

DISMISSAL

Sabah Banking Employees' Union (SBEU) works to protect jobs and has long campaigned against job losses in the Banking Industry. However, trade unionists need to know their rights when faced with an employer's decision to dismiss employees.

What is dismissal?

A dismissal occurs when :-

- **The employment contract is terminated with or without notice**
- **A fixed term contract is not renewed**
- **The employee leaves as a result of the employer's conduct**
- **A redundancy takes place**
- **A woman with the right to return after maternity leave is not allowed to do so**
- **The employer claims there has been a "self-dismissal"**
- **There is a refusal to re-employ after a takeover**
- **Etc.**

Unfair or Fair Dismissal ?

The law provides protection to workers who meet the qualifying conditions for unfair dismissal.

An employer must act reasonably in dismissing someone. The employer must not act on a whim or jump to conclusion, or victimize anyone, and they ought to take into account any other relevant circumstances.

Conduct

Before dismissal, the employee should be given an opportunity to offer an explanation. Unless the misconduct is serious, the employee should be warned verbally.

In addition, there are a number of procedural matters which could still make a "Conduct" dismissal unfair. For example, the way the hearing is conducted or failure to allow the employee to be accompanied. For minor misconduct, a verbal warning should be sufficient. For more serious conduct, a written warning would be appropriate stating the complaint and the improvement in behaviour required. Dismissal should be a last resort.

Capacity

Dismissals for Sickness absence and poor performance usually fall into this category. However, the employer must still act reasonably. This may include meeting to discuss improvements in performance and investigating sickness absence thoroughly.

Automatically unfair dismissals

Some dismissals are automatically unfair no matter what reasons the employer gives for them. These are unfair dismissals:-

- a) Pregnancy**
- b) For membership (or non-membership) of a trade union**
- c) Where the employee has brought proceedings to enforce a statutory right**
- d) For health and safety reasons**
- e) By the reason of the sale of the employer's business to a new employer**
- f) For taking leave which stipulated in the Collective Agreement i.e. emergency leave, marriage leave. Etc**

General qualifying conditions

Under the Section 20 (reinstatement) Industrial Relation Act, workers can make file complaint to the department for various reasons:-

- a) Have been dismissed**
- b) Constructive dismissal**

Under the section 20 of the Industrial Relation Act, the remedy for the dismissal will be the reinstatement of the workers. However, most of the employers would not agree to the reinstatement, hence bringing these cases to the Industrial Court for hearing.

Sabah Banking Employees' Union can represent any workers who are dismissed at the Industrial Court or even at the Industrial Relation Department.

Members of the Union must aware of your right.