

Wrongful and Unfair Dismissal



SWU Trade Union Advice and Representation Officer **Julie Long** discusses this problem



What is the difference between wrongful and unfair dismissal?

A wrongful dismissal is a dismissal in breach of contract and the only relevant considerations are the contractual ones of the employer. There is no length of service requirement for a breach of contract claim, which can be

brought in the County or High Court. Most wrongful dismissal occurs where an employee is dismissed without appropriate or sufficient contractual notice. Damages awarded usually equate to the value of the employee's pay and benefits during the period of notice that the employee would have been given, had the contract been terminated lawfully.

The right not to be unfairly dismissed, is a statutory rather than a contractual matter. To determine whether a dismissal is fair or unfair it is firstly necessary to determine the reason for the dismissal (and whether it is one of the potentially fair reasons listed in the 98 Employment Rights Act). Whether or not the employer acted reasonably in treating this reason as sufficient to justify dismissing the employee and whether or not the employer followed a fair procedure. If either the

employee or employer fail to follow established work-place procedures the Employment Tribunal can increase or decrease awards by 25% as applicable.

Except in defined circumstances an employee must have a minimum of two years continuous service for the right to bring an unfair dismissal claim. Compensation is made up of a basic award usually the same as a statutory redundancy payment and a compensatory award. This can take into account future loss of earnings.

There are situations when an employee can choose between bringing either a wrongful dismissal and an unfair dismissal. There may have been a situation, for example, where the employee has been unfairly dismissed for an act that they didn't commit and an employer dismisses an employee with immediate effect. This is without allowing the employee to work their notice period. This would be both a breach of contract (wrongful dismissal) and an unfair dismissal (because you did not commit the act you were dismissed for).

The decision about which claim to bring depends on notice periods. Some senior managers, for example, who have lengthy notice periods may find it more beneficial than damages for a breach of contract claim.