**Course: Professional Ethics Raghurama Varma Gonela Assignment 2 2018A7PS1120P**

**Unjust Dismissal**

Unjust dismissal is a major issue in the world across all kinds of professions revolving around the employer employee relation. This issue is mostly based on the absence of a contract that spells out the conditions under which employment can be terminated.

**What is the Employer Employee Relation?**

***Employer Employee Relation* refers to the relationship shared between the employer and employee in an organization**. Itis based upon an understanding that both groups are compensating each other in terms of monetary resources and human resources respectively for the sake of goods or services. Such an understanding is rooted in the values and principles of equality of both groups and the respect for each other’s rights and obligations.

A healthy Employer-Employee Relation improves productivity, increases employee loyalty, reduces conflicts, and increases the morale in the workplace.

**Just Dismissal**

Losing a job is one of the most traumatic occurrences in people’s lives. Aside from the interruption of income and benefits, dismissed workers typically lose a valued social network and an important source of satisfaction and meaning. Even when a terminated worker finds another job quickly, the new position may pay less than the old one, with the result that lifetime earnings are reduced. Thus, job security is an important aspect of employment that workers value and often seek in a job.

Workers lose their jobs for a variety of reasons, many of which are considered to be just reasons for dismissal. Among these ***just*** reasons are economic adjustments, as when an employer has (i) too many workers, (ii) workers without the right skills, (iii)workers who perform their jobs inadequately and/or (iv) workers who behave inappropriately or have a disruptive behavior on the job.

**What is Unjust Dismissal?**

Generally, people not only believe that employees should be dismissed only for a just reason or good cause but also that they should have an opportunity to know the grounds for dismissal and to offer a defense. Dismissal is widely considered to be ***unjust***, under two conditions: when an employee is dismissed without a good cause and when the dismissal occurs without a fair hearing. These two elements together constitute due process. Although due process is a requirement of the criminal justice system, in which the state prosecutes persons for crimes, it is less clear that justice requires due process in employment.

The issue of unjust dismissal raises two questions. One question concerns the conditions under which the dismissal of employees is morally justified. Is due process a moral requirement for just dismissal? The other question is, even if it is a moral right, should due process be a legal requirement and thus have the force of law?

**Employment At Will (EAW)**

In the American legal system, a cornerstone of labor law is the doctrine of *employment at will*, according to which an employer may terminate an employee at any time and for any reason unless an employment contract specifies otherwise. Employment, according to this doctrine, is an “at-will” relation that comes into existence when two parties willingly enter into an agreement, and the relation continues to exist only as long as both parties will that it does so. Both employers and employees have the right to enter into any mutually agreeable arrangement without outside interference. Each party is also free to end an arrangement at any time without violating the rights of the other, as long as doing so is in accord with the terms that they have agreed on.

Three arguments are commonly used to justify employment at will. One argument holds

that the doctrine is entailed by the *rights of property owners*; the second argument appeals to the notion of *freedom of contract*; and the third argument is based on considerations of *efficiency*.

* **Property Rights Argument:**

The property rights argument begins with the assumption that both employers and employees have property of some kind. The owner of a factory, for example, owns the machinery and raw materials for the manufacture of a product, along with a certain amount of money for wages. The remaining resource is labor for operating the machinery and turning the raw materials into a finished product. Labor, or more precisely the productivity of labor, thus has an economic value and can be said to be a kind of “property” that is “owned” by the worker. Employment can be described, therefore, as an exchange of a worker’s productive power for the wages that are given out in return by the factory owner.

In this exchange, both parties are free to exercise the rights of property ownership. The owner of the factory is free to utilize the productive resources of the factory and to pay out money as wages in any way that workers are willing to accept. Workers are free to accept work under the conditions and at the wages offered or to seek work elsewhere on more favorable terms. It follows that any restriction on the kinds of agreements that employers and employees can make is a violation of the property rights of both parties. Just as consumers are under no obligation to continue buying a product, employers are free to stop “buying” the labor of an employee. Although the loss of a job may create some hardship for the person dismissed, no rights are violated according to the property rights argument; indeed, an important right, the right to property, is respected.

* **Freedom of Contract Argument:**

In this argument, from freedom of contract, employment is viewed as a contractual arrangement between employers and employees. This arrangement arises in some instances from an explicit contract, a legal document signed by both parties, in which a business firm states the terms under which it is willing to hire a person and that person signifies by his or her acceptance a willingness to work under those terms.

To place a limit, then, on the kinds of agreements that can be made between an employer and an employee is to violate the freedom of contract of both parties. Just as it would be a violation of an employee’s freedom to contract to force an employee to remain in a job, so it would be a violation of the employer’s freedom to contract to prevent an employer from terminating an employee who voluntarily entered into an at-will employment relation.

* **Efficiency Argument:**

This argument for ‘employment at will’ is a utilitarian one that relies not on property rights or the freedom of contract but on the importance of this doctrine for the efficient operation of business for the benefit of both employers and employees. Although employment at will is often thought to be something that employers impose upon employees without their consent, the contractual nature of employment requires that the terms of employment be mutually advantageous.

The utilitarian advantages of ‘employment at will’ to employers are straightforward. The success of any business enterprise depends on the efficient use of all resources, including labor. Overall, the intrusion of factors other than the most efficient allocation of resources into business decision making can only impair efficiency, according to this argument, and thereby harm everyone concerned.

**Violations and issues that lead to Unjust Dismissals**

Violations can occur in the property rights argument in the form of *unequal bargaining strength of employers and employees*, and lead to unjust dismissal. There is always a certain trade-off to be made between due process and employment at will. Freedom of contract argument can be violated by *unfavorable societal conditions* since freedom of contract holds only when there exists the freedom of choice, and freedom of choice has no meaning without rights (like the right to choose) of the employee being acknowledged by the employer. This may also lead to an unjust dismissal. In regard to the efficiency argument situations involving *bad faith, mal intentions, and poor work culture* may occur, resulting in unjust dismissal. This is because generally, employees are expected to (and expect to) work in an atmosphere of good faith, with moral intentions and good work culture, and to maintain efficiency the employer can exercise the right to choose the number of workers, with the right skills required by him/her for the tasks at hand. But when the employer entertains his/her own prejudice by showing some kind of discrimination against an employee or a group of employees, it results in poor work culture, mal intentions, bad faith, which violates the efficiency argument.

Other issues leading to unjust dismissal stem from matters involving cost-benefit analyses, or when employees are not ends but are treated as means to an employer’s end. Discrimination is another problem that may lead to unjust dismissal.

**Employee Rights Against Unjust Dismissal**

According to the second formulation of Kantian categorical imperative, the employers must treat employees only as ends and never merely as a means, since employees are also human beings. As a matter of employee rights there must be anti-discrimination measures and policies in the workplace. Employers must provide adequate compensation after dismissal. This compensation does not necessarily have to be monetary; it can also be in terms of a provided service. Whenever there is a dismissal, it must have a good cause, followed by a fair hearing after being provided with the reasons of dismissal. Then it is called due process.

**Conclusion**

With this, it can be concluded that the discussion of unjust dismissal is of vital importance for all employees and not just those unfortunate enough to be fired without a cause. The reasons of just or unjust dismissal are not looked into for a lifetime guarantee of employment but to provide an assurance that all employees are treated in a fair manner.

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