

**Comprehensive Guide to
Unfair Dismissal:
No Reason/
No Legitimate Reason**

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If a worker is dismissed for no reason at all, even if the employment contract stipulates that the company can dismiss for no reason, this dismissal may be unfair.

The common law action of wrongful dismissal requires neither an elucidation of reasons nor proof that the reasons so revealed are valid. Conversely, the statutory action for unfair dismissal is an interrogation into the substantive reasons for the dismissal, the probity thereof and, as a natural corollary, whether the employer's conduct in the dismissal was reasonable.

(Commonwealth Caribbean Employment and Labour Law, Natalie Corthésy and Carla-Anne Harris-Roper, Chapter 6 Pg 220,221)

TD No. 72 of 2000 Union of Commercial and Industrial Workers v El Dorado Consumers Co-operative Society Limited

"The idea still persists in some quarters that it is possible to terminate a worker's employment by merely giving him the required notice under the contract of employment. This was true under the common law but termination of workers by notice alone is insufficient under the Act...In addition, an employer must have an acceptable reason for terminating the worker's employment. Under the common law, the employer had the right to terminate without assigning a reason for the termination. This is not acceptable under the Act. An employer must have a valid reason for dismissal which must be connected with the worker's conduct or capacity to perform the work."

TD No. 140 of 1997 Bank and General Workers' Union v Home Mortgage Bank

HH Khan stated: "We find that the Employer's failure to give such reason or reasons was in breach of the principles of good industrial relations practice. It does not matter that the contract was a short-term contract. The Act's protection applies to all persons who work under contracts of employment, regardless of the duration of the contract. In our opinion, it is just as possible for an employer to dismiss a worker under a short-term contract of employment harshly and oppressively or contrary to the principles of good industrial relations practice as he can in the case of a worker under an indefinite contract of employment. The length of the employment under the contract is of no significance...If an employer dismisses a worker under a short-term contract of employment harshly or oppressively or contrary to the principles of good industrial relations practice, the Court will take the duration of the contract into account for the purpose of assessing the quantum of damages to be paid by the employer, but its short-term character is no defence in such a situation."

GSD TD 277 of 2015 National Union Of Government And Federated Workers Union v Telecom Security Services Limited

It is trite law that no worker should be dismissed from his employment unless there is a valid reason for such termination connected with the capacity or conduct of the Worker based on operational requirements of the undertaking, establishment or service. See ILO Convention 158 Terminate of Employees Convention 1982 Article 4. Indeed the Court is replete with decisions and precedent to that effect.

Employers must be mindful that, irrespective of what may have transpired during the currency of the employment, the termination letter ought to be the reason or reasons the Employer formed the view that the employment relationship ought to come to an end. Within the four corners of the termination letter there ought to be no ambiguity as to the why and on what basis the Employer came to this final decision. It is the requisite medium or vehicle that an employer has to drive home the point to the Worker that they cannot sustain the said employment relationship. Strangely in this instance there are no reasons given in the termination letter of Worker No.1. The Court found as a fact that the termination letter herein was inconsistent with good and proper industrial practices.

Trade Dispute No. 2 of 2001 Banking Insurance and General Workers Union v Hindu Credit Union

One of the best statements of this good industrial relations principle is contained in ILO Convention No. 158 of 1982, the salient parts of which are as follows:

“1. The employment of a worker shall not be terminated unless there is valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

2. The following, inter alia, shall not constitute valid reasons for termination:-

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of laws or regulations or recourse to competent administrative authorities;
- (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (e) absence from work during maternity leave.

3. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

4. The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.”

Note: Legitimate reasons for dismissal (or for ending the employment relationship) include:

If the worker has,

- Been found guilty of gross misconduct or repeatedly being found guilty of misconduct
- Consistently performed poorly
- Been absent from work for a long time because of illness/injury
- Been persistently absent from work because of illness or some other reason

- Been retrenched due to redundancy
- Abandoned his job
- Mutually agreed to a separation/severance

For each of these reasons, there's a specific process to be followed (and if the process isn't followed, the dismissal may be unfair!)

Conclusion:

- ❖ For a dismissal to be fair, it must be for some reason connected to conduct or capability of the worker, and the proper procedure must be followed.
- ❖ An employee cannot be dismissed for no reason; nor can he be dismissed for an illegitimate reason. Whether he is given notice or not, this may be an unfair dismissal.
- ❖ Even if the employment contract stipulates (as most of them do) that the either party can terminate the contract by giving notice (and even if it says that cause isn't required), if the employer gives the employee notice of termination without having a good reason and following the proper process, the dismissal may be unfair.
- ❖ It is also against good industrial relations practice for an employer to dismiss an employee without informing him of the reasons for his dismissal. There ought to be no ambiguity in the termination letter as to the why and on what basis the Employer came to the decision to dismiss.
- ❖ In addition to not being allowed to dismiss a worker for no reason, an employer cannot dismiss a worker for an illegitimate reason such as:
 - being a union member/workers' representative;
 - filing a complaint/bringing a case against the employer;
 - being absent on maternity leave;
 - being temporarily absent from work because of illness or injury; or
 - any reason connected to race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Questions to ask your client to determine if their dismissal may have been unfair:

- Were you dismissed?
- Did you receive a dismissal letter? Or were you verbally dismissed?
- Did your employer inform you of the reasons for your dismissal?
- Did your employer have any legitimate reason to dismiss you? Was the dismissal due to misconduct or poor performance?
- What procedure did they follow before dismissing you? Did they follow any procedure or were you just notified that you were being dismissed?
- How did your employer dismiss you? Did he actually tell you that you were being dismissed? Did he just stop rostering you for duty? Did he not renew your contract? What, if anything, did he say when he dismissed you? Did he give you an opportunity to defend yourself and say why you shouldn't be dismissed before he dismissed you?
- Were you dismissed because you are a union member/workers' representative?
- Were you dismissed because you filed a complaint/brought a case against your employer?

- Were you fired because you were absent on maternity leave?
- Were you fired because you were temporarily absent because of illness/injury?
- Were you dismissed because of your race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, nationality or social origin?

Sources:

1. Case Law

2. Texts:

- Commonwealth Caribbean Employment and Labour Law, Natalie Corthésy and Carla-Anne Harris-Roper
- Labour Law in the Commonwealth Caribbean, The Practice of Good Industrial Relations in the 21st Century, Deborah Thomas-Felix
- Labour Law, Simon Deakin & Gillian S Morris, Sixth Edition,
- Selwyn's Law of Employment, Twentieth Edition, Astra Emir