

The processes related to redundancy and termination play a vital role in the overall success of the organization

Anusha Shalwani

Canadian College Kuwait.

Kuwait City, Kuwait

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Abstract: Redundancy and dismissal are central issues in employment relations because they affect organizational effectiveness, employee wellbeing, and legal risk. This manuscript examines the legal and procedural frameworks governing redundancy and termination, with particular attention to fairness, reasonableness, and employer accountability. It outlines redundancy as a potentially fair reason for dismissal under employment law and discusses its principal causes, including economic decline, technological change, and organizational restructuring. The discussion also distinguishes between wrongful dismissal, unfair dismissal, summary dismissal, and the non-renewal of fixed-term contracts. Emphasis is placed on the importance of meaningful consultation, objective selection criteria, and procedural fairness in redundancy situations. The manuscript further reviews automatically unfair reasons for dismissal, including discrimination, pregnancy, maternity, health and safety activities, and protected statutory rights. Relevant case law is used to illustrate how tribunals assess fairness, particularly in relation to redundancy selection, procedural defects, and employer decision-making. The paper concludes that effective redundancy and dismissal procedures require legal compliance, transparent processes, and careful managerial judgement to balance organizational needs with employee rights.

Keywords: Redundancy, termination, wrongful dismissal, discrimination, summary dismissal, instant dismissal.

1. CONCEPT OF DISMISSAL AND LEGAL FRAMEWORK

Effectively managing the termination of employment improves the organization's commitment to its personnel by keeping the appropriate individuals and avoiding expensive legal disputes associated with wrongful termination (Pilbeam, 2010). Dismissal encompasses the collection of relevant information, a sequence of decision-making processes, and the formulation of informed judgments based on an understanding of the legal framework, principles of equity, and substantial expertise. Redundancy can serve as a potentially valid reason for dismissal, as defined in the Employment Rights Act 1996. Redundancy occurs when an employee's termination is mainly attributable to the employer's decision to discontinue or intend to discontinue the business for which the employee was employed (CORBRIDGE, 2010).

2. CAUSES OF REDUNDANCY

Redundancy can be attributed to four primary factors: structural decline, reductions in economic activity, technological advancements, and reorganization or restructuring. Structural decline within a sector or industry results in diminished demand for the associated product or service, which in turn leads to a decrease in labor demand across all organizations in that sector. For example, the manufacturing sector in the UK and the financial services industry have both faced a general decline since 2009.

Reductions in economic activity can adversely affect sales or income, whether stemming from a broad economic recession impacting all sectors or a specific downturn in areas such as housing construction or the tourism sector.

Technological advancements, whether occurring within an individual organization or across an entire sector, can lead to a decreased need for labor to maintain the same level of output or can change the skill requirements for certain jobs, thereby making some skills obsolete.

The Industrial Relations Act established a restricted property right concerning employment for workers and defined the legal implications of unfair dismissal. The primary regulations regarding dismissal have since been integrated into the Employment Rights Act of 1996, with additional stipulations provided by the Employment Act of 2002. This legislation aims to offer a degree of protection to employees from unjust treatment by employers that results in termination of employment.

3. TYPES OF DISMISSAL

Wrongful dismissal transpires when there is a considerable breach of the employment contract, frequently resulting from insufficient notice periods or a lack of appropriate compensation. The remedy for successful wrongful termination claims is usually limited to a sum that corresponds to the payment due from the moment of wrongful termination until the date the employment would have lawfully concluded.

Dismissal with notice, summary dismissal, and instant dismissal each possess unique consequences. Employees typically have the right to receive sufficient notice from the employer when the contract is being terminated; this is referred to as dismissal with notice.

Summary dismissal takes place when an employee violates a core term of their employment contract, leading to a legal termination without prior notice. It is crucial to understand that instant dismissal, which is frequently confused with summary dismissal, entails immediate termination without a thorough investigation and without following the principles of natural justice. In contrast to summary dismissal, instant dismissal does not require any notice period.

The employer's intention to terminate employment must be clear and unequivocal, as an employee cannot reasonably interpret an ambiguous statement, a dismissive comment, or an unauthorized attempt at dismissal as valid grounds for termination. Agreements to conclude the employment contract do not amount to dismissal unless the employee agrees to the termination with a full understanding of all associated consequences. In cases where there is doubt about the reasonableness of an employee's interpretation of words or actions, it is essential to carry out a comprehensive investigation to ascertain whether the situation represents a dismissal rather than a resignation, thereby ensuring clarity regarding the employee's genuine intentions.

The termination of employment can also occur at the end of a fixed-term contract when it is not renewed. This type of termination is considered lawful if the employer has a valid need for the fixed-term arrangement. Conversely, if the fixed-term contract is employed merely to evade statutory employment rights, the termination at the end of the contract may be viewed as unjustifiable. To ascertain the justification of the termination, the employer is required to show that the employee was properly evaluated for other employment options at the conclusion of the contract.

4. REDUNDANCY AND PROCEDURES AND CONSULTATION

In instances of redundancy, it is imperative for the employer to initiate consultations with the employees, irrespective of how many employees are impacted. The consultation should occur early in the redundancy proposal process, as it is vital for employees and their representatives to receive adequate information and sufficient time to provide feedback. As noted by ACAS (2009), it is recommended that employers incorporate into the consultation process the procedures related to management transfers and downgrading, should these alternatives to redundancy be under consideration. Legal precedents have determined that employers must reveal the business justification for the decision to implement redundancies. This obligation arises from the necessity to consult on potential measures to avert redundancy dismissals, which requires discussions regarding the business decisions that lead to the unavoidable redundancies (CORBRIDGE, 2010).

5. SELECTION FOR REDUNDANCY

The procedure for selecting employees for redundancy frequently results in a multitude of claims regarding unfair dismissal, underscoring the necessity for managers to remain impartial, rational, and unbiased. It is imperative that the criteria for selection are openly discussed, mutually agreed upon during consultations, clearly defined in the redundancy policy, and applied consistently. The application of objective criteria is vital to avert any unjust selection of employees for redundancy. Discrimination based on attributes such as gender, marital status, race, disability, religion or belief, sexual orientation, or

age is deemed unfair and unacceptable. In instances where an employee believes they have been unjustly selected for redundancy, they possess the legal right to contest the decision by submitting a claim to an employment tribunal if the selection process diverges from the agreed-upon criteria or lacks objectivity (CORBRIDGE, 2010).

To qualify for protection against wrongful termination, an individual must first possess employee status under a legitimate employment contract. Before 2006, employees were additionally required to be below the age of 65, or, if applicable, the organization's standard retirement age. Nevertheless, in 2006, in order to adhere to the European Equal Treatment Directive that forbids age discrimination in the workplace, a default retirement age of 65 was instituted, thus making compulsory retirement prior to reaching the age of 65 unlawful.

The case of *Rolls Royce PLC v Unite* offers significant insights. Under a collective agreement, employees earned one point for every year of service based on a measured factor approach. Furthermore, points were awarded for achieving objectives, demonstrating self-motivation, possessing knowledge and expertise, exhibiting versatility, and contributing to the team. The Court of Appeal concluded that employing length of service as a criterion for redundancy selection did not contravene the Employment Equality (Age) Regulations 2006 (CORBRIDGE, 2010).

6. AUTOMATICALLY UNFAIR DISMISSAL

The termination of employment for an impermissible reason will be regarded as fundamentally unjust, and the usual one-year service requirement is generally not relevant in these situations. Instances of potentially impermissible reasons for dismissal encompass those associated with pregnancy or maternity, as well as considerations such as gender, race, disability, age, previous convictions, refusal to work on Sundays, and involvement in health and safety programs. Dismissal on the grounds of pregnancy or related issues is effectively forbidden. This prohibition is applicable throughout the entire period of pregnancy, during maternity leave, and upon the employee's return from maternity leave. Additionally, it is deemed unjust to choose an employee for redundancy solely based on their pregnancy or maternity leave status.

Attempts to utilize a theoretical analogy involving a 'pregnant man' to rationalize the termination of employment due to an employee's unavailability for work have been unsuccessful in legal precedents such as *Webb v EMO* [1995] IRLR 645 and *Tele Danmark v Brandt-Neilsen* [2001] IDS Brief 696, ECJ. This indicates that it may be deemed unlawful to refuse employment to a pregnant woman or a woman of childbearing age based solely on the potential for pregnancy.

The Sex Discrimination Act 1975 and the Race Relations Act 1976, as amended, effectively prohibit dismissal on grounds of sex, marital status, race, or ethnic origin. Furthermore, protections against discrimination based on sexual orientation and religion or belief were added in 2003, with age being included in 2006. Indirect discrimination may arise when employees are selected for redundancy due to their part-time employment status, as this approach can disproportionately impact women, who constitute a considerable segment of part-time workers. Moreover, terminations that are swayed by the pressure from coworkers based on an individual's gender, marital status, race, or ethnic origin are considered unjustifiable. Employers are now obligated to demonstrate that unlawful discrimination based on gender or race did not take place. In addition, dismissals associated with a disability, as specified in the Disability Discrimination Act 1995, are also subject to examination.

As stipulated by the Sunday Trading Act of 1994, which was later consolidated in the Employment Rights Act of 1996, employees designated as 'protected workers' possess the right to decline work on Sundays without the risk of unfair dismissal. Employers are expressly forbidden from terminating employees for carrying out legitimate health and safety duties or for voicing legitimate health and safety issues. In general, it is deemed unjust to dismiss an employee for ceasing work or for taking essential safety precautions based on a genuine belief that they are confronted with serious and immediate danger.

7. FAIRNESS AND DISMISSAL DECISIONS

The Working Time Regulations (1998) provide employees with the right to paid leave, rest breaks, and limit the maximum number of hours they are permitted to work each week. Employees may be subject to unfair dismissal if they do not comply with an employer's directive that contravenes these regulations. As per the Employment Rights Act (ERA) of 1996, an employee may be lawfully terminated for reasons such as misconduct, incapacity, redundancy, a statutory prohibition on employment, or any other significant reason. For a dismissal to be considered fair, it must not only be based on a legitimate reason but also be regarded as reasonable under the specific circumstances.

For a dismissal to be considered fair, an employer must provide evidence that it was founded on one of the five justifiable reasons. This principle underpins the defense against allegations of unfair dismissal. Even if a dismissal is based on a fair rationale, the essential issue of its fairness depends on whether the employer's conduct was 'reasonable in the circumstances.' The ACAS guide regarding workplace discipline and grievances, in conjunction with tribunal decisions, recognizes that elements such as the organization's size, the type of work being carried out, and the resources at hand play a crucial role in evaluating the reasonableness of the situation.

Procedural fairness involves a thorough investigation, a formal hearing, the opportunity for an employee to articulate their perspective, the right to representation, and the possibility of an appeal. This principle was notably emphasized in the *Polkey v A E Dayton Services* case ([1987] IRLR 503, in which a dismissal was considered unfair due to procedural deficiencies.

8. CONTEMPORARY PRACTICES IN MANAGING DISMISSAL

It is crucial to differentiate between misconduct and gross misconduct. Misconduct that does not reach the level of gross may not warrant immediate termination until the disciplinary procedure has been finalized and can be managed progressively through that procedure. Conversely, gross misconduct may constitute a fundamental violation of the contract and can justify immediate termination.

The changing demands for skills and knowledge can result in an employee, who once fulfilled performance standards, becoming ineffective. When the requirements of a role evolve while the fundamental duties stay the same, and the employee does not adjust accordingly, the employer is entitled to safeguard the organization from possible adverse effects. As a result, this scenario may warrant the justifiable termination of the employee due to their failure to perform. It is crucial to recognize that academic, technical, or professional credentials may be vital for successful job execution, and these qualifications ought to be determined before the commencement of employment.

An employee facing health challenges might have the opportunity to return to work on a part-time schedule or assume alternative responsibilities to facilitate their reintegration. Dismissal due to incapacity stemming from a disability is not automatically regarded as unjust; however, employers are required to furnish legitimate justifications for such actions. If an employee cannot fulfill the essential functions of their position, even with reasonable accommodations, and there are no viable contractual modifications or alternative roles accessible, then termination could be considered suitable.

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For a termination to be deemed justifiable, the employer is required to present a legitimate rationale for the decision, engage in dialogue with the employee, consider alternatives to termination, and facilitate any necessary and feasible adjustments through suitable time frames, training, compensation, and various forms of support. The assessment of SOSR entails evaluating whether the reasons for termination are legitimate, whether all alternatives to termination have been explored, and whether the termination is a course of action that a reasonable employee would undertake. Should the termination be classified as unjust, potential remedies may include reinstatement, which refers to re-employment in the same position with uninterrupted service, or re-engagement, which involves re-employment in a different yet comparable role under a new contract.

Pursuing a competitive advantage or striving for enhanced productivity may necessitate a reduction in the workforce for specific tasks, potentially resulting in job losses for some employees. This situation could involve either a reduction in the number of required workers or a transformation of the workforce's skill set by dismissing those who do not possess the requisite skills and hiring new employees who do (CORBRIDGE, 2010).

Performance Improvement Plans: When an employee fails to meet expectations, it is common for managers and HR to place them on improvement plans. However, in situations where the intention is to prompt an employee to resign, some organizations utilize these plans to create obstacles to the employee's success. Cynthia Shapiro, a career coach and former HR director in the United States, observes that this practice is prevalent. "They impose unattainable deadlines, then assert that you are not achieving your objectives, creating the impression that you are underperforming." Mike Phipps from the London consultancy Politics at Work indicates that similar tactics are employed in the UK. "I frequently hear about

companies establishing unrealistic targets that employees are unable to achieve, thereby ensuring that the performance management process is set up for failure." He further notes that when employees contest these strategies and contemplate legal recourse, employers often opt for financial settlements. Peter Davis (a pseudonym), a lecturer in the UK, recounts his experience of being managed out. He was presented with two choices: to depart with a financial settlement and a reference or to undergo a performance process that he would inevitably not succeed in. The Big chill: This approach seeks to foster a negative environment for the employee. As stated by Ms. Shapiro, it can be considered "the most psychologically harmful" method to persuade an individual to depart. "They may host a celebratory dinner and not extend an invitation to you, or they might omit you from meetings." This frigid treatment can be nuanced and challenging for the employee to confront without experiencing feelings of paranoia (Wiggins, Mar 16, 2017).

9. CONCLUSION

The analysis highlights that dismissal decisions are rarely judged solely on their stated rationale. Employment tribunals place substantial emphasis on the reasonableness of the employer's conduct, the fairness of the procedures followed, and compliance with statutory protections against discrimination and automatically unfair dismissal. Case law illustrates that even where redundancy or misconduct is established, procedural deficiencies—such as inadequate consultation, biased selection criteria, or lack of investigation—can render a dismissal unfair.

In conclusion, effective management of redundancy and dismissal demands more than legal compliance alone. It requires transparent decision-making, ethical leadership, and informed managerial judgement. Organizations that adopt fair, consistent, and compassionate approaches are better positioned to maintain employee trust, reduce litigation risk, and uphold long-term organizational effectiveness in an evolving employment landscape.

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