



COMPARISON OF BOTH MIDDLE EAST COUNTRIES' AND COMMON LAW JURISPRUDENCE ON 'ARBITRARY TERMINATION' AND 'UNFAIR DISMISSAL' IN EMPLOYMENT LAW

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ABSTRACT

It is extremely important to distinguish between unfair dismissals from the general law, which is corrected for unlawful dismissal. The latter is a legal remedy for civil law, mainly formed in the violation of the employment contract. From the worker's point of view, there are significant shortcomings in this civil law as a remedy. Civil law does not provide a remedy by restoration. Since the employer, as a rule, has the right to dismiss in accordance with the terms of the contract after the provision of the relevant notice period, as provided for in the contract, the damage will often be limited to loss of earnings during this period.

KEY WORDS: *Arbitrary termination, Arbitration law, Arbitral Tribunal, DIFC law, ADGM law, unfair dismissal, labor law, UAE Labor Law, common law, civil law.*

INTRODUCTION

There are no legal remedies based on breach of contract, for failure to comply with proper complaints and disciplinary procedures before dismissal. "However, it will be stated below that the development of the concept of unfair dismissal and the number of remedies available to it may have allowed the employee too much with an ironic result that he may ultimately be less satisfied with the consequent unwillingness on the part of potential employers to expose themselves to the consequences of using an individual who, in time, will be able to pursue such a strong relief from them".

The basic laws governing labor relations in the United Arab Emirates are 1981, No 24, 1981, No 15, No 12 and No 8 (Labor Legislation) and the Ministry's instruction to execute those provisions. This applies to all employees (including foreigners) working in the United Arab Emirates except for the following categories of workers:

- Staff assigned to federal and local government officials, employees and federal and local government projects.

- Households working in private homes.
- Armed forces, police and security personnel.
- Agricultural workers (repairs or repair of agricultural machinery or agricultural machinery).
- Employees working at Abu Dhabi Global Market (ADGM) and usually working for ADGM. These employees are eligible for ADGM Employment Law No.1 of 2014.
- Employees working at DIFC and working in the DIFC are usually employees of the Dubai International Financial Center. These employees have amended DIFC Labor Act No. 4 (2005 DIFC Labor Law).

The parties may choose to apply the law applicable to the contract. If the rules of a free zone conflict with the Labor Law, labor laws will prevail. However, this does not apply if labor law is less favorable than the rules of the free zone. Employees (including foreigners) working in the United Arab Emirates (except those employed by DIFC and ADGM) in one of the many free areas are subject to the Labor Law and the relevant workplace regulations.



However, in practice, the courts of the United Arab Emirates generally have the jurisdiction, usually when they are not handled by DIFC or ADGM (unless they believe that they have assumed the jurisdiction of the DIFC or ADGM) jurisdiction.

DIFC's sovereign workflow, DIFC Labor Act (DIFC Act 4/2005, amended) settles business-related problems in DIFC. Dubai International Finance Center (DIFC) is a free zone that manages under the legal system of the UK law. It does not depend on the arrangement or method of act of other free zones or areas of the UAE. It is significant that the DIFC has no concept of dismissal and therefore there is no dismissal compensation. However, there are accurate and clear prejudicial rules. DIFC does not have employer requirements or policies or employment regulations for UAE citizens.

The passport holders of the United Arab Emirates and other Gulf Cooperation Councils (GCC) are commented narrowly differently, since they buy or purchase a place residence permit of the United Arab Emirates not required (The Concept of Freedom of Movement in Different States of GCC Membership). However, there is still a request for a DIFC card. The residence and job permits are valid for a cycle of three years and may be renewed, due to the diplomatic eclipse among the two countries, Qatari citizens, who are not currently allowed to the United Arab Emirates, are only one exclusion. The United Arab Emirates labor regime is closely connected to the immigration regime. Residents of other countries could not work legally in the DIFC, without the right to employ and the right to address for labor permission by a domestic licensed or registered legal department.

The DIFC Business Act does not include any particular rules controlling or settling post-contractual limitations. However, since DIFC is a united authority (with respect to the common civil jurisdiction of the United Arab Emirates), the DIFC courts may force limits on the employer's labor contract after certain terms, and this is due to the English legal rules - its degree, expanse and length and does not have a reasonable need to preserve the benefit of the employer's legitimate labor interests. The SISC can take juridical action against the worker, but in implementation this can only be done in the DIFC territory. These procedures could not be productive if the employee chooses to work externally from the DIFC.

As with the Dubai International Finance Center ("DIFC") ADGM becomes a private free zone and controls as a new authority from the United Arab Emirates and does not observe with the UAE civil and commercial laws. Any misdiagnosis of common law is

addressed to a section of the ADGM law with suitable and detailed measures so as not to be postponed by ADGM and its common law applies. This was not a sudden event because ADGM composes a legitimate legal environment for international banks and financial institutions.

From the point of view of employment, the Rules carefully apply to the requirements of the DIFC and differ from a number of key areas of the UAE.

A solitary figure of ADGM is the drafting of a new authority, but another feature is the development of a new regulatory body. Most workers currently employed by ADGM are allocated to the Ministry of Labor ("MOL"). Their employees are granted labor cards (work permits) and employers' MOL observations and supervision. There are some state-owned organizations in the region that do not have MOL.

In the case of the Free Zone, the migration process will be licensed by employers with the ADGM Free Zone Territory ("FZA"), and employees will be granted free entry visas for free visas. From the point of view of the right to work, this is to cancel one job and start another. It is important to consider how to deal with benefits calculated by the employer as well as the end of the annual leave. The majority of employers are expected to work to achieve these new benefits to achieve these new benefits, which can be achieved through existing contracts.

"Abu Dhabi (but not for the employee's visa) and it is not clear yet whether this will change under the new regime.

From an employer's perspective the FZA will replace the MOL as the regulatory and oversight body. Generally speaking free zones are considered to be more relaxed about providing permission for hybrid working arrangements and short term working arrangements.

Most free zones have a mediation process (with differing levels of formality) that must be exhausted by the parties to an employment dispute before a party can file a case in court and it remains to be seen whether this is followed in ADGM.

The Regulations are very employer friendly in that the prospect of obtaining injunctive relief to enforce post termination restrictions is likely to be attractive to employers. The working hour arrangements, which oftentimes can represent a challenge for onshore employers, are also quite flexible".

While there is no express provision for the dismissal of dismissal, the explicit recognition of the rights and confidence. It is yet to be seen how this may be interpreted and applied in practice.



From the employee perspective, there is an anti-discrimination and data protection policy, as well as for the first time in the UAE private sector, paternity leave. There is no reduced gratuity where the employee resigns.

Overall the regulations are likely to be welcomed by employers and without a doubt they send out a powerful message that ADGM is open for business.

In contrast to European countries, the termination of business relations may be more complicated, particularly for long-term employees, the UAE can simplify the employment of a worker by giving the agreed number of employers.

Common Labor Legislation consists of several legal provisions working places in various laws. Employment Agreement shall be considered current if the employee (service) is obliged to provide service for a certain period of time (to the employer). Staff personally and economically depending on the employer. Right to work labor legislation (personal labor law),(Collective labor legislation), procedural laws and conditions health and safety issues. This is the main purpose of the right to work eliminating the social imbalance between employees and employers. This is an important part of social policy.

Labor protection in Great Britain is primarily legitimate. Additionally to legal provisions (by courts and For example, years of workplace) some areas (eg. discrimination and dismissal) issued by government-sponsored bodies. Codes are illegal are not mandatory, but they should be considered by the Labor Tribunals and that is why it should be taken into account employers. Contract law (based on customary law) not by law) plays an important role protection.

There is plenty of employment in the European Union. As Part of the European Union (EU), Britain is subordinate to the EU business legislation, some of which are directly related to the UK but most of them define minimum standards must be made locally by each Member State. Thus, there are many laws in different Member States different from those of the same EU law.

“At Common Law, an employer can terminate the services of an employee without giving reasons, provided that the appropriate period of notice is given in accordance with the applicable contract. However, this position has been altered by the Act, which establishes certain minimum procedural standards an employer must follow prior to terminating the services of an employee who is eligible to claim unfair dismissal”.

The mandatory requirement is that the worker does not complete the job service of the employee in the end of service it is harsh, unfair or unreasonable.

According to the Common Law system for arbitrary termination following circumstances should happen, such as:

- Whether or not the employer has an explanation to do so whether the job is terminated and whether the employer has been granted or not so with the opportunity to respond;
- Whether there are valid reasons to stop based on the employee's capabilities or behavior according to the employer's operational requirements;
- Lacks of alerts or warnings are given to the employee prior to termination of the case.

Discrimination claims should normally be granted before Labor court. As discussed above, the time limits are short and claims must be filed within three months of the appearance of the complaint.If temporary discrimination persists, the time will come from the last movement in the chain. Complaints on the same charge the law can be enforced at any time or in the following cases:

- (i) Within six months of employment termination (for requests in front of the Labor Courts); or
- (ii) 6 years (for prior notice) traditional courts).

Compensation is the main tool of guilty behavior and it gives advice to the Tribunal that the employer has taken concrete steps to eliminate discrimination actions.

“There are five reasons that are treated as “fair” reasons under the legislation:

- (i) redundancy (where an employer reduces the number of employees in a particular role and/or at a particular site);
- (ii) misconduct;
- (iii) capability (i.e., performance issues or inability to do a job);
- (iv) where continued employment would breach a legal duty (such as allowing a disqualified driver to continue to drive); and
- (v) Some other substantial reason, which acts as a catch-all category.”

“Labour legislative requirements and the case law require employers to:

- provide eligible employees with specific details of any concerns with their conduct or performance and give them an opportunity to respond to the same;



- provide eligible employees with sufficient warning that if their conduct or performance does not improve then their employment may be terminated;
- where appropriate, counsel or train employees on how their conduct or performance can be improved; or to provide employees with a final opportunity to respond before terminating their services. Where FWA finds that a termination was unfair, it can order reinstatement of the employee. It also has the power to order the payment of compensation of up to six months' remuneration".

On the contrast to the Common Law system, Labor disputes in the United Arab Emirates are subject to the jurisdiction of the United Arab Emirates courts following the initial intermediary sent to the United Arab Emirates Ministry of Labor. Courts of the United Arab Emirates are not affiliated with the precedent, and similar cases are considered on a case-by-case basis. In general, it should be noted that labor laws have agreements for a "certain period" (ending in a certain period of time) and "explicit" (without agreement). The Labor Law provides detailed information on the terms and conditions of the employment contract and its financial consequences.

The UAE Courts have, however, held that, for contracts which do not have a fixed term, redundancy is a valid reason for termination and will not be treated as arbitrary. The employer will, however, need to show that the redundancy is genuine (i.e. other employees are also being made redundant and the specific job in question should not be taken by another employee etc.).

"Examples of where the UAE Courts have held a dismissal to be unfair thereby entitling the employee to compensation include:

- where an employer has been in breach of his obligations under the employment contract or those provided by law, including the obligation to pay an employee's salary within the timeframe laid down in the employment contract and this has caused the employee to leave his employment; and
- where an employer has, by his oppressive acts and his breach of the conditions of the employment contract, put the employee in a position that makes it appear that it is the employee who has terminated the contract (whatever may have been the form of the termination), provided that it is proved that it was the acts of the employer that gave rise to such termination."

In evaluating the amount of compensation for unjustified dismissal, the United Arab Emirates

emphasized the need to pay attention to the type of work: the degree of damage and the employment.

However, Article 123 of the Labor Law stipulates that compensation for unjustified dismissal should not exceed three months' wage, unless the contract expires. In this situation, the employee will be entitled to compensation in the amount equal to the amount of wages for the three months' wage and the remainder of the contract balance, with the consent of the employee to the higher level of compensation.

CONCLUSION

Although the evidence in the preceding paragraph may well be seen as a tongue in the cheek, it can be said that it can be worthy of re-evaluating the effectiveness and equilibrium of the current law approach in cases of dismissal. Of course, since 1971, it is unrealistic to suppose that the cancellation of all workplace protection can be abolished, as the protection of the employee against the employer has so far been extended.

"Until recently, redundancies in the GCC were practically a non-existent phenomenon, which is fortunate as labor laws aren't exactly generous towards the employee. However, with the economic crisis exerting an ever tightening grip in the region, it's worth knowing what rights you have.

The concept of unfair dismissal isn't recognized by the UAE labor law, so if you believe you've been ousted unjustly, you'll struggle to receive significant compensation.

The closest thing to this is called 'arbitrary dismissal', where an employee loses their job for reasons other than an inability to perform their duties. Even then, the maximum compensation is only three months' salary."

Prior to the 2002 Labor Law, even the employer was inadequate when the employer needed to be employed when needed for the proper job security. It was undeniably accurate and appropriate that the previous general legal approach to the damage compensation in case of forced dismissal on the strict application of the Convention principles was insufficient to protect the employer from the ability to understand very long in favor of the supplier.

This creates a threat to avoid employers' employment, and they are reluctant to nominate candidates or even refuse to appoint them, fearing the financial consequences of terminating their employees. As shown, the introduction of legal disciplinary and procedural procedures in October 2004 entails a great deal of interference in matters that can be voluntarily exercised by the legislature or is insufficiently adequate. The key argument set out above is that,



despite the employer's illicit restriction, the consequences of non-compliance with disciplinary regulations - should not be forgotten that the new law governing the law-abiding behavior is also in the workplace (a complaint procedure for the dismissal) may cause discomfort to the worker.

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