

LEGAL ASPECTS OF DISMISSALS

Hazrabee bte Gulam Mustaffa

Submitted in partial fulfilment of the requirements for the
Diploma in Law at the MARA Institute of Technology

11st March 1982

Signature of author : °j ^wAexM^et •

Certified by : _____

(Supervisor)

PREFACE

In Industrial Relations, the area of dismissals is not an uncommon one. The majority of trade disputes are due to dismissals and according to the 1978/79 Labour and Manpower Report , in 1978 dismissals constituted 58*2% of all disputes and in 1979, 49.8%. Moreover, also stated in the Report, that of the cases referred to the Industrial Court, the cases referred by the Minister of Labour and Manpower under Sections 20(1) and 26 of the Industrial Relations Act, 1967» comprised major portions. They comprised 50.2% and 55.6% of the total number of cases referred in 1978 and 1979 respectively.

In view of this, there is thus a necessity to look at the legal aspects of dismissals and the connected areas in order to fully understand the nature of dismissals in our Industrial Relations today. My paper is an attempt to discuss the relevant areas in the light of the Employment Ordinance, No: 38 of 1955 and the Industrial Relations **Act, 1967.**

A lot of reference work was carried out in libraries where the purely academic matters were raised. I also interviewed some officers of a trade union in order to get a better picture of the situation.

ABSTRACT

In this paper, I have defined a contract of service, bearing in mind both the statutory definition and the common law definition.

The various methods of termination of employment are discussed touching the position at common law and that under the Employment Ordinance, 1955*

Then I went into the crux of the paper, that of dismissals. The meaning of dismissal is explained using cases and English Law. Then the subject of fair or unfair dismissal was brought up stressing on Section 14 of the 1955 Ordinance, the management prerogatives and victimisation.

Lastly, I outlined the various remedies available to the dismissed employee. There is a common law remedy as well as the statutory remedies. The statutory remedies available as applicable to unionised and non-unionised workmen is highlighted in this paper.

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CHAPTER IContract of Service - Definition

Under Section 2(1) of the Employment Ordinance, 1955 (hereinafter referred to as the 1955 Ordinance), it is provided that a "contract of service" means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract. There is thus an agreement between two parties! & mutual agreement made orally or in writing. This agreement is made between an employer and an employee and with the intention that one person agrees to employ another as an employee and that other also agrees to serve his employer as an employee. In an English case, Ready Mixed Concrete v Ministry of Pensions², Justice MacKenna stated "... I must consider what is meant by a contract of service. A contract of service exists if the following three conditions are fulfilled: (1) The servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill, in the performance of some service for his master. (2) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (3) The other provisions of the contract are consistent with it's being a contract of service"