Dismissal Procedures

VI: India — VII: United Arab Republic [1]

India

SOURCES OF REGULATION

Regulation of dismissal and related matters in India is largely accomplished through legislative measures. However, collective bargaining, the common law, and particularly principles arising out of arbitration awards also have great significance.

Legislation [2]

The Industrial Employment (Standing Orders) Act, 1946, as Amended.[3]

This Act requires covered employers to define formally and with sufficient precision by means of standing orders, the conditions of employment in the undertaking. The Act applies to every industrial establishment in which more than 100 workers are employed, or were employed on any day of the preceding 12 months. The central Government or the state government concerned may extend the application of the Act to any class or classes of other industrial establishments. Standing orders have to provide for certain prescribed matters, among which are termination of employment generally; dismissal for misconduct, and acts or omissions which constitute misconduct; and means of redress for workers against unfair treatment.

Standing orders must be certified by the Government. In order to be so certified they must conform to the Act and, in so far as practicable, to the Model Standing Orders prescribed by the appropriate government. The employer may frame his proposed standing orders or may alter certified standing orders in agreement with his employees or their union. Under the procedure of certification itself, the employees or their representatives are entitled to make objections to the employer's proposed orders and to have a hearing on their objections.

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[1] For the preceding articles in this series, dealing respectively with France, the United States, the U.S.S.R., the Federal Republic of Germany, and the United Kingdom, see Vol. LXXIX, No. 6, June 1959, and Vol. LXXX, Nos. 1, 2, 3 and 4, July, Aug., Sep. and Oct. 1959.

[2] Under the federal type of government in India, the subject of labour is under the concurrent jurisdiction of the central and state governments. Both the Central Industrial Employment (Standing Orders) Act, 1946, as amended, and the Central Industrial Disputes Act apply in the states and are enforced by state governments within their respective jurisdictions, except with regard to industries or cases subject to the jurisdiction of the central Government.

[3] *I.L.O. Legislative Series* (hereafter cited as *L.S.*), 1946 (Ind. 2).

The Industrial Disputes Act, 1947 [1], *and the Amendments Thereto, Notably the Amendment Act of 1953* [2] *and the Amendment Act of 1956.*[3]

One of the more important features of the Industrial Disputes Act as amended is the establishment of extensive prescriptions relating to retrenchment and lay-offs. A primary purpose of the Act is to provide for conciliation and adjudication or compulsory arbitration of industrial disputes. In this respect, it should be noted that even an individual dismissal may become an industrial dispute under the Act if the case is taken up by the union or a substantial number of employees in the undertaking. Other pertinent provisions of the Act allow the central Government or a state government to require the establishment of bipartite works committees within undertakings. In practice these committees function partly or largely as grievance machinery although this is not primarily their purpose. Over 19,000 such committees were in existence in 1955-56.

It may further be mentioned that while the Standing Orders Act and certain provisions of the Industrial Disputes Act apply only to undertakings employing more than a specific number of employees, the dispute settlement provisions of the Industrial Disputes Act have no such limitations.

Arbitration Awards

Arbitration awards, under India's compulsory arbitration scheme, assume great importance as a source of regulation since these awards have laid down both procedural and substantive standards that must be complied with in dismissal situations.

Collective Bargaining

In 1957 the Standing Labour Committee [4] adopted a "Code of Discipline in Industry" which contains provisions relevant to dismissal questions.[5] The Code was ratified in 1958 by the Indian Labour Conference and accepted by the Government as well as by the central employers' and workers' organisations, which may apply sanctions against their members who violate its provisions. The implementation of the Code is also made a responsibility of a central tripartite body—the Implementation and Evaluation Committee—and of similarly constituted machinery at the state level, as well as of an Implementation and Evaluation Division set up in the Ministry of Labour.

Pertinent provisions of the Code call for the establishment of grievance procedures and use of negotiation, conciliation and voluntary arbitration in settling disputes. Further, the employers agree not to support or encourage unfair labour practices such as dismissal for trade union membership or recognised trade union activity or victimisation of any employee and abuse of authority in any form. They also agree to dis-

[1] *L.S.*, 1947 (Ind. 1).

[2] *L.S.*, 1953 (Ind. 1).

[3] Act No. 36 of 1956. Acts of Parliament 1956, Ministry of Law, Government of India.

[4] This Committee and the Indian Labour Conference are the two principal tripartite organs for consultation on labour and social policy at the level of the central Government in India. See "The Institution of a Tripartite Labour Organisation in India : The Influence of the I.L.O.", in *International Labour Review*, Vol. XLVII, No. 1, Jan. 1943, p. 1.

[5] See *Industry and Labour* (Geneva, I.L.O.), Vol. XIX, No. 6, 15 Mar. 1958, pp. 212-213.

tinguish between actions which justify immediate discharge and those where discharge must be preceded by a warning, reprimand, suspension, or some other form of disciplinary action.

While collective agreements in India are relatively few and only a small number of them contain stipulations on dismissals [1], dismissal questions are frequently the subject of negotiations although the agreements reached may not take the form of formally written contracts.

Common Law

In undertakings falling outside the purview of special legal provisions, the termination of the employment relation would be governed in cases brought before the ordinary courts by the common law rules of contract. The basic principle of these rules is that of strict equality and mutuality of rights as between the parties, without regard to their economic and social conditions. Briefly stated, these rules may be summarised as follows [2]:

(a) if the contract is not for a fixed period the employer may terminate it by giving reasonable notice or wages in lieu thereof;

(b) summary dismissal may result from conduct on the part of the employee amounting to dereliction of duties, or incompatible with the faithful discharge of these duties, under the express or implied terms of the contract;

(c) in case of wrongful dismissal the only relief which the courts can generally grant is damages.

Inasmuch as questions of wrongful dismissal are seldom brought before the ordinary courts in breach of contract cases (but rather arise as grievances or industrial disputes) this subject will not be discussed further.

The following aspects of dismissal procedures will now be considered in turn: dismissals for reasons connected with the employee (disciplinary and non-disciplinary dismissals); dismissals (retrenchment) and lay-off arising out of the needs of business operation; special consideration afforded to certain employees or in certain situations; recourse and remedies for employees wishing to challenge their dismissal; and, finally, the position of the dismissed employee.

Dismissal for Reasons Connected with the Employee

Misconduct: Inquiry Procedure

The following acts or omissions constitute grounds for summary dismissal without liability for pay in lieu of notice under the Model Standing Orders prescribed in the Central Rules [3]:

(a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;

[1] It seems that one of the reasons for this is that in establishments where unions are likely to be found, these questions are already covered by standing orders and legal provisions.

[2] See N. Barwell and S. S. Kar: *The Law Relating to Service in India.* Vol. I: *The Law of Master and Servant* (Bombay, Calcutta, Madras, Orient Longmans, Ltd., 1952), Ch. VI.

[3] As modified up to 31 October 1954.

(b) theft, fraud, or dishonesty in connection with the employer's business or property ;

(c) wilful damage to or loss of employer's goods or property ;

(d) taking or giving bribes or any illegal gratification ;

(e) habitual absence without leave or absence without leave for more than ten days,

(f) habitual late attendance ;

(g) habitual breach of any law applicable to the establishment ;

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline ;

(i) habitual negligence or neglect of work ;

(j) frequent repetition of any act or omission for which a fine may be imposed [1] . . . ;

(k) striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.

The Model Standing Orders set out the basic requirements of the procedure to be followed in disciplinary dismissals. Arbitration tribunals have refined and elaborated this procedure.[2] Generally, a " charge sheet " must be served on the employee giving a clear indication of the offence, with a reference, where appropriate, to the standing orders. At the request of the employee an inquiry will be held, presided over by an inquiring officer appointed by management. Witnesses for both sides are heard and a record of the proceedings is taken. The inquiring officer then makes his findings and decision, which, together with the record, is considered by the employer, who is bound to take into account the gravity of the misconduct and extenuating circumstances as well as the employee's past record. This procedure is not required when the employee is dismissed with notice (or pay in lieu thereof)—even if summary dismissal could have been invoked by the employer.[3]

Unauthorised Leave : Automatic Termination

Dismissal may take place under the Model Standing Orders, without observance of the above procedure, when an employee remains absent beyond his period of leave as originally granted or subsequently extended. In such circumstances notice is not required, and automatic termination can result, unless the employee returns within eight days of the expiry of his leave and explains to the satisfaction of the employer his inability to return before its expiry.

Other Reasons : Notice

For cases of dismissal (incompetence, inefficiency, repeated or prolonged illness or incapacity, etc.) based on reasons other than those mentioned above, a permanent employee may be dismissed only upon the giving of written notice. The Model Standing Orders provide for one month's notice in the case of monthly-rated employees and two weeks' notice for all other employees. Appropriate pay in lieu of notice

[1] These would include less serious offences which the employer may designate in the standing orders subject to approval by the prescribed authorities.

[2] See V. P. ARYA : *Principles and Practices relating to Punishments and Disciplinary Actions in Private Industries* (Calcutta, Bhushan Prakashan, 1958), pp. 20-29.

[3] Nagpur Electric Light and Power Co. v. Phati Rac, 1958—*Labour Gazette* (Bombay), Nov. 1958, p. 369.

may also be provided. As will be discussed later, even a dismissal for which appropriate notice or pay in lieu of notice has been given is subject to challenge as being unjustified.

Dismissals (Retrenchment) and Lay-Offs Arising out of the Needs of Business Operation

The Industrial Disputes Act, as amended, sets out certain mandatory procedures governing dismissals (retrenchment) and lay-offs arising out of the needs of business operation, which are applicable to undertakings regularly employing a minimum of 20 employees and to employees in such undertakings who have more than one year's continuous service.

Distinction between Retrenchment and Lay-off

Retrenchment and lay-off are given different meanings under the Act. " Retrenchment " means the employer's termination of the service of an employee for any reason whatsoever, other than as a disciplinary measure or on the ground of the employee's continued ill-health. It may be stated, however, that arbitral and judicial interpretation limit the meaning of retrenchment to situations connected with business operation.[1] " Lay-off " results from the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials, or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to an employee who has not been retrenched.

Retrenchment

Notice.

The employee must be given one month's advance notice in writing, indicating the reason for retrenchment, or be paid wages in lieu of notice. Retrenchments must also be reported to the government.

Selection of Employees to Be Retrenched.

With certain exceptions the Act requires the employer to proceed on a " last-come, first-go " basis within each category of employees. If the employer deviates from this procedure he must record the reasons for it, which may be subject to review by arbitration tribunals. For the purposes of fixing the order of retrenchment the Central Rules issued pursuant to the Act require the employer to prepare a seniority list of all employees in the category within which the retrenchment is contemplated and to display it in a conspicuous place in the establishment at least seven days before the actual date of retrenchment.

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[1] For example, dismissal for inefficiency has been held not to be retrenchment under this definition. *Labour Appeal Cases* (New Delhi), Sep. 1957, p. 575. The Supreme Court has held that in no case is there any retrenchment unless these is discharge of surplus labour or staff in a continuing or running industry. Retrenchment provisions do not apply where the services of all employees have been terminated by the employer on a real and bona fide closure of business. Cases of Barsi Light Railway Co. Ltd., and Dinesh Mills Ltd. (1956), in *All India Reporter*, Mar. 1957.

Consultation.

While there is no statutory prescription requiring consultation on retrenchment questions, the matter is sometimes included in collective agreements. Some agreements provide for negotiation or consultation with the union when the management intends to introduce any change leading to a possible reduction in the number of workers or when mass retrenchment becomes necessary. Under one agreement such negotiation is to take place if the retrenchment involves 50 or more workers.[1]

Moreover, the Industrial Disputes Amendment Act of 1956 prohibits the employer from making any change in conditions of service (including those which may lead to a reduction in the number of employees) without notice to the affected employees, unless in pursuance of a collective agreement, or settlement by conciliation or arbitration award. It would appear that the purpose of this provision is to encourage joint discussion of the proposed change. The discussion may result in a collective agreement or simply in a decision of the management to modify its original plan, taking into account the views expressed by the employees or their union.[2]

Retrenchment Compensation.

The Act provides that at the time of retrenchment the affected employee shall receive compensation on the basis of 15 days' average pay for each completed year of service or any part of a year in excess of six months.

Possible Re-employment.

While the theory of retrenchment is that of permanent termination, if it happens that at a later date the employer proposes to recruit workers, he must afford a preference to those retrenched workers who offer themselves for employment. Rules promulgated under the Act set out the procedures to be followed in cases of re-employment.

Lay-off

When an employer lays off a permanent employee who has completed not less than one year of continuous service, the Industrial Disputes Act provides that the employee shall be paid, during the period of lay-off, compensation equal to 50 per cent. of the total of the basic wage and dearness allowance which would have been payable to him had he not been laid off. As a condition for receiving such compensation, the laid-off employee must present himself for work at least once each day.

[1] Agreement between the Bata Shoe Company and the Bata Mazdoor Union dated 8 February 1955.

[2] It has been the practice in the textile industry, even before the enactment of this legal provision and even in the absence of express contractual stipulation, to make any proposed change relating to standardisation of work loads or the introduction of automatic machinery a subject of negotiation ; the agreements which have been negotiated provide that such changes shall be effected without retrenchment or subject to appropriate arrangements for employees who become redundant. The agreement concluded in 1956 at the Tata iron and steel works, which was made with a view to the Company's expansion and modernisation programmes, also provided that there would be no retrenchment and that displaced employeees would be given training for other jobs. In many other cases the negotiations turn on the number and selection of employees to be retrenched, or on work-sharing.

Further, no compensation shall be paid if the employee refuses any alternative employment at his regular wage offered by the employer or if the laying-off is due to a strike or slowing-down of production on the part of other employees.

The compensation payable to an employee during any period of 12 months shall not be for more than 45 days. If, however, during any such period of 12 months he is again laid off for continuing periods of more than one week at a time, he shall, unless there is agreement to the contrary between the affected employee and the employer, be paid compensation for all the days comprised in any such subsequent periods of lay-off. It is lawful for the employer, after the first 45 days of lay-off to retrench the employee, in which case the lay-off compensation already paid may be deducted from the retrenchment compensation he is entitled to.

Special Cases

Dismissal during Pendency of Conciliation or Arbitration Proceedings [1]

During the pendency of conciliation or arbitration proceedings an employer may not, save with the express permission of the authority before which the proceedings are pending, dismiss an employee concerned in the dispute for reasons connected with the dispute. An employee connected with the dispute may be dismissed for reasons unconnected with the dispute, but even in this case application for approval of the dismissal must be made to the authority and the employee must be paid one month's wages. Prior permission is also required for dismissal of a recognised trade union officer even if the action has no connection with the pending dispute.

Union Activities

Although there is no specific legal provision dealing with the subject, arbitration tribunals will generally look with particular severity upon dismissals that appear to be based upon an employee's union activities.

Recourse and Remedies for Dismissed Employees

Collective Bargaining and Other Forms of Union Intervention

Under certain collective bargaining provisions a dismissed employee may present his case to the joint works committee. Under the law works committees have only advisory functions. But in the agreement at the Tata iron and steel works [2], unanimous decisions of the committee are binding. In the Ahmedabad textile industry [3], unsettled complaints are submitted to the voluntary arbitration machinery set up by the parties. In other cases such a complaint is made subject to negotiations between the management and the union and may be submitted by agreement to voluntray arbitration. However, in cases of disciplinary dismissals it must be emphasised that the original dismissal decision can

[1] Section 33 of the Industrial Disputes Act, as amended by section 21 of the Amendment Act of 1956.

[2] Agreement between the Tata Iron and Steel Company and the Tata Workers' Union, dated 8 January 1956.

[3] Agreement between the Ahmedabad Millowners' Association and the Ahmedabad Tèxtile Labour Association, dated 27 June 1955. See also " The Ahmedabad Experiment in Labour-Management Relations ", in *International Labour Review*, Vol. LXXIX, No. 5, Apr. 1959, pp. 343-379 and No. 6, May 1959, pp. 511-536.

be taken only after the appropriate inquiry procedure, as discussed above, have been followed. Complaints arising out of retrenchment and lay-off are not usually the subject of collectively bargained procedures.

In the absence of a collective agreement establishing a procedure for the settlement of employees' complaints, trade unions usually seek to negotiate with the managements for the reinstatement of employees whom they believe to have been dismissed without reasonable cause, or for the payment to them of compensation. If, in the case of particular undertakings, complaints are referred to the works committee, the union may intervene when no satisfactory settlement is obtained after the committee has acted on the complaint.

Conciliation and Compulsory Arbitration

General.

In practice when a dispute arises over a question of dismissal, retrenchment or lay-off, most frequently the employees (or trade union) concerned ask the government conciliation officer to intervene. Normally the government refers the dispute for adjudication or compulsory arbitration if conciliation fails to produce a settlement and if the conciliation officer's report indicates merit in the claim of the union or employees.

For purposes of adjudication, the Industrial Disputes Act authorises the central or state government to set up labour courts and industrial tribunals. Only the government may refer a dispute to a labour court or tribunal for adjudication.[1]

While the competence of labour courts is different from that of the tribunals [2], the paucity of labour courts plus the fact that industrial tribunals may act in the area otherwise reserved to the labour court when so directed by the appropriate government makes of the tribunals the major factor in the sphere of adjudication of dismissal questions.

Apart from disputes over actual cases of dismissal, retrenchment or lay-off, employees or trade unions can raise a dispute over the fairness or reasonableness of the employer's standing orders. In a number of awards, the industrial tribunals have framed such orders, including provisions on rules of discipline, dismissal, gratuity schemes, etc.

Appeals may be taken, on substantive questions of law, from the awards of arbitration tribunals (labour courts, industrial tribunals and national tribunals) to the State High Courts and finally to the Indian Supreme Court.

Dismissals Based on Reasons Related to the Individual.

As set out by the Supreme Court, it is not the function of an arbitration tribunal in case of dismissal based upon an inquiry (as discussed above) to substitute its judgment for that of the management. However—

It will interfere—(i) when there is want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, (iv) when on the materials the finding is completely baseless and perverse.[3]

[1] In Bombay State the parties themselves may refer a dispute for arbitration.

[2] The jurisdiction of labour courts encompasses the application and interpretation of standing orders, including the legality or propriety of action taken by an employer under standing orders, and dismissal questions and relief for wrongful dismissal. Industrial tribunals are competent to deal with, among other things, contents of standing orders and rules of discipline under standing orders and questions connected with rationalisation, retrenchment and the closure of undertakings.

[3] Indian Iron and Steel Co. v. Its Workmen, 1958—I *Labour Law Journal* (Madras).

On review, the arbitration tribunal will reverse the dismissal only on the basis of one or more of the four criteria mentioned above or if the inquiry procedure had been improper. While frequently dismissals have been set aside in the absence of inquiry or where the inquiry was improper, the tribunal may hold an inquiry of its own to determine whether or not there existed just grounds for dismissal.

Moreover, an industrial tribunal may set aside a dismissal if it finds that it is too severe a penalty for the misconduct actually committed by the employee and that the requirements of good order and discipline would not be prejudiced if a milder penalty were imposed.

The management may not invoke grounds for dismissal other than those stated in the " charge sheet ". With respect to undertakings in which standing orders have been framed, the dismissal will be set aside if it was based on an act not specified as misconduct in the orders, unless such act falls within the category of universally known offences.

In cases of dismissal not involving misconduct, a tribunal will be entitled to know the reason behind the termination of service in order to judge whether the act of the management was bona fide, or was performed with an ulterior motive.

The relief for a wrongful dismissal is usually reinstatement but may be payment of adequate compensation (damages), in the discretion of the tribunal. The factors taken into account are a sense of fair play to the worker, on the one hand, and considerations of discipline in the concern, on the other, as well as the worker's past record, the nature of the alleged lapse and the ground on which the action of the management is set aside.[1] As a general rule reinstatement entitles the dismissed employee to back wages at the full rate until he is reinstated. But a tribunal may grant back wages for a shorter period or for only 50 per cent. of the rate, or otherwise limit the relief of back wages according to the particular circumstances of the case. In exceptional cases a tribunal will refuse to order reinstatement and grant instead the payment of adequate compensation, for example where reinstatement will endanger industrial harmony or contribute to unrest in the concern, where evidence of a strained relationship between the parties exists, and where management has lost confidence in the employee.

Retrenchment and Lay-off.

The provisions of the Industrial Disputes Amendment Act of 1953 discussed above concerning retrenchment and lay-off were based on principles already generally followed by arbitration tribunals before the passage of the Act (notice and graduated retrenchment compensation ; 50 per cent. compensation for the period of lay-off).

Industrial tribunals have continued to apply these principles in cases where the provisions of the above-mentioned Act are inapplicable, subject to such qualifications as the tribunal may find warranted in the particular circumstances of each case. As a general rule the tribunals also hold that whenever possible, the management should consult the union whenever it proposes to retrench or lay off employees.

Even when the management complies with these conditions or the conditions prescribed by the Act, an industrial tribunal will examine, upon challenge by the union or the employees, the propriety of the

[1] See Buckingham and Carnatic Mills v. Their Workers, 1951—II *Labour Law Journal* 314.

retrenchment or lay-off. The points for scrutiny in cases of retrenchment have been summarised as follows [1] :

(i) Whether a case for retrenchment has been established on the grounds of rationalisation, trade reasons, economy or other sufficient causes. (The Supreme Court has posed the question as whether " retention of the workers being retrenched would mean the dead weight of an economic surplus ".)

(ii) If the management is able to establish a case for retrenchment, the extent of retrenchment will then be considered. Where the management has acted in good faith, the number of workers retrenched by it will be accepted. But if it is influenced by erroneous considerations or improper motives (increasing the workload of employees to be retained, victimisation or unfair labour practice, etc.) the tribunal will confine the number of employees to be retrenched strictly within the limits of actual requirements.

(iii) If the case for retrenchment has been established, the selection of employees to be retrenched will be considered. The " last come, first go " principle, taking into account the categories of employees concerned in the establishment as a whole, should be followed. Management may deviate from this rule in order to weed out the inefficient and unreliable or when there is a history of past misdemeanours and misconduct, punished or tolerated. But in any case of such deviation the management must record its reasons and justify its action before the tribunal.

As in other cases of wrongful dismissals, the relief granted to wrongfully retrenched employees is reinstatement or payment of adequate compensation (damages), but in considering the right to back wages of reinstated workers or the amount of compensation, the tribunals take into account the economic or financial position of the concern.

In cases of lay-off, a tribunal will not interfere with the action of the management if it was taken in accordance with the standing orders and the management has resorted to it for bona fide trade reasons.[2] It has been held that the essence of a lay-off is that within a reasonable time the employer expects business conditions will warrant a recalling of the employees laid off. When therefore the employer knows or it becomes apparent that conditions will not change, he is obligated to retrench the laid-off employees and pay them retrenchment compensation.[3]

Position of the Dismissed Employee

Certificate

Every permanent employee, under the Model Standing Orders, is entitled, upon dismissal, to a service certificate.

Gratuity

While the dismissed employee has a legal right to retrenchment compensation, possible compensation by way of damages or in the form of back pay, all of which have been discussed above, collective bargaining agreements sometimes provide for the payment of lump-sum gratuities in the event of termination of the employment relationship for other than disciplinary reasons. Where such provisions exist, the amount of the gratuity is usually based upon and varies with length of service.

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[1] Case of Visvamitra Press, 1952—I *Labour Law Journal* 181 ; Case of Indian Navigation, 1952—II *Labour Law Journal* 611.

[2] Case of Aluminium Manufacturing Co.—*Labour Appeal Cases*, Mar. 1957, p. 136.

[3] Veiyra v. Fernandes, 1956—I *Labour Law Journal* 547.

United Arab Republic

In view of the very recent promulgation of a new Labour Code in the United Arab Republic, it is at present impossible to examine the manner in which it is being applied or the actual practices resulting under the Code. Hence what follows is essentially a description of the provisions of the Code relating to dismissal procedures.

Sources of Regulation and General Principles

Legislation

Legislation is the principal source of dismissal regulation in the United Arab Republic. The Labour Code of 1959 [1], a codification, with certain additions and modifications, of prior legislation, regulations and decrees, deals, among other things, with the individual contract of service, works rules, the collective labour contract, conciliation and arbitration. The most significant aspect of the legislative scheme of the Republic is that any dismissal is subject to challenge as being unjustified.

The Contract of Employment

Individual contracts of employment maintain their validity except if they provide for benefits (e.g. dismissal indemnities) and protection (e.g. period of notice) that are less advantageous to workers than that provided for in the Labour Code (article 6).

Collective Agreements

Collective agreements, which are enforceable in the courts (article 103) must not be in contravention of the minima laid down in the law, but may contain provisions more advantageous to the worker than those of the law (article 96).[2] Furthermore any provision of an individual contract of employment which is less advantageous to a worker than a corresponding provision of a collective agreement covering the given worker, will be superseded by the latter provision (article 97).

However, in practice, collective agreements currently cover relatively few employees in the U.A.R., and where such agreements do exist dismissal provisions do not usually increase the obligations of the employer beyond those required by the Code.[3]

Joint Consultative Boards

A possible future source of regulation of dismissal procedures are the Joint Consultative Boards, tripartite in nature, which are to be

[1] Law No. 91 of 1959. All references, unless otherwise indicated, are to the articles of the Labour Code of 1959.

[2] See U. Haddad: "Les Conventions collectives dans le nouveau Code du Travail de la R.A.U.", in *L'économie et les finances de la Syrie et des pays arabes* (Damascus), No. 17, May 1959, p. 30.

[3] Ibid., p. 31.

formed in each industry (article 113). According to the Labour Code the competence of these Boards extends to the fixing of general standards for circumstances and conditions of work. This wide competence, it would seem, could include disciplinary and dismissal procedures and norms.

* * *

Below will be considered the procedures that an employer is obliged to follow prior to dismissal with notice, dismissal without notice, special treatment in special cases, the recourse of the employee for challenging dismissal decisions and his remedies in the event of wrongful dismissal and, finally, the position of the dismissed worker.

Dismissal with Notice [1]

Notice

The law prescribes (article 72) a mandatory minimum period of notice of 30 days for monthly paid workers and 15 days for other workers. Less notice or none at all may be given on the condition that appropriate pay is granted in lieu of notice. As noted above, longer notice periods may be provided for in individual contracts of employment or collective agreements. But it will be seen that, quite irrespective of these notice requirements, any dismissal must be justified upon challenge by the dismissed employee.

Consultation

Consultation on dismissal questions does not figure, as such, in the new Labour Code. However the provisions calling for the establishment of joint consultative committees within undertakings (article 111) outline the advisory functions of such committees in such broad terms as to be capable of including matters related to dismissals (article 112). Otherwise it is virtually impossible to gauge the extent of consultation on dismissal questions which might be practised through informal arrangements or procedures in various undertakings.

Dismissal without Notice

General

An employer may dismiss an employee summarily and with freedom from liability or payment of indemnities only in the cases enumerated in the Labour Code (article 76) [2], these being—

(a) if the employee has falsified his identity or submitted false certificates or recommendations ;

(b) if the employee has, through his own acts, caused serious material damage to the employer (on the condition that the employer has reported the matter to the competent authorities within 24 hours after its coming to his attention) ;

[1] The section below on dismissal without notice discusses " certain requirements for disciplinary dismissals ". Although it is possible that some disciplinary dismissals are effected with notice, since the bulk of such dismissals are without notice, they are all discussed together in the mentioned section.

[2] See O. Achi : " Les droits des travailleurs dans le nouveau code unifié ", in *L'économie et les finances de la Syrie et des pays arabes*, No. 17, May 1959, p. 16.

(c) if, in spite of a written warning, the employee has failed to observe written safety instructions which have been conspicuously posted ;

(d) if the employee has been absent without valid reason for more than 20 days in one year, or for more than ten consecutive days (provided that the employee has received a written warning after an absence of ten days in the former case and five days in the latter case) ;

(e) if the employee has not carried out his essential obligations under the contract of employment ;

(f) if the employee has divulged industrial or commercial secrets of the establishment by which he is employed ;

(g) if the employee has been convicted (in a final decision) of a crime or misdemeanour contrary to honour, integrity or good morals ;

(h) if the employee has been found, during working hours, in a state of drunkenness or under the influence of drugs ;

(i) if the employee has committed an offence on the employer or the responsible manager or has committed serious acts of violence against his superiors in the course of or in connection with his employment.

Moreover, the equivalent of summary dismissal may obtain by virtue of an employer's right to suspend an employee accused of any crime or misdemeanour at the workplace, including that of participating in or inciting an illegal strike (article 67). Such employee may be suspended at once provided that the matter is reported to the competent authority. Although the law does not speak with precision on this point, if the employee is not exonerated, presumably the suspension becomes a dismissal involving no obligation, monetary or otherwise, on the part of the employer.

Certain Requirements for Disciplinary Dismissals

An important curb on disciplinary dismissals arises out of a provision of the Labour Code (article 66) proscribing any disciplinary action which is not taken within 30 days (for monthly-paid employees) or 15 days (for other employees) after establishment of the disciplinary offence. Moreover the charge itself must be made within 15 days after the discovery of the offence.

Further, the employer is required to post conspicuously the work rules for the undertaking together with a schedule of disciplinary measures and the conditions under which they will be imposed (article 68).

Special Cases

Union Activities

Dismissals based upon union membership (or non-membership) or union activities are prohibited and render the offending employer subject to fine as well as other remedial action (reinstatement of the dismissed employee) (article 231).

Maternity

Women employees have the right to a confinement leave of 50 days including the periods both before and after confinement (article 133) and are protected from dismissal during this period (article 135). Neither may such an employee be dismissed during a further period of absence

not to exceed six months, where such absence is necessitated by an illness resulting from the pregnancy and rendering her unable to work; however, the necessity for such an extension must be attested by a medical certificate (article 135).

Military Service

An employee called up for compulsory military service may not be dismissed by reason thereof and has the right to reinstatement after completion of his service (article 79).[1]

Discontinuance of an Undertaking

The contract of employment may be terminated in the event of liquidation, bankruptcy or authorised final closing of an undertaking (article 85). Presumably in such a case the employee would have the right to his indemnity based on length of service (see below).

Absence Due to Illness or Disability

During periods of absence due to illness or disability of an employee, the provisions of the Code regarding dismissal with notice may not be invoked by the employer (article 81). The contract of employment shall, however, be terminated upon the employee's absence, for this cause, for an uninterrupted period of 180 days or for various periods totalling 200 days in any one year, but termination for this cause is without prejudice to the employee's right to receive an indemnity from the employer.

RECOURSE AND REMEDIES FOR DISMISSED EMPLOYEES

Generally, an employee may seek relief before the regular courts for violations of his contract of employment, e.g. if the notice or indemnity provisions have not been observed by the employer at the time of dismissal. Furthermore, either the union or the affected employee may seek judicial relief in the event of a similar violation of a collective bargaining agreement, such agreements being enforceable as noted above.

Special Procedure for Unjustified Dismissals

Any employee who wishes to challenge his dismissal as unjustified may do so (article 75). The procedure is to submit an application to the competent administrative authority, i.e. usually the Department of Labour or its branch office in a given area. This must be done within one week from the date upon which notice was given to the employee. The administrative authority will then make efforts directed at securing an amicable settlement. In the event of failure the application is referred (within one week from the original date of the application) for a preliminary hearing to the Judge of Urgent Matters or the Judge of the Summary Court of Labour Affairs in his capacity of Judge of Urgent Matters, as the case may be, in the area of the undertaking. The referred application is to be accompanied by a memorandum embodying a summary of the case, the arguments of the parties and the comments

[1] See ACHI, op. cit., p. 16.

of the administrative authority. Within two weeks of this referral the preliminary hearing must be held. The Judge must then render his decision within two weeks from the date of the first hearing. This decision may find that there is enough merit to the employee's claim to warrant a further and full trial of the issues. On the other hand the Judge may find it sufficiently apparent that the employer's action was justified. If the Judge finds for the employee, the employer will be directed to pay to the employee an amount equivalent to the latter's wages from the date of dismissal (subject to reimbursement if the employer should prevail at the full hearing of the case) or to pay such amount in escrow to the court.

The case will then be referred to the competent court or to the Labour Affairs Court for full trial. These cases enjoy a priority and, in principle, should be adjudicated within one month from the date of the first hearing. There is no indication in the Code regarding the bases or criteria upon which the court may decide whether a dismissal is justified. It may be presumed that the court employs general equitable principles in arriving at a decision. The court, if the employee prevails, will order the employer to pay damages. In awarding damages the court is directed to consider the nature of the work, the prejudice caused to the employee, the length of service and custom and usage (article 74). This award will be reduced by the amounts the worker has received in lieu of wages by virtue of the proceedings in the Summary Court.

The courts are not empowered to decree reinstatement in favour of an employee who has been wrongfully dismissed, save in the case of dismissal for union activities (article 75).[1]

Judgments rendered under the procedures discussed above are subject to appeal as other judicial decisions ; however, certain priorities, in terms of time, are afforded (article 75).

Conciliation and Arbitration

Another possible avenue of employee redress lies in the provisions of the Labour Code relating to conciliation and arbitration of labour disputes (articles 188 et seq.).[2] The Code (article 188) defines labour disputes as " all disputes relating to the work or the conditions of work . . .". This definition would seem to be sufficiently broad to encompass those disputes arising out of dismissals. Generally, if efforts at informal settlement and conciliation fail, compulsory arbitration comes into play. Arbitration decisions are enforceable under penalty of fines (article 232) although appealable to the Court of Cassation (article 103). Strikes and lockouts are interdicted during the course of conciliation and arbitration (article 209).[3]

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[1] The new Labour Code, with reference to cases involving union activities, places the burden of proof on the employer to establish that the dismissal was not predicated upon such activity. However it might be observed that practice in the past has placed the burden of proof on the employer in all cases to establish that the dismissal was justified. While the inclusion of the new provision might give rise to a negative implication regarding cases other than those involving union activities (i.e. the burden of proof being on the employee in all other cases), it seems more probable that the provision was placed in the law merely to emphasise the protection afforded to employees in the matter of union activities.

[2] See F. AKBIK : " Le règlement des conflits collectifs du travail dans le Code du Travail unifié ", in *L'économie et les finances de la Syrie et des pays arabes*, No. 17, May 1959, pp. 50-54.

[3] See T. de CHADAREVIAN : " Le syndicalisme ", ibid., p. 38.

Position of the Dismissed Employee

Indemnity

In the event of dismissal the affected employee has the right to receive from the employer an indemnity (article 73) calculated as follows : one-half month's pay for each of the first five years of service and one month's pay for each year in excess of five (or proportionally less for fractions of years). The base for such payment is the employee's last wage.[1] However, an employee who is the subject of a valid summary dismissal has no right to the above indemnity (article 76). If an employee is terminated for reasons of illness, he retains his right to the indemnity (article 81).

If there is in operation a provident fund which meets certain requirements, including the requirement that the benefits payable on termination be at least equal to the stated indemnity, such benefits may be afforded in lieu of the indemnity (article 83). Similar provisions are applicable in the case of pension schemes. It should be noted that if the regulations of the provident fund do not expressly provide that the benefits are in lieu of the indemnity, then the affected employee is entitled to both the benefits provided by the fund and the indemnity (article 83).

Certificate

Upon dismissal the employee has the right to request and receive a certificate from the employer stating the dates of engagement and dismissal, and the nature of his job. Upon request of the employee, the certificate may also contain mention of the amount and nature of the employee's wages and other benefits (article 86).

Placement

The employee may apply to be enrolled with a Placement Office of the Labour Ministry which is charged with the duty of aiding the employee to find new employment (articles 11 to 22). The benefits of this service include the payment of removal expenses if the employee must leave the area to find work (article 13).

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[1] The provisions of the abrogated Syrian code allowed a greater indemnity and hence special treatment for workers in the Syrian Province is permitted in order to allow them the more favourable indemnity. See Achi, op. cit., p. 17.