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Court finds no privacy violation in employer's email surveillance

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The Taiwanese High Court recently dismissed an employee's tort privacy claim, finding that his employer did not infringe his privacy by monitoring his work email communications.

The privacy dispute resulted from an alleged trade secret leak. In 2008, through a routine employee email check, the plaintiff's supervisors found that the plaintiff had sent confidential materials belonging to the employer from his work email to his personal email account. The employer fired the plaintiff because a deeper investigation indicated that the plaintiff had disclosed these confidential materials to a third party. The employer also filed a criminal complaint against the plaintiff for his unauthorised disclosure of the confidential materials. However, the prosecutor determined not to pursue this criminal complaint because of insufficient evidence. After that, the plaintiff sued his employer for monitoring his email communications.

The plaintiff asserted that the employer had infringed his right to privacy. The plaintiff based his tort privacy claim on Article 195 of the Civil Code, under which a person who infringes on another person's privacy should be liable for monetary damages. In response, the employer argued that the plaintiff had no reasonable expectation of privacy in his work email communications, because he had been informed of the employer's written email management policy which authorised managers to monitor employees' work email accounts. Moreover, because the plaintiff used his work email to disclose the employer's trade secrets, the employer had due cause to check the plaintiff's work email communications in order to secure its interests.

The High Court ruled in favour of the employer, finding that its email surveillance did not violate the plaintiff's privacy. In its reasoning, the court first found that the plaintiff was aware of the employer's email policy and thus had no reasonable privacy expectations in his work email communications. In addition, the court recognised that the employer had a legitimate reason for adopting the policy. At the same time, the court found the employer's email surveillance to be necessary for the employer to supervise, control and operate the workplace efficiently. This was so because the email policy did not allow the employer to look into its employees' every email communication, but only allowed it to scrutinise employees' abnormal use of their work email accounts. Accordingly, the court concluded that the plaintiff had no grounds to claim that he should have been free from employer scrutiny, and thus the plaintiff had not made a viable tort claim against the employer's surveillance.

This case emphasises the significance of workplace privacy issues. While the court in this case held in favour of the employer's email surveillance, it remains uncertain whether an employee's online activities via employer-provided devices should also be subject to employer scrutiny. In addition, the court may have overlooked the fact that the plaintiff's freedom of speech was threatened by the employer's email surveillance. Thus, these issues deserve further consideration.

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