

## **Compensation in Wrongful Dismissal Cases**

Wrongful dismissal is the name given to a breach of an employment contract, by an employer, connected with the actual or constructive dismissal of an employee.

Breach of contract and wrongful dismissal are common law concerns and cases are frequently dealt with by the ordinary law courts. Wrongful dismissal is quite different from unfair dismissal. Unfair dismissal cases are dealt with at the Employment Tribunal (ET), not by the courts.

Compensation for wrongful dismissal is very different from an award for unfair dismissal, which is a statutory entitlement. However, a dismissal can be both 'wrongful' and 'unfair' at the same time.

The most common situation in which wrongful dismissal is claimed is where the employee is dismissed without notice. However, if the employer is in breach of any significant term, whether express or implied, of an employee's contract of employment, then the employee may be able to resign and claim constructive dismissal.

Every contract of employment carries with it an implied mutual duty of trust and confidence. Two recent cases considered the question as to whether a claim for damages can be pursued in the courts where a dismissed employee claims to have suffered psychiatric injury and consequent financial loss as a result of an employer's behaviour and when the employee has already won a case at the ET for unfair dismissal.

The House of Lords heard conjoined appeals in the cases of McCabe v Cornwall County Council and Eastwood and another v Magnox Electric plc. Difficulties in deciding these cases arose because in the earlier case of Johnson v Unisys Ltd. a majority of their lordships held that an employee could not use a breach of the implied terms of trust and confidence to claim damages for psychological injury if the damage arose because of the manner of the dismissal itself. The employees in the conjoined appeals claimed that events prior to their actual dismissals were the cause and therefore the basis for their respective legal actions.

Mr McCabe was a teacher at Mounts Bay School in Cornwall. Following complaints of inappropriate behaviour made against him by female pupils, he was suspended. While still suspended he was required to attend a disciplinary hearing. Meanwhile, he began to suffer psychiatric illness. Over the next three years there were further disciplinary hearings and in 1996 his dismissal was confirmed. In December 1996, Mr McCabe won a case of unfair dismissal and was awarded compensation of £11,000, the statutory maximum at that time. In March 1997, Mr McCabe made a High Court claim for damages for psychiatric illness caused by the behaviour of the Council and the School. The judge did not accept his argument that his claim related to matters preceding his dismissal, rather than to the manner of the dismissal itself. Mr McCabe

won his appeal in the Court of Appeal and his employer then appealed to the House of Lords.

Mr Eastwood and Mr Williams held senior posts at the Magnox power station. Mr Eastwood was involved in a disagreement with his immediate superior. This escalated and Mr Eastwood was given a final written warning. Mr Williams was asked to give a false statement in support of the case against Mr Eastwood. He refused to do so and was threatened that he too would be made the subject of investigation and disciplinary action. The men were subsequently told that they faced serious allegations of sexual harassment and had to answer detailed questions without being told what the allegations were. In August 1996, both men were suspended and later dismissed. By this time, both men were suffering from stress.

Mr Williams won a case of unfair dismissal and Magnox settled a similar claim brought by Mr Eastwood. The men went on to sue Magnox in the County Court, claiming breach of the implied term of trust and confidence and loss and damage for stress-related illness, depression and the inability to work. Magnox argued that the claims related to the unfair dismissal claims which had already been settled and only Tribunals have jurisdiction to hear unfair dismissal claims. Magnox won the argument and succeeded again in the Court of Appeal. Mr Eastwood and Mr Williams took their case to the House of Lords.

The House of Lords allowed the appeal of Mr Eastwood and Mr Williams and also dismissed the appeal of Mr McCabe's employer. The Lords' view was that the circumstances in each case which could give rise to action were separate from the dismissals themselves and so common law claims could be brought for damages for psychiatric injury caused by the employers' actions. However, the Lords recognised practical consequences arising out of this judgment, such as the likelihood of judges and Tribunals being faced with conflicting medical evidence as to the cause of an illness and when exactly it occurred. In the light of these judgments, it appears an employer may be better off simply dismissing an employee. A claim for unfair dismissal would be subject to the maximum statutory award whereas a common law claim for damages for psychiatric injury would not. Lord Nicholls said that the situation is one that 'merits urgent attention by the Government and the legislature'.