



UNFAIR TERMINATION OF EMPLOYMENT AT WORKPLACES

(The Case of Tanzania)

Author

Alexander S. Madinda

Assistant Lecturer

Tanzania Public Service College

Tabora-Campus,

P. O Box 329,

Tabora-Tanzania (East Africa).

Cell +255 713176813 +255 762408036

Email: alexmadinda2@gmail.com alexanderstnly@yahoo.com

ABSTRACT

In the 18th to the 19th century, the world stated to experience major changes in the means of productions, changes in agriculture, mining, transportation, manufacturing and technology. These changes made a major turning point in human history, as they had effects on the social, economic and cultural perspective of that time. It is industrial revolution that resulted into a need for countries to create effective national system of labor administration to improve employees' rights, working condition, and productivity for sustainable development. In ensuring employees rights are not infringed this paper therefore seeks to identify the grounds for unfair termination of employment at work places. It starts with the introduction then reviewing theories and practical experience of different cases that happened in Tanzania under unfair dismissal grounds. The application of Tanzania Employment & Labor Relations Act (2004) in regard to unfair dismissal was also cited by this paper so as to enhance the relevancy of the findings and recommendations made. The paper goes on discussing the notice and remedies for termination of employment and identifying problems that lead to unfair procedures of termination of employee's employment at workplaces and recommend measures on how to combat the problem. The paper ends up by a conclusion.

1.1 Introduction

Unfair termination of employment refers to the process of dismissing employee in the absence of a substantial reason. It is the removing of someone from a work for reasons which are not legally. Unfair dismissal claims normally cannot be valid in the grounds where an employee is dismissed for genuine redundancy, incapability, or misconduct (Economics Dictionary, 2011). The process of dismissing someone from work is categorized in the group of disciplinary action of the office (Salamon, 2000). Disciplinary actions are formal actions taken by the management against an employee who fails to comply with rules established within the organization. Salamon (2000) added that the employers have the legal authority in the utterance of commands and the operations of restrictions or sanctions to ensure enforcement and compliance with those rules. Normally employers expect their employees to comply with general society and managerial work rules and be away from unacceptable behaviors like fighting, stealing, drunkenness, sexual and racial discrimination, insubordination and poor performance (ibid). However, offices witness a lot of unfair grounds in applying these disciplinary rules which employers acquire legal possession over employees. It is for that reason of injustice and unfair termination of employment that this paper seeks to redress.

1.2 Literature Review

1.2.1 *General overview of the unfair dismissal at work places*

The employers' right to discipline their employees is presented on the failure of the workers to fulfill their duties and responsibilities under the contract of employment which involves giving honest and faithful service by using relevant skills, care and all reasonable orders and not otherwise (Salamon, 2000). Employers are not always right; sometimes they can act unreasonably just because of over ambitions toward their workers performance, and

behaviors. It is during this time they can act and take awkward decisions of dismissing employees without considering the formal procedures and the provision of laws on the fair termination grounds. In discussing employees right basing on fair grounds of termination of employment the Industrial Relations Commission of South Australia under Fair Work Act, (2009) section 108(1) provides that during the hearing of the case the commission must determine whether on the balance of probabilities, the dismissal is harsh, unjust, or unreasonable, and they must have regard to the termination of employment convention, rules and procedures for termination. In the United States, situation is inconsistent just because the majorities of private sector employees almost 50 million are unorganized and have no protection against unfair dismissal. Their hope is when they can think of fit in themselves into the specific statutes designed to protect employees against discrimination of race, age, sex, disability and nationality (LexisNexis, 2011). For the case of employees who work under collective bargaining agreement, 25 percent of the total workforce acquires strong protection against unfair discipline of any kind including termination of employment (ibid). The Queensland Industrial Relations Act (1999) revealed the grounds for unfair dismissal if there is an application of invalid reason. The invalid reason is when an employee is alleged for a temporary absence from work because of illness, or injury or his spouse has given birth to a child. The General Protection Provision of the fair work Act (2009) also mentioned unjustifiable reasons for termination like being a member of any trade union, physical and mental disability, marital status, sex, age preferences, and gender. If termination of employment was done under those circumstances then the employees have legal right to apply for reinstatement (Queensland I R Act, 1999). The act provides that the application for reinstatement must be made within the 21 days after the dismissal to be dealt. Dessler (2011) added that

employers are prohibited from discriminating in anyway against employees who reported unfair employers labor practices hence employees should feel free to use their right of being reinstated when they are treated unfairly. The General Protection Provision of the fair work Act (2009) listed some of the fair grounds that justifies termination of employment as when the employee refuses to obey the employer's lawful instructions, repeatedly inefficiency, incompetence at workplace, or where the employer has given clear warning that the employee's work is unsatisfactory and yet no improvement has been made regardless of given ample time to rectify the situation, and misconducts like drunkenness, drugs, assault, serious breaches of work safety standards, dishonesty, or criminal acts .The act concluded that not all misconduct will justify termination of employment but it depends on many factors like how serious the misconduct was.

1.2.2 The Relevant theories of industrial relations regarding to unfair dismissal

The relations of workers are determined by so many factors. Scholars have formulated different approaches to industrial relations like unitary approach, Pluralistic approach and Marxists theory to give guidelines and justify fair grounds on the management of employee's rights at workplaces. The approaches yet convey different perceptions to the management like types of work societies and nature of organizations. The issue of unfair termination of employment directly falls under both unitary and pluralistic approaches. Unitary approach sees the organization as a single unity and as one happy family, that the management and all staff share a set of common values, interests, and objectives of the organization (Salamon, 2000). That being the case managers believe that they have got rights to make decisions without consultation and there is no way employees can challenge the management. In this approach, dismissal becomes unfair because employees are expected to obey and demonstrate their loyalty to the management. The

approach also assumes that there is no need for trade unions to interfere unfair dismissal of employees even in the absence of substantial reasons. Moreover, conflict is viewed as a fiction and not disruptive and collective bargaining is perceived as anti-social. The model has paternalistic approach where it demands loyalty from its employees.

On the other hand, Pluralistic approach insists on the importance of having trade unions because powers are perceived to be pervasive and conflicts are rational and inevitable. In this approach, unfair dismissal can occur when an employee seeks help from the trade union which is perceived to be one of the predominant sub-groups pending the management group (article base.2011). It is in the trade union where unfairly dismissed employees can demand to be reinstated from job.

1.3 Theoretical and practical experience of unfair dismissal at workplaces

Most employees are still in the battle of fighting for their own rights towards management. Their hopes remain in Trade unions hands. They believe that it is from trade unions where they can get greater bargain power to bargain for the increment of their low salary, to minimize discrimination in promotions, transfer, pay, or by being unfairly dismissed, to win participation in discussing matters affecting their interests and maintain peace of mind by acquiring freedom of self expression and better relationship with management. But in contrary all the efforts and hopes end up in vain. Employees' rights are still infringed, they have acquired very low power of collective bargaining, their freedom of self expression has been taken away and they are left with their grievances and complaints. In Australia there was a very interesting case whereby an employee who was dismissed for breaching the non-smoking policy won her job back because, although the company had a non smoking policy,

the consequence of breaching was not known nor was the policy adhered to (Industrial relations, 2011). This gives employers lesson that the introduction of any workplace policies, must be compatible with efforts to enforce them.

A practical case of unfair dismissal can be cited from Tanzania where a court upheld the unfair dismissal claim of 700 mineworkers on July 2010. These employees were ex-miners of Bulyanhulu underground gold mining in Shinyanga, Tanzania. The miners were dismissed for taking part in a strike in 2007 following a breakdown of pay talks. The mine suspended output for several weeks before firing all the 1,300 striking workers, accusing them of illegally walking out. Some were later rehired, while the rest were represented in the court case. The Tanzania Mines, Energy, Construction and Allied Workers' Union has accused the employer, Barrick gold mine, Tanzania Ltd, of poor labor practices (Survey Report, 2011).

Another case of unfair termination of employees in Tanzania was of Sun flag textile factory. The company has 2,100 workers who work day and night in a shift to make it operate 24 hours. Sun flag manufactures clothes, such as T-shirts and dresses, and produces lengths of material for stores and individual labels in developed countries. In February 2008, about 350 workers who were protesting the low wages granted by their employer contrary to those proposed by the government were dismissed unfairly. Later, around a hundred workers were rehired at another company production site (Survey Report, 2008).

1.4 Tanzania Employment & Labor Relations Act (2004) in regard to unfair dismissal

On 4th June 2004, Benjamin Mkapa, the former President of the United Republic of Tanzania signed and introduced the Employment and Labor Relations Act. The Act aimed at making provisions

for core labor rights; to establish basic employment standards, to provide a framework for collective bargaining, to provide for prevention and settlement of disputes, and other related matters. In its sub-part (E) the Act provides a clear meaning of unfair termination of employment; by interpreting the application, and describe unfair termination grounds .It also shows the importance of the proof, remedies and notice of termination.

1.4.1 Application of the provision

To make a clear sense to both employers and employees on the application of the Act, Section (35) of sub-part (E) provides that, “the Act shall not apply to an employee with less than six months employment with the same employee whether under one or more contracts.”

1.4.2 Unfair grounds for termination of employment

In order to protect employee's rights from biasness of employer's decisions, Section 37(1) of the Act provides that it is unlawful to terminate the employment of an employee unfairly. The unfair grounds according to the act include the failure of employer to prove the validity of the reason for termination and termination should be done in accordance with fair procedure. Section 37(3) of the Act provides that it shall not be a fair reason to terminate employment of an employee for reasons related to pregnancy, disability, being a member of any trade union and if employees fails or refuses to do anything that an employer may not lawfully permit or require the employee to do. The Act insists on the importance of providing proof during the proceedings concerning unfair termination of an employee by an employer. Section (39) of this Act provides that “the employer shall prove that the termination is fair.”

1.4.3 Notice and Remedies for Termination of Employment

Before dismissal, employees have rights to be issued a notice of 28 days if he/she is employed on a monthly basis section 41(b). In that notice an employer shall state the reasons for termination and the date on which the notice is given. Sections 41(4) prohibit employers from issuing notice during any period of leave. The Act also considers remedies if an employer fail to comply with substantive and procedural fairness in dismissing an employee. Section 40(a) of the Act allows labor court to order the employer to reinstate the employee from the date the employee was terminated without loss of remuneration or pay compensation to the employee of not less than twelve month, compensation or re-employment. Despite the fact that the government enacted this Act to create equal rights to both parties the employer and employees to ensure good industrial relations and their well being at workplaces, still there is high prevalence of unfair termination of employment and infringement of their rights. There is a need to look again on the side of awareness and implementation of these policies and government acts so as to achieve the target for their purpose of being established.

1.5 Findings in regard to unfair termination of employment

The study found out that employers dismiss their employees unfairly due to various factors including discrimination. For example, when employees register for any trade union in order to be helped to get their rights from their employers, the employers tend to take it negatively hence terminate workers contracts unfairly.

There are also narrow chances for employees to get legal advice on how to win and respond to unfair dismissal. This is because employees are not aware of their rights; they don't know what constitutes fair ground of termination of employee's employment and the grounds for unfair dismissal. Also they are

mostly unable to meet the costs of hiring legal practitioner to handle their cases.

Employers especially those in private companies tend to dismiss their workers unfairly purposely so as to switch the new ones who are not stubborn and know little about their rights so as to continue exploiting them and reduce challenges at workplaces.

The study also found that employees do not report their discouragements and appeals cases of unfair dismissal because of the lack of knowledge about their rights. They absolutely blank and know nothing about their entitlements in terms of compensations and other rights from their employers.

Lastly, observations show that in these cases, unfair termination of employment does not proceed to the court stage. This is because most employers tends to avoid wasting their time to attend to the court and pay the fine which is not less than twelve months salary to the dismissed person if found the dismissal was done under unfair grounds.

1.6 Recommendations on how to rectify the situation

Induction course to newly recruits is highly advised to familiarize them with the rules, procedures of the office and rights which they are entitled to as employees. Most workers find themselves victims of un-procedural termination of their employment just because they are ignorant of what is supposed to be done and know nothing about what constitutes fair or unfair grounds of termination of employment. Trade unions should expose employees to knowledge of understanding the procedures and how to go about claiming their rights.

Trade unions should play their part on ensuring the welfare of employees at work places is well

maintained. Their efforts should be directed to ensuring freedom of workers, collective bargaining and legal assistance to the employees who may be terminated unfairly and other job related problems.

Finally, employees should report any kinds of discrimination cases like place of origin, age, sex, marital status, pregnancy, disability sexual harassment, and other indecent acts done by their supervisors and bosses to the trade unions or to the labor court, because it is from these acts that unfair grounds of terminations of employment emerge.

1.7 Conclusion

The relationship of employers and employees at workplaces, and the rights entitled to, development, and welfare of these two parties is what constitutes industrial relations. However, the relation of the two is ruined by a lot of factors being internal or external. The relationship turns from friendly hood to enmity especially when one part acts contrary to the agreement. The provision of various labor laws, establishment of labor courts, and trade unions justifies the problems like discrimination at workplaces, in terms of sex, gender, nationality, pregnancy, disability, age, religion, etc The unfair termination of employment of employee is one of the results of such antagonistic relationship between the two. The struggle for the equal balance of rights will never come to an end as no group is ready to be defeated.

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