

LAW OF MEKISSAL IN MALAYSIA

BY

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The majority of trade dispute in Malaysia are to dismissal. In Industrial Relation, the area of dismissal is not an uncommon one. In view of tftis, there is thus a necessity to look at the law of dismissal in Malaysia.

Before the introduction of the Industrial Relation Act 1967) many employees had little or no safeguard against arbitrary dismissal by their employer which were not in hreach of contract. It may he the employer had an internal procedure which required the employer to warn an employee- a right to explain his case before the dismissal or offered him the right to appeal following a dismissal. But the likelihood of such a procedure existing was remote and too many employees were subject to the vagaries of their employer.

The legal concept that the employee should have the right not to be unfairly dismissed from his employment was given statutory form in the Industrial Relation Act, 1967. The Employment Act, 1955 further developed the provision particularly those dealing with remedies for unfair dismissal.

The proble-n of present concern is the grievance of an individual over a dismissal which he or she regards as unjustified.

The difficulty of defining unfair dismissal was an important obstacle which had to be overcome. In the final analysis, a judicial process would have to be given criteria, on which to decide whether or not any particular dismissal had been unfair.

This project paper considers the position of the wrongfully dismissed employee and the statutory protection of the unfairly dismissed employee, his rights and remedies.

In dealing with the reasonableness of the dismissals reported cases are used as a guidance as to the way in which industrial tribunals decide whether the dismissal are justified or not and whether the principle of natural justice is followed .

I would not have been able to complete this paper without the valuable assistance and advice of my supervisor , Mr Murugavell of the Department of Industrial Relation, Kuala Lumpur , the librarians at the ~~MARA~~ Institute of Technology (bangunan tambahan) my colleagues and last but not least to my father for his assistance in financing the typewriter. I wish to thank them all and to say that they all bear no responsibility for my use and abuse of their suggestions .

Industrial Relations Act , 1967

Employment Act , 1955

Trade Union Labour and Relations Act , 1974

CHAPTER I

Difference "between dismissal and termination of contract of service.

In the practice of Industrial Relation , there are different modes by which relationship between the worker and the employer is suspended . Sometimes this relationship is suspended on the initiative of the workers .

Dismissal of an employee is one of the fundamental modes by which the employer and employee relationship stands stagnant . It is distinguishable from termination

In labour law practises , termination of services has a very general significance. The phrase simply meant to say that the services of the employee are brought to an end .

Under common law governing- the relation of employers and employees , an employer is entitled to terminate the services of his employee at any time subject to customary notice unless under a binding contract security of tenure of service is granted . An employer cannot normally be compelled to retain an employee when he does not desire to retain in his employment. Certain statutory provisions have however been made which have considerably altered the Common Law rule governing the relations of an employer and an employee . And under statutory provisions this right has been restricted to a certain extent ,

Termination without any notice at all is known as " summary dismissal" and this entitle the employee to limited