REPORTS AND INQUIRIES

Dismissal Procedures

V : United Kingdom [1]

General Principles

Statutory regulation of dismissal procedures is virtually unknown in the United Kingdom.[2] The legal basis of the British system in this regard is freedom of contract. Hence, the law will take into consideration only the express or implied terms of the contract of employment or, as it is more frequently designated, the contract of service. This does not necessarily mean, however, that by virtue of possible inequality of bargaining power between the individual employee and the employer the former is unprotected in the employment relationship. Protection from arbitrary, summary or unjustified dismissal is afforded by the precedential influences of the common law in conjunction with its recognition of customs and usages, by the presence of trade unions, by voluntary adherence to the terms of collective bargaining agreements, and by traditional procedures espoused by the majority of employers.

This article will consider successively the common law strictures, including the role of custom and usage ; the general effect of collective agreements on the common law concept of the contract of employment and union pressures affecting dismissal policies pursued by employers ; redundancy practices, both collectively negotiated and unilateral on the part of the employer ; special treatment afforded in certain situations or to certain categories of employees ; the avenues open to employees or unions to contest dismissals ; and, finally, the position of the dismissed employee.

Common Law and the Contract of Employment

An inquiry into dismissal procedures in the United Kingdom logically commences with the common law concept of the individual

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[1] For the preceding articles in this series, dealing respectively with France, the United States, the U.S.S.R. and the Federal Republic of Germany, see Vol. LXXIX, No. 6, June 1959, and Vol. LXXX, Nos. 1, 2 and 3, July, Aug. and Sep. 1959.

[2] An exception is the Dock Workers (Regulation of Employment) Scheme under the provisions of which employees can be subjected to disciplinary sanction, including dismissal, for industrial misconduct only by action of a bipartite local dock labour board, subject to review by the bipartite National Board. The National Board has an independent chairman appointed by the Minister of Labour. Schedule to Dock Workers (Regulation of Employment) Order, 1947, S.R. & O. 1947, made under section 2 of Dock Workers (Regulation of Employment) Act, 1946, 9 and 10 Geo. VI, C.22. See A. Flanders and H. A. Clegg : *The System of Industrial Relations in Great Britain* (Oxford, Basil Blackwell, 1954), pp. 63-64.

contract of employment. To this extent it should be noted that, legally speaking, a contract of employment is subjected to the same general principles as other contracts.[1] However, while most commercial contracts are relatively detailed, in the case of the vast majority of workers express provisions of an employment contract, with the possible exception of wages and hours, are very rarely formalised or discussed and even more rarely noted in writing.[2] This is especially true of provisions relating to duration and termination.[3] Nevertheless, at any time when an employment relationship is entered into a contract of employment normally exists. And the common law has imposed certain implied conditions in such contracts.

If the parties have expressly agreed to a fixed duration for the contract, then a valid dismissal during its term can obtain only in the event of a material breach by the employee of his express or implied obligations under the contract.[4] Inasmuch as such breaches also justify a summary dismissal where a contract not of a fixed duration is in question, they will be discussed below. It should be added that an employer may, by contract, reserve the right to instant dismissal of an employee at his pleasure and for any reason, or no reason, whatsoever.[5]

Duration of Contract of Employment and Notice

With regard to the contract term, there early grew up in the common law a presumption that a hiring for an indefinite or unspecified period was to be construed as a hiring for a year.[6] However, this presumption has become so easily rebuttable that its present vitality, if any, is highly questionable.[7] For instance, in some cases, it may be rebutted simply by the fact that pay periods are shorter than one year.[8]

The common law, with regard to those contracts of employment that mention no period of notice and which do not specifically provide that no notice is necessary, will imply or presume that the parties intended a " reasonable " period.[9] Hence, where the contract is silent on the point, the nature of the employment, the duration of the pay periods (weekly, monthly, etc.) and, above all, the custom in the locality or trade will be looked to by a court in determining what is a reasonable period of notice.[10] Where a custom regarding notice has not been judicially noted

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[1] See P. R. BATT : *The Law of Master and Servant*, 4th edition (London, Pitman, 1950), p. 41. " The law as to employer and workman is for the most part the general law of contracts as applied to this particular relationship. Apart from legislation, employer and workman are just two persons who have made a bargain which the law will enforce." (F. TILLYARD : *The Worker and the State*, 3rd edition (London, Routledge, 1948), p. 3.)

[2] " This ' contract of employment ' which looms so large in the thinking of lawyers is often almost invisible to the naked eye of the layman." FLANDERS and CLEGG, op. cit., p. 47. See also TILLYARD, op. cit., p. 3.

[3] See BATT, op. cit., p. 51.

[4] See W. MANSFIELD COOPER : *Outlines of Industrial Law*, 2nd edition (London, Butterworth, 1954), pp. 41, 66-71 ; also BATT, op. cit., p. 60.

[5] See BATT, op. cit., p. 190.

[6] Ibid., pp. 51-52 ; also MANSFIELD COOPER, op. cit., p. 47.

[7] See BATT, op. cit., p. 52 ; cf. MANSFIELD COOPER, op. cit., p. 47.

[8] See A. S. DIAMOND : *The Law of Master and Servant*, 2nd edition (London, Stevens, 1946), pp. 174-175.

[9] See BATT, op. cit., pp. 51, 54-55 ; also DIAMOND, op. cit., pp. 181-182.

[10] See BATT, op. cit., pp. 15-16, 50-51. See also DIAMOND, op. cit., Appendix 3 for court decisions on notice required in specific cases, by various trades and professions. Cf. TILLYARD, op. cit., p. 9.

by the courts (i.e. generally recognised over a long period by the courts), such custom must be strictly proved as a question of fact.[1] Further, courts have generally held that the higher the position and the larger the salary (and, sometimes, the longer the period between wage or salary payments) the longer must be the period of notice.[2] But it is important to remember that this will obtain only in default of agreement by the parties to the contrary.[3]

Summary Dismissal

Summary dismissal, i.e. dismissal without notice, can obtain only where there is a material breach by the employee of the express or implied terms of the employment contract. Otherwise stated, a summary dismissal may always be exercised when an employee has failed substantially to carry out the obligations which his service involves.[4] The principal breaches are as follows [5]:

(a) Wilful disobedience of a lawful or justifiable order. And this is true even if the order may be unreasonable in the given circumstances, if the employer is entitled to give such an order under the contract of employment. However, orders subjecting the employee to undue or unnecessary risks or danger, such as were not reasonably contemplated at the time the employment relationship was entered into, are not lawful or justifiable.

(b) Neglect or carelessness. As an isolated occurrence these will not usually justify dismissal. However, habitual or serious neglect or carelessness in appropriate cases could constitute a material breach justifying dismissal.

(c) Positive acts of misconduct which are inconsistent with the due and faithful discharge by an employee of the duties of his services. For example, such acts would include dishonesty, breach of confidence (revealing company secrets and other acts prejudicial to the employer's interest), insubordination or promoting insubordination, insolence and violence. Of course, with regard to some of these acts, a single occurrence might not be sufficient. No fixed rule can be laid down regarding misconduct. It is a question of degree in each individual case. And the misconduct must be such as interferes with and prejudices the safe and proper conduct of the employer's business.

(d) Misconduct outside service which casts a reflection either on the effectiveness or utility of the employee to the business or which reasonably provokes a loss of confidence in the employee (e.g. dishonesty).

(e) Incompetence. However, proof may often present serious difficulties, the employer having to prove what the established standard is and then to show that the employee has consistently or repeatedly failed to meet this standard.

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[1] See BATT, op. cit., p. 56. For example, it has been judicially noted that the customary period of notice for domestic servants is one month. Ibid., pp. 15-16, 56. See also DIAMOND, op. cit., pp. 181-182.

[2] See BATT, op. cit., p. 58.

[3] Ibid., p. 190. Also TILLYARD, op. cit., pp. 7, 11.

[4] See BATT, op. cit., p. 60.

[5] Ibid., pp. 60-75 and 189-190; also DIAMOND, op. cit., pp. 185 ff. With regard to illness see TILLYARD, op. cit., p. 12.

(f) Illness. The following facts would be taken into account : the nature of the employment, the length of employment, and the duration of the disability. As an extreme example, if the illness were such that the employee would never be able to resume his duties and a replacement is immediately needed, the employer may terminate the contract. In other words, the illness must be such as would frustrate the object of the employment. Hence, a short illness would not usually suffice.

With regard to summary dismissal, it should be noted that the employer's condonation of a material breach by the employee of his obligations under the employment contract or an implied condonation by retaining the employee after becoming aware of the breach will be construed as a waiver of the employer's right to dismiss.[1] Thus the employer may not continually hold the fact of a breach over the employee's head.

Finally, an employer may summarily dismiss an employee even where a material breach has not occurred if pay in lieu of notice is afforded.[2]

* * *

In summarising the above discussion it may be stated generally that the common law requires : *(a)* the observance of the contractually prescribed period of notice or, in the absence of contractual prescription, reasonable notice, prior to dismissal under a contract of indeterminate duration, or *(b)* that there be a material breach by the employee of the employment contract prior to summary dismissal under a contract of indeterminate duration or prior to any dismissal under a fixed-term contract.

The Influence of Trade Unions and Collective Bargaining Agreements on Dismissal Practices and Procedures

Detailed dismissal procedures are not frequently found in British collective bargaining agreements. Where dismissal is mentioned, reference is usually made only to the period of notice that must be given in dismissing employees. For example—

> The contract of service between the Board and the employee may be terminated by seven days' notice by either party, except in the case of serious misconduct, in which case the contract of service may be terminated forthwith and without notice.[3]

* * *

> During the first six working days of employment, termination of service shall be upon the tendering of two hours' notice by either employer or workman, such notice to expire at the end of the normal working day. Thereafter, termination of service shall be upon the tendering of two hours' notice by either employer or workman, such notice to expire at the normal finishing time on Fridays. Provided always—
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> . . . . . .
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> (iii) that in cases of misconduct an operative may be summarily discharged at any time.[4]

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[1] See Batt, op. cit., p. 77.

[2] Ibid., pp. 190-191.

[3] Agreement Relating to Wages and Working Conditions of Building and Civil Engineering Manual Workers in the Service of Electricity Boards, 1956, p. 11.

[4] National Working Rules for the Building Industry, 1956, p. 21.

Any worker who has had continuous employment for four weeks or more shall . . . receive a fortnight's notice of termination of employment.[1]

* * *

One week's notice shall be given . . . on the last working day of the week. Subject to the usual procedure, the employer shall have the right to dismiss an employee without notice in cases of serious industrial misconduct.[2]

* * *

However, this ostensible dearth of dismissal procedures must be viewed in the context of a growing number of collectively bargained and unilateral procedures uniquely designed to meet redundancy problems. This subject is discussed separately below.

Collective agreements are normally not themselves legally binding on the parties.[3] Nevertheless, the existence of a provision concerning notice in a collective agreement is of legal significance in that it is an indication of the custom in the industry or undertaking. Hence it would be looked upon by a court as an implied condition of the individual contract of employment.[4]

A very important brake on arbitrary or discretionary dismissal is the very presence of a union. In many industries and undertakings the employer's power to dismiss is restrained by fear of repercussions in the form of strikes or other economic pressures on the part of the union or unions.[5]

It also sometimes happens that shop stewards committees in an undertaking (often comprised of stewards from different unions representing employees in the undertaking) will reach agreement with the employer on subjects, such as dismissal procedures, that are normally outside the narrow limits of the national or industrial collective bargaining agreements. These arrangements are usually informal and rarely in writing.

As can be seen from the above discussion the mandates and strictures of the common law of the contract of service have been rendered somewhat academic by collective bargaining and the increase in the strength of the trade unions.[6] The prevalence of formal and informal procedures for the settlement of disputes (dealt with below) is another important factor in this regard.

Redundancy Practices

In recent years much attention has been devoted, in the United Kingdom, to redundancy problems. Altough the term "redundancy" is variously defined, it generally refers to an excess of manpower resulting either from mechanisation or rationalisation, or from a decrease in

[1] Lithographers' Agreement (National), 1956, p. 3.

[2] Evershed Mule Spinning List and Current Agreements, 1957, p. 63.

[3] Flanders and Clegg, op. cit., pp. 56-57.

[4] Ibid., pp. 58-59.

[5] Ibid., p. 320.

[6] "While there exists, in fact, a widespread system of workers' representation through shop stewards and works councils, and while, in fact, the workshop or factory community is very far from being an 'absolute monarchy', the law still reflects a state of affairs which has long ceased to be the norm of practical life." Flanders and Clegg, op. cit., p. 50.

business activity.[1] The emphasis concentrated on this problem has led to the adoption, either unilaterally by employers or through collective negotiation, of a good number of formalised policies and procedures.[2]

The bulk of existing redundancy plans have been drafted with reference to a single undertaking.[3] However, there are in existence some plans that are industry-wide, most of them having been drawn up by representative bodies of employers and employees. Notable among these is the cotton industry scheme which was adopted by the relevant workers' and employers' organisations as a prerequisite to the government-sponsored reorganisation of the industry.[4] All industry in the nationalised sector is subject to redundancy plans.

Consultation.

There does not generally seem to be widespread provision for consultation between management and unions or employee groups immediately prior to implementation of a predetermined redundancy policy. Where the policy is a negotiated one, then of course there will have been consultation with the union or unions concerned before its adoption, as there may also have been even in the case of a policy unilaterally adopted by the employer.[5]

However, consultation before dismissal is provided for in some redundancy policies. In certain instances this consultation may be directed at measures to forestall or minimise redundancy ; or discussion with the unions may be of a more general nature and encompass the application of the predetermined policy. For example—

> Workers' representatives will be informed of the redundancy and of the reasons for it. . . . Workers' representatives shall receive a copy of the list of employees to be dismissed and may request discussion on it.[6]
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> * * *
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> If dismissals become unavoidable, management will decide upon the members to be dismissed and will inform a meeting of the Shop Stewards, attended also by a Union Official, accordingly. A week will then be allowed for discussion and investigation before the issue of notices to individuals.[7]
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> * * *
>
> It is accepted by the Company that when [redundancy] arises there would be consultation with appropriate Signatory Unions. While it may not always be practicable to consult prior to a decision, the Company accepts the principle of consultation at the earliest practicable moment.[8]
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[1] See Acton Society Trust: *Redundancy, A Survey of Problems and Practices* (London, 1958), pp. 1, 6-9. Redundancy has also been simply defined as " employees surplus to requirements ".

[2] It is probable that predetermined redundancy policies exist in somewhat less than one-third of the industrial firms in the United Kingdom.

[3] See FLANDERS and CLEGG, op. cit., pp. 303-304.

[4] See *The Times* (London), 20 May 1959, p. 10 ; also *Parliamentary Debates* (Hansard), House of Commons, Vol. 609, No. 151, 21 July 1959, pp. 1196-1208, and Vol. 609, No. 152, 22 July 1959, pp. 1209-1230.

[5] See A. B. BADGER : *Man in Employment* (London, A. Barker, 1958), p. 250.

[6] Ministry of Labour and National Service : *Positive Employment Policies* (1958), pp. 34-35 (a firm of coachbuilders).

[7] Ibid., p. 35 (an engineering firm).

[8] *Protection of Employment* (redundancy plan of Imperial Chemical Industries, Ltd.), p. 4.

In any case where reductions in salaried staff are contemplated, the Railways agree there will be full consultation with the staff representatives at all levels....[1]

Alternatives to Dismissal under Redundancy Procedures

In probably somewhat less than half of redundancy policies provision is made for measures to avoid or postpone the need to dismiss employees when a siutation of redundancy arises or is anticipated. The extent of redundancy may be reduced by stopping overtime and curtailing recruitment, or by making internal transfers to vacancies in another part of the undertaking or business. Elimination of subcontracting work to other firms is also sometimes considered. Work-sharing through short-time working is frequently used as a temporary measure.[2]

The management will make every endeavour to provide alternative work by means of transfers wherever practicable, by withdrawing subcontracted work where it can conveniently be carried out by the department concerned, by stopping overtime in the section experiencing redundancy, and by placing an embargo on recruitment of new labour until all possible transfers have been made.[3]

* * *

. . . The Company will arrange suitable alternative employment elsewhere within the Company whenever this is practicable.[4]

* * *

. . . Management will try to avoid the laying-off of employees where possible by the cancellation of subcontracts and stopping all but essential overtime. In cases where redundancy affects a particular section the Company will try to transfer workers to other jobs, paying them the wage appropriate to the new job, providing that this is acceptable to the Trade Unions concerned.[5]

Selection of Employees to Be Dismissed

The general principle that is usually found in most redundancy plans with regard to selection of employees to be dismissed is " last in, first out ".[6] However, the application of this seniority rule, especially in private industry, is frequently modified by combining seniority with efficiency and the needs of the business.[7] Where practicable other factors are often taken into account, among which might be some or all of the following [8] :

(1) Part-time workers may be among the first to be dismissed. The reasoning here is that there is less of a personal need, that they are in a position more easily to find alternative employment and that their dismissal will cause less of a shock to the undertaking.

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[1] National Union of Railwaymen : *Rates of Pay and Conditions of Service* (looseleaf), section P, p. 11.

[2] See BADGER, op. cit., p. 251.

[3] *Positive Employment Policies*, op. cit., p. 35 (a firm of coachbuilders).

[4] *Protection of Employment*, op. cit., p. 4.

[5] *Positive Employment Policies*, op. cit., p. 35 (an engineering firm).

[6] See BADGER, op. cit., p. 247. Cf. Acton Society Trust, op. cit., p. 33.

[7] A recent study of 96 redundancy plans in private firms indicates that 46 gave seniority as their first consideration while 43 gave efficiency. See Acton Society Trust, op. cit., p. 32.

[8] See BADGER, op. cit., pp. 247-250.

(2) Married women whose husbands are gainfully employed may similarly enjoy less protection.

(3) Temporary employees, since they enter into the employment relationship with knowledge that the relationship is not permanent, may be dismissed before regular employees.

(4) Older employees of pensionable age may be retired, inasmuch as they will be eligible for an immediate income.

(5) Foreign nationals will sometimes be dismissed before seniority rules (last in, first out) are applied.

(6) Key workers and staff employees may sometimes be retained regardless of their seniority.

(7) Certain employees have legal rights to be retained in employment. Hence seniority cannot be applied in their case. For example, the law requires that a certain percentage of disabled persons be employed in an undertaking. And, with apprentices, the employer may be legally bound by the indenture of apprenticeship not to dismiss them.

Although the unit within which seniority will operate (e.g. the department, plant or other unit) is not often mentioned specifically, it is inherent in the definition of business needs or production requirements set out in the redundancy plan.[1]

Some examples of these procedures follow :

The selection of employees to be dismissed will be based on the following four factors, to be considered in the order stated : (i) requirements of production ; (ii) efficiency ; (iii) length of service ; (iv) domestic responsibilities or other relevant factors.[2]

* * *

Management will select workers for dismissal primarily on the basis of length of service, but with due regard to efficiency.[3]

* * *

The Company will continue to follow the policy . . . of discharge on the basis of seniority, other things being equal.[4]

* * *

Employees shall be selected for dismissal with regard to the principle of " last in—first out ", but this is applied subject to the right to retain highly efficient and key workers, hardship cases, registered disabled persons, and those having legal rights to continued employment.[5]

* * *

(a) *Basic Rule.*

" Last in, first out " all other things being equal, is considered to be the only fair basis of agreement, and this general rule will be applied both departmentally and to the Works as a whole. . . .

. . . . . .

[1] Problems involved in the choice of seniority unit are discussed in Acton Society Trust, op. cit., p. 35.

[2] *Positive Employment Policies*, op. cit., p. 33 (an electrical engineering firm).

[3] Ibid., p. 35 (an engineering firm).

[4] *Protection of Employment*, op. cit., p. 5.

[5] *Positive Employment Policies*, op. cit., p. 36 (civil air transport).

(c) *Modification of the Rule.*

Modifications to the basic rule would be made only if—

1. Production would be severely hampered by its rigid application. . . .
2. It is agreed by management, trade union and all persons affected that it should be modified in particular cases.

. . . . . .

(d) *Application of Release.*

. . . . . .

3. When everything possible has been done to absorb anyone affected by redundancy the order of application of release would be as follows :
   (a) part-time workers . . . ;
   (b) employees of pensionable age . . . ;
   (c) the " last in, first out " principle would then apply . . . .[1]

Notice

In the absence of any provision regarding notice in the redundancy plan the notice requirements either of the individual contract of employment or of the collective bargaining agreement would be in force. But redundancy policies do, as a matter of fact, frequently contain such notice provisions.[2]

The notice periods envisaged appear to vary greatly ; sometimes they are related to length of service and there seems to be a definite trend towards the provision of longer notice. Sometimes extended periods of notice are given in lieu of redundancy or severance allowances.[3] For certain companies the length of notice is used as a basis for a form of disguised compensation, employees being paid for the period of notice even though they do not work during it. Another procedure is to afford a rather long period of warning during which an employee may be declared redundant and given a further period of notice.

In the event of a redundancy due to a job, department, factory or firm closing down, operatives concerned shall be entitled to one month's notice or wages in lieu. . . .[4]

* * *

. . . Employees . . . who become redundant . . . shall receive notice as follows : [One week minimum for one year's service or less to ten weeks for more than 30 years' service].[5]

* * *

In cases of redundancy the Company accepts the principle of giving as long a warning as practicable, and . . . undertakes to give formal notice of termination of employment on the following basis :

after one year's service, two weeks' notice ;
after three years' service, four weeks' notice ;
after five years' service, six weeks' notice ;
after 10 years' service, nine weeks' notice ;
after 15 years' service or more, 12 weeks' notice.[6]

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[1] *Planning Ahead* (redundancy plan of the Yorkshire Copper Works Ltd., 1956), pp. 6-7.

[2] See BADGER, op. cit., pp. 250-251.

[3] See Acton Society Trust, op. cit., p. 33 ; and BADGER, op. cit., p. 250.

[4] National Joint Industrial Council for the Hosiery Trade, Redundancy Agreement, 1958.

[5] National Joint Industrial Council for the Cement Manufacturing Industry, Redundancy Agreement, 1958.

[6] *Protection of Employment*, op. cit., pp. 5-6.

Every employee will be given at least one week's warning that he is to be made redundant, but he will not at that time be given formal notice. On the date when his services are to be terminated he will be given money in lieu of notice. . . . The notice to which an employee is entitled varies according to grade and length of service. Hourly paid employees receive from one week's to ten weeks' pay, weekly paid from one week's to 12 weeks' pay, and monthly paid from one month's to six months' pay. Twenty or more years' service qualifies for the maximum grant in each category.[1]

Severance Payments

Many redundancy plans provide for some form of money allowance to employees with a minimum number of years of service who are dismissed as a result of redundancy.[2] Provisions for such allowance vary so widely that it would be impossible to make any general comment as to their amount and nature.[3] They may vary both according to length of service and the kind of job held by the affected employee. On the other hand, there may be a given sum for all affected employees regardless of length of service or the nature of the job. Sometimes there is interdependence between severance payments and public unemployment benefits. Moreover, it is sometimes impossible to distinguish severance payments from the payments in lieu of notice discussed above.

6. Compensation in accordance with clause 9 hereof shall be payable to persons rendered redundant . . . provided they have been employed in the coal-mining industry amounting in all to not less than three years.

. . . . . .

9. The compensation payable under this scheme shall be at the following weekly rates :

surface workers	£1 13s. 8d.
underground workers	£2 3s. 8d.

and shall be payable to persons of the classes mentioned . . . so long as they maintain registration at an employment exchange or are in receipt of a sickness benefit, and until—

(a) they accept other employment either within or outside the coal-mining industry ; . . .

or a period of 26 weeks has elapsed since the termination of their employment with the Board, whichever first occurs.[4]

* * *

Unemployment pay . . . to be made up to an amount not exceeding two-thirds of full average earnings for a period of six weeks or until suitable employment has been offered by the Ministry of Labour, whichever is less. . . . This payment, which will apply only to employees with at least 12 months' service with the company, will be conditional upon compliance with the National Assurance Regulation.[5]

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[1] *Positive Employment Policies*, op. cit., p. 33 (an electrical engineering firm).

[2] See Acton Society Trust, op. cit., pp. 35-39 ; also BADGER, op. cit., p. 250.

[3] See Acton Society Trust, op. cit., pp. 35-36.

[4] National Coal Board : *Memorandum of Agreements, etc.*, Part III, 1948, pp. 402-403, as renewed, ibid., Part VIII, 1953, p. 684.

[5] *Planning Ahead*, op. cit., p. 12.

In addition, *ex gratia* payments will be made to redundant adult male workers with over two years' service, ranging from a week's pay for employees with under six years' service to 12 weeks' pay for those with 40 years' service or more. Employees aged 50 or over (45 in the case of women) with at least 15 years' service, are guaranteed at least seven weeks' pay in addition to notice.[1]

* * *

. . . For cases where other employment is not found by the time the period of notice has expired, a resettlement allowance—subject to the conditions below—will be payable to employees with three years' or more service. . . :

After	3	years'	service	3	weeks'	resettlement	allowance
,,	4	,,	,,	4	,,	,,	,,
,,	5	,,	,,	5	,,	,,	,,
,,	6	,,	,,	6	,,	,,	,,
,,	7	,,	,,	7	,,	,,	,,
,,	8	,,	,,	8	,,	,,	,,
,,	9	,,	,,	9	,,	,,	,,
,,	10	,,	,, or more	10	weeks'	,,	,,

The duration would continue until other employment is found or until the entitlement period is exhausted, whichever is shorter.

The weekly amount . . . will be on the basis of one-third of the employee's plain time rate . . . for his normal working week. . . .[2]

An interesting variation on severance payments is found in the above-mentioned cotton industry plan.[3] In this plan compensation is based solely upon the age of the affected employee. The scale is calculated on the earnings of the individual for a normal week starting at the equivalent of one week's wages at the age of 21 and rising to the equivalent of 30 weeks' wages for employees aged 65 and over.

Re-engagement

In what probably amounts to rather less than half of redundancy policies attention is given to the question of possible re-engagement of dismissed employees. Generally this takes the form of a promise or commitment by the management to offer jobs to such employees before recruiting others.

Where such provisions exist, they sometimes expressly provide that upon re-engagement, the re-engaged employee's service with the company will be considered as continuous.

Conversely [to dismissal], the principle of " last out, first in " will, operate where work increases again and people can be re-engaged. That is, a man declared redundant has the right of reinstatement based on length of service when the work position improves, and again, the principle will apply to the works as a whole.[4]

* * *

[1] *Positive Employment Policies*, op. cit., p. 36 (an engineering firm).

[2] *Protection of Employment*, op. cit., pp. 6-9. The allowance is not permitted to be in excess of the amount which legally can be paid without affecting entitlement to state unemployment benefits ; employees must register with an employment exchange and be eligible to receive state benefits. Finally, *ex gratia* lump-sum payments continue to be available to redundant employees with ten or more years' service. Ibid., p. 9.

[3] See footnote 4 on p. 352 above.

[4] *Planning Ahead*, op. cit., p. 6.

When work is again available, redundant employees shall be considered before new labour is engaged.[1]

* * *

A man who has been discharged [under the redundancy plan] will, on receipt of written application, be given prior consideration over new entrants for subsequent vacancies for which he is suitable in starting grades in any department at or in the vicinity of the department from which discharged....[2]

* * *

Redundant employees who at the group's request rejoin it within a year of dismissal will have their service, less the period of absence, treated as continuous for all purposes.[3]

* * *

When subsequent vacancies occur, prior consideration will be given to employees previously declared redundant. Any benefits received by an employee on one redundancy shall be taken into account in any subsequent redundancy.[4]

Special Cases

Military Service

Special legislation [5] imposes upon employers an obligation to reinstate former employees who left their employment to serve in the armed forces. The affected employee must be reinstated in his former job on terms and conditions no less favourable than if he had not left the job to enter military service. If this is not practicable or reasonable, he must be reinstated on the most favourable terms and conditions which are reasonable and practicable. The employer is further obliged to continue to employ him for a stated number of weeks depending upon his prior length of service with the firm.

Furthermore, an employee may not be discharged during such period or before entry into military service with intent to evade the provisions of the legislation. A detailed procedure is provided for the resolution of controversies arising out of the application of the rules laid down in the law.

Disabled Persons

The Disabled Persons (Employment) Act, 1944 [6], imposes an obligation on employers to employ a given quota of registered disabled persons in an undertaking. Failure by an employer to take his quota or the discharge without reasonable cause of a registered person, if the discharge would bring the employer under his quota, is made an offence punishable by fine or imprisonment or both.[7]

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[1] *Positive Employment Policies*, op. cit., p. 35.

[2] National Union of Railwaymen, op. cit., section P, p. 56.

[3] *Positive Employment Policies*, op. cit., p. 33.

[4] *Protection of Employment*, op. cit., p. 9.

[5] National Service Act, 1948, Part II ; Reinstatement in Civil Employment Act, 1950, 14 and 15 Geo. VI 1950, Ch. 10. See Mansfield Cooper, op. cit., pp. 237-249 ; and Batt, op. cit., pp. 147-151.

[6] 7 and 8 Geo. VI, C. 10.

[7] See Batt, op. cit., pp. 141-142. The 1944 Act was amended in certain respects by the Act of 1958, 6 and 7 Eliz. II, C. 33. See also Mansfield Cooper, op. cit., pp. 230-232.

Employee Redress

Suit on the Contract of Employment

An employee who believes he has been wrongfully dismissed may bring an action for damages against his employer for breach of contract.[1] The breach of contract may take the form of dismissal without proper notice or summary dismissal in the absence of cause constituting a prior breach on the part of the employee. Such a suit, in the eyes of the law, is generally equivalent to any other action for breach of contract and is tried by the regular judicial tribunals.[2]

It should be noted that recovery by the employee need not be limited to wages for the unobserved period of notice. In cases of wrongful dismissal the employee may base his claim to damages not only on lost wages but also on any other pecuniary loss, such as the value of board and lodgings, tips, shares of profits additional to wages, etc.[3] It is also possible that the difficulty of getting employment may be taken into consideration when damages are assessed.[4] Hence, even though an employee is liable to dismissal with a week's notice, if he is wrongfully dismissed, he may, upon proper evidence, be awarded considerably more than a week's wages.

As in general contract law, the plaintiff (the dismissed employee) is expected to make every reasonable effort to lessen the degree of damage suffered by him.[5] Thus only nominal damages would be awarded for a wrongful dismissal if the employee obtained, or could have obtained, immediately upon dismissal, similar or other suitable employment at an equal remuneration. However, the employee-plaintiff is not expected to take any kind of available employment.

It should be added that reinstatement can never be a legally sanctioned remedy. Whatever other relief may be available, the law will never order either an employee to work for a given employer or an employer to hire or retain a given employee.[6]

Economic Pressure

Although employers may have a legal right to dismiss employees upon the giving of appropriate notice or summarily for a cause that constitutes a breach of the employment contract, in practice it would seem that this relative degree of freedom is substantially curtailed by the possible opposition of the union or of certain groups of employees.

A dismissal or dismissals, if objected to by the union, or perhaps the shop stewards committee, or by a number of employees, could lead—and has, in fact, on several occasions recently led—to a strike.[7] In this regard it has been commented that trade unions are continually protecting their members against victimisation or other forms of arbitrary treatment.[7] Indeed their very existence is a deterrent to employers' abusing their power through unwarranted dismissals, in that an em-

[1] See Batt, op. cit., p. 201.

[2] See discussion in Batt, op. cit., pp. 210-215.

[3] Ibid., p. 202; also Mansfield Cooper, op. cit., pp. 74-75.

[4] See Batt, op. cit., p. 202.

[5] Ibid., pp. 203-204.

[6] See Mansfield Cooper, op. cit., pp. 75-77; also Batt, op. cit., pp. 194, 210.

[7] See Flanders and Clegg, op. cit., p. 254.

ployer will not be anxious to incur the displeasure of the union with which he must deal.[1]

Procedures for the Settlement of Disputes

A possible avenue of redress for employees lies in the formal and informal dispute settlement procedures which exist in a considerable number of undertakings and industries. However, due to the informal nature of many procedures in undertakings and the wide variety of practices at the industry level [2], it is possible to present only a very general picture here.

In this regard it may be mentioned that in British practice there is not the distinction, found in certain systems of labour law and labour management relations, between disputes arising under the provisions of a collective bargaining agreement and those arising outside the scope of the agreement.[3] Hence, even where dismissal or redundancy procedures are not dealt with by collective agreement, it is not unusual for disputes arising out of dismissals to become the subject of formal or informal resolution machinery.[4]

Disputes arising out of individual dismissals, disciplinary or otherwise, are usually handled informally at the level of the undertaking. If dismissals are objected to, and there are no clearly defined local grievance or negotiation procedures, the shop stewards concerned or other representatives of the employees might simply approach management to discuss the matter. The issue may, of course, be resolved either by the management's convincing the employees that the dismissals are justified or being persuaded to take back the dismissed employees. But if a stalemate is reached, and if feelings run sufficiently high, pressures might be brought to bear on the management, e.g. in the form of a ban on overtime, working to the rule or even a strike. Where more formal grievance procedures exist, they would probably be followed; but a dispute regarding individual dismissals would rarely be subjected to the more formal procedures at the level of the industry or to arbitration.[5]

Disputes involving large scale dismissals (e.g. due to redundancy) are frequently handled at a higher level and through more formal settlement procedures, and sometimes even go to arbitration. Settlement procedures exist in many industries and generally provide for bipartite discussions at various levels from the undertaking up to the industrial or national level. If no agreement is reached the dispute may possibly be submitted to arbitration [6] (though few procedures or collective

[1] See FLANDERS and CLEGG, op. cit., p. 320.

[2] See FLANDERS and CLEGG, op. cit., pp. 294-295. For a description of dispute resolution procedures in coal mining, see Political and Economic Planning: *British Trade Unionism*, 2nd edition (1949), pp. 39-41; in engineering see I. G. SHARP: *Industrial Conciliation and Arbitration in Great Britain* (London, Allen and Unwin, 1950), pp. 107-112, and DERBER: "Labor Relations in British Metalworking", in *Monthly Labor Review* (Washington, D.C.), Vol. 78, Apr. 1955, pp. 403-409; for disputes specifically arising under redundancy procedures in railways see British Transport Commission: *Machinery of Negotiation for Railway Staff* (1956) and SHARP, op. cit., pp. 256-265, 266-269; for disciplinary procedures in railways see British Transport Commission, op. cit., pp. 37-39 and FLANDERS and CLEGG, op. cit., pp. 304-305.

[3] See FLANDERS and CLEGG, op. cit., pp. 255-256.

[4] Cf. E. HERZ: "The Protection of Employees on the Termination of Contracts of Employment", in *International Labour Review*, Vol. LXIX, No. 4, Apr. 1954, pp. 307-308.

[5] Cf. FLANDERS and CLEGG, op. cit., p. 257.

[6] It would appear that neither an agreement to arbitrate nor an arbitral award are legally binding (although, in practice, the question of enforcement does not normally arise). See FLANDERS and CLEGG, op. cit., p. 91.

bargaining agreements provide specifically for this [1]). If arbitration is not used, then the economic pressures mentioned above might be resorted to.

Finally it should be pointed out that the Government, while encouraging the use and development of private machinery, makes available conciliation and voluntary arbitration [2] facilities under certain conditions. [3]

Position of the Dismissed Employee

Certificates or References

The employer is under no obligation to afford to or on behalf of a dismissed employee a certificate or other type of reference.[4] However, if such a reference is given, the employer is under a legal obligation to state only that which he honestly believes to be true. Indeed in certain cases the wilful making of certain mis-statements is a criminal offence.[5] Further, the giving of a false character reference can lay the employer open to a suit by the employee for libel or slander.[6]

Unemployment Benefits

In the United Kingdom unemployment insurance forms an integral part of the over-all co-ordinated system of national insurance.[7] The insurance fund from which benefits are provided is financed by means of contributions from insured persons, employers and the Government. Eligibility for unemployment benefits is based on the employee's having made a stated number of contributions. Benefits are paid only after a fixed waiting period, which is extended in the case of dismissal for misconduct. Disqualification for a stated period can also result from failure to apply for or accept suitable employment when available. The maximum possible duration of continuous benefits is normally 30 weeks. The regulations permit private benefits (redundancy or severance payments) to be paid without loss of state benefits, provided that the combined amount is not more than two-thirds of the applicant's previous weekly earnings, if single, and appropriately more if married.[8]

Placement

Under the Ministry of Labour and National Service local employment exchanges are available to aid in the placement of unemployed workers.[9]

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[1] Flanders and Clegg, op. cit., p. 292.

[2] With the revocation in 1958 of the Industrial Disputes Order, 1951 (S.I. 1951 No. 1376) compulsory arbitration in any form disappeared. Industrial Disputes (Amendment and Revocation) Order, 1958 (S.I. 1958 No. 1796). See *Industry and Labour* (Geneva, I.L.O.), Vol. XXI, No. 10, 15 May 1959, p. 385.

[3] See, generally, Sharp, op. cit., pp. 290-320, 347-369, 419-453.

[4] See Batt, op. cit., p. 172.

[5] Servants' Character Act, 1792 (32 Geo. III, C. 56).

[6] See Batt, op. cit., pp. 17 ff.

[7] National Insurance Act, 1946, 9 and 10 Geo. VI, C. 67, as amended. See Mansfield Cooper, op. cit., pp. 272-280.

[8] See Acton Society Trust, op. cit., pp. 41-43.

[9] See *Positive Employment Policies*, op. cit., p. 8.