

CHAPTER 13: THE CONTRACT OF EMPLOYMENT AND ITS TERMINATION

QUESTION 1

Explain how an employer can show that the way he dismissed an employee was reasonable. What kinds of action can be reasonable?

Answer:

- A dismissal does not necessarily have to be unfair. First, an employer would need to show that he dismissed for a reason which is capable of being fair, namely capability, conduct, redundancy, statutory bar, or some other substantial reason.
- Secondly, he would need to show that the decision to dismiss was one within the range of reasonable responses.
- Finally, the procedure taken would also need to be fair, either by following the procedure in the ACAS code, or that in the employment contract if it is more generous to the employee, namely by having a proper investigation and hearing, and appeal hearing if required.

QUESTION 2

Explain the difference between an employee, a worker and a self-employed contractor. Why is the difference important?

Answer:

- There are a number of differences. An employee is someone with an employment contract, whether written or oral. He is someone to whom the tests will apply, such as the integration test, mutuality of obligation, etc. A self-employed contractor is someone who can be described as being in business on his own account. A worker is someone who is not an employee but is not fully self-employed either. They may be agency workers or working on a freelance basis.
- The difference is important because only an employee will have employment rights, not a self-employed person. A worker will have a few rights (such as the rights to paid holiday and a minimum wage), but not the full rights of an employee.

QUESTION 3

A football manager is employed on a five-year contract. After three years, his team does extremely badly in the Premiership and is relegated. The club wishes to dismiss the manager. What issues are raised?

Answer:

- It depends on what his contract says, and whether he is an employee or not. If the tests of employment are met, then he will be an employee.
- If he is found to be an employee, then as he has been employed for three years, he can apply for unfair dismissal.

- The issues which need to be looked at are whether the club wish to dismiss him for one of the potentially fair reasons for dismissal, in this case probably competence, and the procedure that they use to dismiss him. If they simply do it as a response to the press this may well be found to be unfair.
- They will also have to consider notice periods and what pay he is owed, including any holiday pay outstanding.

QUESTION 4

A lecturer is asked to teach on a course at a college of higher education. The course has already been written, and the lecturer is given lesson plans to follow. She only has to come to the college for two hours on a Tuesday to teach that particular course. She does not have a manager and is told that she is not an employee. The HR Department asks her to sign a form stating that she is a 'freelancer'. What is her employment status and why?

Answer:

You have to look at the details of the relationship between her and the college. It looks like there is some mutuality of obligation, and she cannot do her own lesson plans. It is therefore unlikely that she is in business on her own account, whatever her contract states. You probably need to find out further information, but it is likely that in these circumstances, she is either an employee or in the 'worker' category.