- b. Determining the legal basis for the duty to conceal job secrets must be based on the extent to which its disclosure affects the public interest, and we concluded that the preponderance of the idea of the general system to determine it.
- c. Avoid expanding job secrecy. The employee can put under his hand some photocopies of documents related to his job achievement, and make it restricted to the direct official hand only.

Recommendations:

- a. The Iraqi legislator has not set disciplinary sanctions in the law for state and public sector employees that are consistent with the situation of violations committed after the end of the job,

Therefore, there is no point in keeping this phrase in the text because it cannot be implemented correctly.

b. The Iraqi legislature did not regulate a special provision on the employee's unintentional liability if disclosure of job secrets occurred as a result of his negligence, lack of attention, precaution, or non-observance of laws and regulations.

c. One of the reasons for the spread of cases of administrative and financial corruption is due to the disclosure of secrets of administrative contracts and confidential information within ministries and government departments.

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