Responsabilidad por hecho ajeno y fraude de empleados

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El empleador responde por hecho ajeno (vicarious liability) de los ilícitos cometidos por un empleado en el ejercicio de su trabajo, incluido el fraude, cuando el acto ilícito está tan estrechamente vinculado con la relación laboral que es justo y equitativo hacer responder al empleador.[1] *ByBit* era un caso en que una empleada de una empresa contratista de nóminas defraudó a la propia plataforma de intercambio, por lo que no se planteó la responsabilidad por hecho ajeno. El caso inverso, en que un empleado de una plataforma desvía activos de los clientes, es el más frecuente. Es probable que responda por hecho ajeno la plataforma cuya empleada utilizó su acceso autorizado al sistema de retiradas para robar a los clientes. El acceso se lo confería la relación laboral, y el robo fue un uso indebido de la misma función para la que había sido contratada. La plataforma puede repetir contra la empleada y contra su aseguradora. Las plataformas deben saber que la cobertura de fidelidad (fidelity cover) frente al robo de criptoactivos es cara y de alcance limitado.

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Notas

1. *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] SGCA 22, en [75]–[93], que adopta el test de la conexión estrecha para la responsabilidad por hecho ajeno en Singapur. ↩

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