

**September 13, 2025**

## **Summary and unfair dismissal in Trinidad and Tobago, Employees are not Ghosts.**

With the recent avalanche of catastrophic firings in the public sector, it is important for those with knowledge and experience to speak out and provide a glimmer of hope to those less fortunate and defenseless in our society.

### **Summary Dismissal**

Summary Dismissal of an employee refers to an immediate termination of employment, typically executed without prior notice. For the employee it is a traumatic event and represents more than just lost wages but a social stigma and loss of self-esteem.

The right of the employer to summarily dismiss a worker must be tempered. In **TD No: 178 of 2001 Communication Workers' Union v. Simpson's F&F Funeral Home Limited**, HH Donaldson-Honeywell (as she then was) gave the following guidance:

*“In a dismissal, actions such as failure to inform the employee of the reasons and failure to give him an opportunity to be heard firstly, In defence and secondly In mitigation of the proposed disciplinary actions are harsh, oppressive and not in accordance with principles of good industrial relations practice, in all but exceptional cases”.*

Employers should be aware how the Courts view the act of summarily dismissing a worker. In **Cable and Wireless v Hill and others (1982) 30 WIR 120** at page 129 stated: *“...the burden of proof was on the company, to show ‘just cause’ for dismissing the employees and that since summary dismissal constituted a strong measure, the standard of proof should be strict, persuasive and convincing ... notwithstanding ... this is a matter of a civil nature requiring proof on the balance of probabilities, since the matters to be proved were of a grave and weighty nature, it would expect the evidence to be correspondingly cogent and weight in nature and content”*

Employers are advised that the question as to whether the employee conduct justified summary dismissal is one of fact to be determined by the Court. Lord James of Hereford in **Clouston and Co Ltd. v Corry [1906] AC 122** stated *“The question of whether the misconduct proved establishes the right to dismiss the servant must depend on the facts and is a question of fact.”*

### **Unfair Dismissal**

Unfair dismissal is a statutorily created concept that refers to a dismissal contrary to a given statute. When such a claim is brought on behalf of an employee/s, the question of the fairness of the dismissal features at its very core. The Court in treating with the claim is obliged to examine the reasons for the dismissal and/or the process by which the employee was dismissed. If any one or both of these elements are unfair, the dismissal is unfair.

In Trinidad and Tobago the concept of **unfair dismissal** has been ascribed to dismissals that are “harsh and oppressive or not in accordance with the principles of good industrial relations practices”. This is pursuant to **Section 10 (4) (5) of the IRA** where the **dismissal** of a worker is dealt with in the context of a trade dispute.

Traditionally unfair dismissal cases are primarily heard in the Industrial Court, however, where access to the industrial court is not available there is no jurisdictional conflict for the High Court to treat with cases of unfair dismissal. Justice Kokaram( as he then was) in **CV2016-03482 Roger Carrington v UTT** stated,”

*To simply say that the common law, as established by the English authorities which rely on Addis do not recognise a remedy for the unfair manner of a dismissal, mummifies the development of our local jurisprudence on employment law. It entombs the relationship of employer and employee to the relics of a history of “master and servant” which rattles our understanding of the importance of labour in production, the respect that should be attributed to both employer and employee, the co-operative nature of the relationship and the underlying principles of mutual honesty and trust without which the relationship would be unintelligible and unworkable.”*

*It is worth noting Lord Nicholls of Birkenhead comments in **Malik v. BCCL [1997] U.K.H.L. 23,** “Jobs of all descriptions are less secure than formerly, people change jobs more frequently, and the job market is not always buoyant. Everyone knows this. An employment contract creates a close personal relationship, where there is often a disparity of power between the parties. Frequently the employee is vulnerable. Although the underlying purpose of the trust and confidence term is to protect the employment relationship, there can be nothing unfairly onerous or unreasonable in requiring an employer who breaches the trust and confidence term to be liable if he thereby causes continuing financial loss of a nature that was reasonably foreseeable. Employers must take care not to damage their employees' future employment prospects, by harsh and oppressive behaviour or by another form of conduct which is unacceptable today as falling below the standards set by the implied trust and confidence term.”*

The courts in our Jurisdiction have not been hesitant in awarding substantial damages for summary and unfair dismissal of employees and certainly it seems like they will be called upon to administer justice yet again.

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