

A Signal for the Karin Law? The Controversial Ruling on Sexual Harassment Between Colleagues in Non-Work Environments

BHP investigated and dismissed an employee without severance pay following an incident that took place at a bar after working hours. The Court upheld the decision.

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By Carolina León

Can a company investigate and take action in cases of sexual harassment between colleagues in a non-work setting, such as an after-office gathering? This question has arisen among legal professionals and HR departments following the enactment of the Karin Law, as the regulation does not specifically address such scenarios.

Now there are signs. A recent ruling by the Court of Appeals has validated companies' ability to investigate and take measures regarding incidents that occur beyond the traditional office, factory, or industrial setting.

Key Facts of the Case

A gathering of coworkers at a bar in Parque Araucano to exchange Secret Santa gifts set the stage for an incident on December 30, 2021. A female BHP employee reported being harassed by a company supervisor, who allegedly made inappropriate physical contact, gestures, and sexual comments toward her. The employee reported the incident to the company, which, despite the event occurring outside the firm's premises and in a recreational context, launched an investigation. The process concluded with the accused employee's dismissal based on Article 160 No. 1 of the Labor Code, which allows termination of an employment contract without severance pay.

"The sexual harassment you committed, aside from being utterly unacceptable and reprehensible from any perspective, violated the victim's right to non-discrimination on the grounds of sex, her dignity, and her mental integrity. Furthermore, your actions constitute serious breaches of the obligations you assumed with the company," stated the dismissal letter delivered to the employee.

After his dismissal, the accused employee filed a labor protection lawsuit in the First Labor Court, alleging a violation of his rights, moral damages, wrongful termination, and seeking severance payment.

The lower court dismissed claims of fundamental rights violations but partially accepted the subsidiary claim of unjustified dismissal, ordering the company to pay a total compensation of nearly 44 million pesos.

In response, the company appealed the ruling to the Santiago Court of Appeals, which overturned the lower court's decision and upheld the dismissal as justified.

According to the appellate court, the initial ruling "errs" in minimizing the gravity of incidents "that are serious and therefore justify termination of the employment contract under Article 160 No. 1" without severance pay.

The Court emphasized that it is incorrect to assume such incidents must occur exclusively on company premises. It determined the situation arose from a recreational gathering of coworkers related to year-end festivities, organized in the context of workplace relationships.

To substantiate this, the Court noted that the Secret Santa event attended by the complainant cannot be considered a private gathering. It stated that the event was "clearly a work-related meeting, stemming from the employment relationship and taking place because of it." As such, it warranted protection under Article 184 of the Labor Code, thereby justifying the company's investigation despite the incident occurring outside the workplace. Based on these arguments, the Court issued a replacement ruling, declaring the dismissal justified and nullifying the severance payment order.

Jorge Arredondo, partner and director of the labor group at AZ, highlighted the ruling's significance in two aspects. First, it establishes that activities occurring outside working hours can be closely linked to job performance, work environment, and workplace dynamics. Second, it "reiterates the importance of the employer's protective role, which may include investigative powers for activities outside working hours that impact the workplace environment."

When asked for comment, BHP stated to Diario Financiero that the company “reaffirms its commitment to policies designed to safeguard the well-being, health, and safety of all employees, fostering inclusive and diverse work environments.”

The company further emphasized that it has “high-standard internal protocols to prevent and address any disrespectful behavior, including sexual harassment and abuse. It is worth noting that BHP adheres strictly to the law and all national regulations.”

A gathering of coworkers at a bar to exchange Secret Santa gifts became the setting for events that led to a harassment complaint, a dismissal, and subsequent legal proceedings.

BHP Announces Major Investment in Chile to Boost Copper Production Through 2032

BHP's operations account for 27% of Chile's copper production.

elperiodista.cl, November 20

The multinational mining company BHP has unveiled an ambitious investment plan in Chile, projecting between \$10 billion and \$14 billion to be allocated to its operations at Minera Escondida and Pampa Norte. This initiative aims to increase Chile's annual copper production by 430,000 to 540,000 tons, a crucial step to maintain the country's global leadership in the red metal market.

Investments in Escondida and Pampa Norte

At Escondida, the world's largest copper mine, investments between \$7.3 billion and \$9.8 billion are planned for projects such as:

- New Concentrator: Expected by 2031/32, it will add 220,000 to 260,000 tons annually, with an investment ranging from \$4.4 billion to \$5.9 billion.
- Laguna Seca Expansion: This will increase production by 50,000 to 70,000 tons annually starting in 2030/31, with an estimated cost of \$2 billion to \$2.6 billion.
- New Leaching Facilities: These will generate 35,000 to 55,000 tons annually from 2030/32, requiring an investment of \$0.9 billion to \$1.3 billion.

At Pampa Norte, which includes the Spence and Cerro Colorado mines, an investment of \$2.8 billion to \$3.9 billion will focus on revitalizing Cerro Colorado using advanced leaching technology. This will enable the production of an additional 85,000 to 100,000 tons annually.

Challenges and Benefits

BHP faces the challenge of declining ore grades in its operations. Strategies to address this include bridging production gaps and mitigating the impact of the scheduled closure of the Los Colorados plant in 2029.

Chile, which contributes 28% of the global copper supply, stands to benefit significantly from this investment.

Copper plays a vital role in the energy transition due to its use in renewable energy and electric vehicles. These sectors are expected to drive global copper demand up by 70% by 2050.

Economic Impact

BHP's operations represent 27% of Chile's copper production and are estimated to contribute \$9.4 billion to the national economy by the end of fiscal year 2024. This investment is poised to generate employment, drive innovation, and advance development within the mining industry.

BHP's commitment underscores Chile's role as a global copper leader, supporting the demands of the energy transition while ensuring positive economic impacts for the country.

BHP's Local Procurement Program Enters New Phase with Over 1,700 Active Suppliers

Less than a month after transitioning to a new operator, the program continues to strengthen small and medium-sized businesses in the Antofagasta Region and across Chile. Register your business to become a BHP supplier at www.programacompra.cl.

timeline.cl, November 20

Less than a month after BHP's Local Procurement Program began operating under new management, the platform boasts over 1,700 active suppliers and is projected to close the calendar year with purchases of goods and services exceeding \$760 million.

A Simplified Process for Suppliers

In its new phase, the program aims to maintain a streamlined process for providing goods and services to BHP while strengthening its presence in Antofagasta. It continues to offer advantageous conditions, including seven-day payment terms and access to the requirements catalog for BHP's three Chilean operations: Escondida, Spence, and Cerro Colorado.

The program remains open to businesses with annual revenues below 200,000 UF, headquartered in the regions of Antofagasta or Tarapacá. Companies can register for free at www.programacompra.cl to learn about and take advantage of available business opportunities.

Support for Regional and Indigenous SMEs

BHP has emphasized that the Local Procurement Program will remain a strategic platform for supporting regional small and medium-sized enterprises (SMEs) and indigenous businesses. The program played a key role during challenging periods such as the pandemic and will continue to open opportunities in large-scale mining for both current and future entrepreneurs.

SQM Reports Losses of \$524 Million as of September: Falling Lithium Prices Place Pressure on Chile's Fiscal Revenue

The mining company expects further declines in lithium prices, significantly impacting its revenues. However, it maintains a positive outlook for the rest of the decade.

MERCURIO DE SANTIAGO

By Tomás Vergara P.

Lithium prices remain in a slump, directly affecting Chilean mining companies and the country's treasury due to reduced royalty payments.

On Wednesday, Chile's SQM disclosed its financial results for the third quarter of the year, reporting earnings of \$131 million—a steep 73% drop compared to the same period in 2023.

In its financial statements, the mining company attributed the sharp decline in profits to its primary business line: lithium and its derivatives. Revenue from these products has plunged since late 2022.

“The average selling price for the third quarter of 2024 reached approximately \$9,700 per metric ton, a 67.1% decrease compared to the average selling price reported for the third quarter of 2023,” SQM revealed.

Additionally, prices accessed during the third quarter fell around 24% compared to the same period last year, and the downward trend appears to have not yet hit bottom.

“We believe this market trend will continue, and our realized price for the fourth quarter should be lower than that of the third,” the company stated. Despite this, SQM has maintained its production projections for the year at between 190,000 and 195,000 metric tons.

The company managed to partially offset its revenue losses through increased production, which rose 18% to 51,000 tons of lithium in the third quarter. For the first time, this figure includes attributable production from Montt Holland in Australia, accounting for about 900 tons.

Overall, the company posted cumulative losses of \$524 million as of September, a stark contrast to the \$1.813 billion in profits during the same period in 2023. A significant factor behind these losses was a \$1 billion tax adjustment payment to Chile's IRS (SII) reported in the first quarter.

Despite the blow from falling lithium prices, SQM's other business lines collectively accounted for more than 50% of its revenue through September—a shift not seen since 2021.

Pressure on Chile's Treasury

The decline in lithium prices has also reduced state revenue. For instance, SQM reported payments to CORFO (Chile's Economic Development Agency) totaling \$318 million by the end of the third quarter, compared to \$1.728 billion last year. Payments from mining companies like SQM increase in line with lithium prices.

Andrés González, head of mining industry analysis at Plusmining, estimates that if prices don't rebound, these payments will close the year between \$380 million and \$390 million.

“Meanwhile, although Albemarle does not disclose quarterly payments to CORFO, preliminary estimates based on rent, realized prices, and projected production for 2024 suggest figures between \$190 million and \$200 million. Combined, these two firms are expected to contribute around \$570 million to \$590 million,” González said, noting that official figures will be available at year's end.

Earlier in November, Albemarle reported cumulative losses exceeding \$1.1 billion as of September, citing that 25% of global lithium production was not profitable at current prices.

Long-Term Outlook

In a conference call with analysts, SQM CEO Ricardo Ramos remarked that “current market prices are far from equilibrium, given that demand continues to grow at a strong pace, while current prices are significantly below the incentive price required for announced projects by various market players.”

Pablo Hernández, SQM's manager of strategy and development, added that the company expects lithium demand to reach 1.1 million tons this year and about 3 million tons annually by the end of the decade, with an annual growth rate of 16% to 18% over the next five years.

“The main driver of lithium demand growth, of course, is the electric vehicle market,” Hernández said. “Currently, electric vehicles account for about 20% of the market, and we expect this figure to reach 50% by 2030.”

Despite the explosive demand growth, supply has also increased sharply, driving prices down since the second quarter of 2023. González predicts the supply surplus will persist until at least 2027 or 2028.

“During that period, we would expect to see supply growth fail to match demand growth, leading to a progressive deficit and, consequently, higher prices. This shift could happen sooner depending on how incumbents handle prolonged low prices,” González said.

Supporting this view, González noted that several companies—including Albemarle, Arcadium, Pilbara, and Mineral Resources—have suspended operations and rock lithium projects (SQM primarily produces lithium from brine), as these ventures are unprofitable at current prices. If such suspensions persist, prices may rise earlier than industry projections.

“We expect the supply surplus to last at least until 2027 or 2028, at which point supply growth will likely fail to keep up with demand growth.”

Andrés González

HEAD OF MINING INDUSTRY ANALYSIS, PLUSMINING

“Current prices are significantly below the incentive price required for the projects announced by various market players.”

Ricardo Ramos

CEO OF SQM

Lower production costs in the Atacama salt flat give SQM a significant advantage.

Glencore and Ceibo Finalize Agreement to Scale Up New Copper Extraction Technology at Lomas Bayas

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After two years of testing, Glencore Plc has reached an agreement with Chilean mining technology company Ceibo to scale up an innovative leaching technology. This technology enables faster and more cost-effective copper extraction from low-grade sulfides, offering a new alternative for extracting more metal from its lowest-grade operation in Chile: Minera Lomas Bayas, with an ore grade of just 0.25%.

The Swiss-based multinational tested Ceibo's technology at Lomas Bayas, analyzing it at its "Lomas Lab" — the company's innovation and development center — and has now decided to proceed with scaling it up on-site.

Ceibo's leaching process extracts copper from sulfide ores using existing leaching facilities at mining operations. The method accelerates oxidation within the ore through electrochemical reactions, resulting in higher recovery rates and shorter operational cycles.

Ramón Castañeda, General Manager of San Antonio Port, on Chancay

"We are not seeking to reduce opportunities for neighboring countries"

Various companies, including U.S. and Chinese firms, are eyeing the tender for the terminal's expansion.

Diario Financiero, November 21, 2024

By Laura Guzmán

At the beginning of the year, Ramón Castañeda took over as General Manager of the San Antonio Port. His appointment coincides with a strategic transformation period for the company, focused on consolidating its growth through the ambitious Puerto Exterior project.

Castañeda's arrival also comes amid a challenging regional context, with the recent inauguration of Chancay Port in Peru. This development has been considered by some as potential competition for Chilean terminals, particularly regarding transpacific trade.

- Does Chile face a disadvantage with Chancay's inauguration?

Our port development strategy is tailored to the country's needs. The San Antonio Port exists and operates for Chile.

- Do you not see it as a threat, then?

No. Trade in the region is growing, and we are not seeking to reduce opportunities for neighboring countries or harm them. I believe the reverse is also true.

- Are we lagging behind the competition?

Demand and capacity are aligned. Currently, we are in a good position and have no significant issues. We must work to increase capacity with a long-term perspective, which we are already doing.

- There have been discussions about port capacity reaching its limit by 2030. Do you see this as a problem?

San Antonio has a capacity of 2.5 million TEU, and the cargo being handled is around 1.8 million. We still have room. Additionally, there's the expansion project in Valparaíso and Puerto Exterior. It's true that projections indicate capacity will be maxed out by the mid-2030s. There may be some congestion, but we will do everything possible to minimize it.

- Could this affect Chilean trade?

If it happens, we must minimize it as much as possible, ensuring that any issues are limited to relatively short periods and not prolonged.

- Could the interest shown by the United States in the San Antonio Port drag Chilean maritime trade into a commercial conflict between the U.S. and China?

Chile is attractive to investors because we have a neutral policy. We aim to contribute to the development of foreign trade. Chile does not pursue policies to favor or harm anyone.

- Did U.S. interest emerge with Donald Trump's re-election, or does it predate that?

When we received expressions of interest for Puerto Exterior, we saw interest from companies worldwide, including American firms. It is not a new development.

- Have the Chinese also shown interest?

Of course. We have companies from all five continents involved.

Could the tariffs that the U.S. might impose on goods passing through Chancay have consequences?

I don't know; it remains to be seen.

Puerto Exterior

The Puerto Exterior project in San Antonio continues to make steady progress. It has been divided into two phases: the construction of the breakwater and the Maritime Port Terminal.

The first phase involves an estimated investment of \$1.5 billion. Castañeda highlighted key milestones achieved this year, including bilateral agreements with the local community and the initiation of talks with international companies. Additionally, negotiations with banks have been underway to secure the necessary financing. The timeline aims to secure environmental approval by early 2025, with construction beginning in 2026 and operations starting by late 2034.

The second phase of the project will require an investment of \$2.5 billion, with construction scheduled to begin in 2034 and operations commencing in 2036.

Currently, San Antonio Port has a capacity of 2.5 million TEU, which is expected to increase to 6 million TEU with Puerto Exterior.

Infrastructure Investment

In addition to port expansion, significant complementary infrastructure projects are underway.

The first is the Barrancas Intermodal Terminal, developed by EFE, with an estimated investment of \$15 to \$20 million. This terminal will quintuple the current capacity for freight transport by train, increasing from 50,000 to 250,000 boxes annually.

EFE is also working on the Ferroportuario Corridor, a larger-scale project aimed at expanding railway capacity. This corridor, requiring an investment of over \$1 billion, will connect San Antonio with Malloco, enabling up to 40% of Puerto Exterior's cargo to be transported by rail.

In terms of road infrastructure, the Ministry of Public Works (MOP) is developing three key projects to facilitate freight transportation: improvements to Route 66, Route 78, and a third project called the Northern Access to San Antonio. These projects aim to increase road capacity and ensure efficient truck flow to and from the port.

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