



Legal Effects of Arbitrary Dismissal in the Bahraini Labor Law

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ABSTRACT

The legal effects of arbitrary dismissal are legal subjects that need to be studied because of the problems that social laws still need to be decided upon in anticipation of the failure of the legal rule to cover them in the light of the continuous change in economic and social conditions.

These effects are compensation for arbitrary dismissal or reinstatement of the employee where possible in accordance with the grounds and controls governing compensation for arbitrary dismissal and the amount of such compensation in fixed-term and unspecified contracts, as well as other labor benefits that an employee deserves as a result of dismissal as notice allowance, termination indemnity in indefinite contracts and compensation for the penalty clause in fixed-term contracts, if any, and other benefits.

The question of reinstating the employee is a matter of appreciation to the civil super court - the competent civil court to consider resolving disputes between the employee and the employer concerning unpaid wages due to the employee or illegal deductions of remuneration, whenever the employee is still in employment - constrained by the employer's desire and the possibility of reinstating the employee.

Keywords: Employer, employee, arbitrary, dismissal, compensation.



Introduction:

The idea of a sanction for arbitrary dismissal has emerged based on the urgent need to examine the penalty for dismissal if this study is not justified, and is imposed on us largely in practice.

In addition, article 101 and 111/C of the Bahraini Labor Code (36) of 2012 ⁽¹⁾, which provided for compensation for arbitrary dismissal, was controversial, so that no amendment was made to the Labor Code except as covered by the legislative amendment, and the focus of the dispute was on the amount of compensation, how it was calculated, and how the amount of compensation was determined.

It is well known that the Labor Code concerns a large group of members of society, employee and employers, which affects their lives and the lives of their families, which may adversely affect the economy of the State, since the Labor Code has both an economic character and a social character that has a significant impact on society and the State.

It should be noted that the Bahraini legislature has defined the cases of lawful and justified dismissal of the employer and is provided for in the provisions of the Labor Code. However, the gaps in the law have made this a cause for employers to exploit and to rely on them to end the contractual association arbitrarily and unjustifiably. This was found in many judicial decisions, since they have not examined the seriousness of the employer in arbitrary dismissal, especially during the trial period, which has begun to ascertain the validity of the employee's assigned work (Hashem, Hisham Refaat, 1990, 323)⁽²⁾.

The draft law did not fit in the order of the legal texts that spoke of the reasons for the legitimate dismissal, so that the texts were scattered and unorganized and did not appear under the title of the draft chapter or justification.

The Bahraini legislation has set out several legal effects as a result of the arbitrary dismissal provision mentioned in the provisions of articles 101, 104 and 111/c of the Labor Code, attempting to strike a balance between the two poles of the contractual relationship and to cope with economic developments, difficulty and cost of living and high unemployment; the dismissal is an unlawful termination of the employment contract and the employer is not disqualified from its obligations; it requires compensation for damages due to the dismissal of the entire period of the employee's employment and the benefit of his employment.

The penalty for an employer if an employee is arbitrarily dismissed, in accordance with articles 101, 104 and 111/C of the Bahraini Labor Code, is two things: Either the employer is sentenced to reinstate the employee who is dismissed or to be compensated for this dismissal.



Study problem:

In examining the articles on termination of employment services, it was found that there was a problem to be discussed, since article 107 of the Bahraini Labor Code had established exclusivity in which the employer could terminate the employee's services.

Another problem arises: The drafting of some legal provisions relating to termination of employment, which are open to interpretation by the court or by jurists, as provided for in article 101 of the Labor Code, which spoke of the court's jurisdiction, but which, together with arbitrary dismissal, required it to be contrary to the law, resulting in a discrepancy in judicial jurisprudence.

Importance of Study:

The importance of the study also arises in highlighting the great role of the courts, the extent to which they have contributed to reducing employer arbitrariness against the employee, and in highlighting the guarantees of litigation granted by the legislator in terms of the free and urgent lawsuits, and the extent to which these procedures contribute to the conduct of the proceedings (Khalifa, Abdulaziz Abdul Moneim, 2004, 11), especially since there is a fair amount of labor cases.

Curriculum:

For the benefit and benefit of this research, the analytical, monetary and comparative method of practical research has been used, guided by the Bahraini Court of Cassation.

Study Plan:

Until the research has achieved its objectives, it has been divided into two researchers as follows:

First: Return the disconnected agent to work

Second: Monetary compensation for arbitrary dismissal.



1. Return the disconnected agent to work

The decision to reinstate the separated employee shall be deemed arbitrary to have his or her original work in kind for the contract (Almugraby, Jaafar, 2004, 898, Jaber, Mahmoud Salama, 2007, 244). By obliging the employer to return the employee who is separated or forcing the employee to continue working in the employer's service, it is noted that forcing either party to the employment contract to resume the employment relationship is unacceptable, as it is an assault on personal freedom on the one hand, and forcing the employee against the supposed good cooperation between the employee and the employer, and constitutes a violation of the employer's prestige and authority on the other (Kira, Hasan, 1969, 817, Ghandour, Zahir, 1982, 58). event of arbitrary dismissal, and that the term "provision" makes it possible for the employer to be elected between return or compensation, not to be obliged to return (Abu Shanab, Ahmad, 2006, 263).

We note that the Bahraini legislature has authorized the competent court to rule on the return of the separated employee to his original work, regardless of the reason for the dismissal.

The judicial struggle has been made that the option of returning the employee to work is for the employer and not for the employee (Allawi, Nusseibeh Mahmoud, 2006, 33).

It appears from the text of article 104/b of the Bahraini Labor Code that the origin of the arbitrary dismissal is the return of the employee to his employment, which is derived from the drafting of the article referred to, where the return has been provided for compensation. The text says. It may, i.e. the court, order the employer to return the separated employee to his or her original job or to pay compensation.

We believe that a criterion should be set for returning the employee to his original work, so that the provision of returning the employee to his work in this way may affect the employee itself and the institution because of the gap between the employee and the employer, especially the small-scale enterprises, where the employee is frequently in contact with the labor force, leading to a decline in production and damage to the economic side, not to mention the possibility of aggravating disputes among them.

This criterion is that an employee who is arbitrarily separated may be reinstated without creating disputes between him and the employer, so I propose that the Bahraini legislator be the criterion of the degree of association between the two parties to the contract. If the contact between them is indirect, if the employee is working in a branch and the employer is in the company's main position, then there is nothing to prevent the employee from returning to work, provided that his claim is within the prescribed legal period.



2. Monetary compensation for arbitrary dismissal

Arbitrary dismissal creates material and moral injury to the employee, which is liable to compensation in accordance with general rules, and the Labor Code, in its article 111, provides that the employee may claim such compensation but in several cases the legislator makes a difference:

"B. If the employer terminates the employment contract indefinitely without cause or for an unlawful reason three months after the date of commencement of work, make a commitment to compensate the employee for the equivalent of two days' wages per month of service and at least one month's wages and no more than twelve months' wages.

C. If the employer terminates the fixed-term employment contract without cause or for an unlawful reason, he or she commits to indemnify the employee with the equivalent of the remaining term of the contract. Unless the parties agree to lower compensation provided that the agreed compensation shall not be less than three months' wages or the remainder of the contract, whichever is less.

D. If the employer terminates the contract of employment for a particular job without cause or for an unlawful reason, he or she commits to compensation for the remainder of the term To complete the work agreed upon by the nature of that work, unless the parties agree to a lesser compensation provided that the agreed compensation shall not be less than three months' wages or the remaining time required to complete the work, whichever is less.

E. In the two cases set forth in paragraphs (a) and (b) of this paragraph, if termination of the contract constitutes an arbitrary dismissal in accordance with the provisions of any of articles (104) and (105) of this Act, the employee shall be entitled to additional compensation equal to half of the compensation due under this article. Unless the contract provides for compensation in excess of that.

F. For the purposes of this article, the fractions of a month are a full month".

Article 30 of the Arab Convention No. 6 of 1976 on Working levels - amended - stipulates that: "If the contract is unjustifiably terminated, the injured party shall have the right to compensation to be awarded by the Court, taking into account the type of work, the amount of damage, the duration of service and the current custom, after verification of the circumstances of the breach" (Badawi, Ahmed, 1982, 50).

It should be pointed out here that compensation for arbitrary dismissal differs from the mechanism for its determination and award in fixed-term and indefinite contracts, which required that this discussion be divided to talk about compensation for arbitrary dismissal in both contracts in two claims as follows.



2.1. Monetary compensation for arbitrary dismissal in indefinite contracts

Compensation for arbitrary dismissal in indefinite contracts shall be based on the last salary of the employee and shall be calculated according to the gravity of the injury suffered by the employee, not less than three months' wages, the remaining duration of the contract or completion Work⁽³⁾.

The Court has the power to assess the gravity of such damage and, accordingly, to compensate with or in conformity with the upper or lower limits, in accordance with the text of article 111 of the Labor Code; The Court's award of compensation may be maximized if the employee's dismissal results in arbitrary dismissal from long-term employment (Ramadan, Sayed Mahmoud, 2006, 438). The assessment of compensation payable to the employee remains a substantive issue within the jurisdiction of the judge of the case without any trace, provided that the court shall identify the elements of the injury for which such compensation has been awarded, discuss each of them individually and indicate the fact or incompetence of the claimant (Diab, Salah, 2015, 354)⁽⁴⁾.

Since the Labor Code required the termination of such contracts for justified reasons - except for exceptions - to give notice to the other party, it would be added to the compensation claimed instead, in addition to the end-of-service remuneration for non-social security and other benefits granted to it under the internal regulations established in the enterprise, These relate to savings, savings, retirement, or any other fund.

The question arises as to the nature of the liability arising from the arbitrariness of the termination. What is the nature of the liability to compensate the other party for damage caused by such arbitrary termination? Is it a default responsibility or a contract responsibility?

The conventional view is that this responsibility is arbitrary, since responsibility for arbitrariness is always a sham responsibility, even if it is the subject of arbitrariness, a contractual right (Shanab, Mahammad Labib, 1983, 575, Ghanem, Ismail, 1961-1962, 527), and the responsibility arising from arbitrariness, which is a sham responsibility in accordance with general rules (Al Attar, Abdel Nasser Tawfiq, 1989, 372, Abdulrahman, Ahmad Shawqi, 1988, 1070); For the contract to be realized only if the contract remained in place, and after the contract had been terminated by a contractor, there was no contract on which the contract would be based.

Another view was that compensation for arbitrary dismissal was based on the employer's contractual liability as a result of the employee's injury due to abuse of his right to terminate the contract (Zki, Mahmoud Jamal Al-Din, 1982, 1070, Otoum, Mansour, 2002, 181)⁽⁵⁾.



In this case, we believe that the second view is that responsibility for arbitrariness in terminating the employment contract is a contractual one. On the basis that the general rule in contracts is that they must be carried out in good faith, and that the liability for breach of the obligation to observe good faith in the execution of contracts is a contract of contract, and that the termination of the contract of employment is an arbitrary termination, is a breach of this principle of good faith.

It is controversial here whether the employee deserves a bonus notice for compensation for arbitrary dismissal even if the employer notifies him? Is the employee obliged to provide the 30-day notice provided for in the law, except for the last seven days? What if he left work before this period? Is it worth the notification allowance or not?

By reviewing the provisions of the Bahraini Labor Code, We find that clear provisions have been made for the resolution of these problems, based on the text of article 99 of it⁽⁶⁾. Which makes it clear that the period of notice is part of the contract of employment and the employer when he or she wishes to terminate the contract, that the employee is exempted from his or her work and is paid for or occupied by him only in the last seven days with the employee's entitlement to pay in all these circumstances, Paragraph (d) made it clear that if the employee was left to work and the notice was directed against him without obligation to perform the work during the period of notification (Hashem, Hisham Refaat, 1990, 299)⁽⁷⁾. He had to compensate the employer, and it should be noted here that the notification did not legitimize the dismissal of the employee; the dismissal was arbitrary and not compensable.

Accordingly, the legislator attempted to strike a balance between the employee's interest in obtaining fair compensation for his arbitrary dismissal and the employer's interest in paying such monetary compensation.

2.2. Compensation for unlawful dismissal on fixed-term contracts

It is understood that a fixed-term contract of employment is an agreement between the employer and the employee to set a period for the employment of the employee so that the contract ends at the end of the term or at the end of the work for which the contract was concluded. However, the employer or employee may terminate the fixed-term contract before completion of its term and thus produce legal effects for both parties to the contract.

Accordingly, compensation for the arbitrary dismissal of fixed-term contracts⁽⁸⁾ on the basis of the monetary equivalent of the remainder of the contract period plus all rights and benefits provided for in the contract shall be in accordance with article 111/c of the Labor Code, which states: "If the employer terminates the fixed-term employment contract without cause or for an unlawful reason, the employer commits to indemnify the employee for the remainder of the contract, unless the parties agree to lower compensation provided that the agreed compensation shall not be less than three months' pay or the remainder of the contract, whichever is less".



For example, if a contract contains a penalty clause requiring the employer to pay a certain amount to the employee if he or she is dismissed in contravention of the law or before the contract expires, the employer is required to implement the penal requirement, which is subject to the discretion of the court of the subject, and is not exaggerated and consistent with the extent of the injury suffered by the employee. In addition to the wages of the rest of the period (Ramadan, Sayed Mahmoud, 2006, 440).

The employee's entitlement to compensation is linked to the loss of damage, and compensation is estimated to be based on the amount of damage under the general rules of article 223 of the Bahraini Civil Code ⁽⁹⁾, no compensation is required to be equal to the wage that the employee was entitled to for the rest of the contract period, and compensation may increase and decrease that wage (Al-Houari, Ahmad Rashad Amin Khalil, 2010, 363).

It is noted that the employee's right to compensation for arbitrary dismissal is different from his right to compensation due to failure to observe the notice period and his right to remuneration (Diab, Salah, 2015, 354).

If termination by the employee is to be compensated by the employer for the termination of the contract before the termination period. The parties may agree on compensation due at the end of the contract within the so-called penal requirement, if the employer fails to execute or terminate the term, and the assessment of compensation shall take into account the duration of the dismissal, the duration of the disruption and the employee's livelihood (Zahran, Mohamad Mahmoud, 1997-1998, 873).

It should be noted that the entitlement to compensation for damage caused by arbitrary termination concerns public order as an imperative of the vital interest of the employee's class, and therefore is void of any agreement to waive the employee's right to all or some compensation for arbitrary termination. Whether such waiver took place at the time of the conclusion of the contract or during its execution (Diab, Salah, 2015, 356).



Conclusion:

The study found that the legal consequences of arbitrary adjudication as provided for in the Bahraini Labor Code were the arbitrary return of the dismissed employee to work by the Court of Appeal if the employee so requested by the competent court. The court of the matter is made clear by the circumstances of the case, the employer's position on return and the extent of direct contact between the employee and the employer. Unlike the above, the employee has only a claim for monetary compensation, which includes all labor rights arranged by the Labor Code, any internal regulation or a decision.

The grounds and controls governing compensation for arbitrary dismissal, the amount of such indemnity in open-ended contracts and the legitimate dismissal in fixed-term contracts, as well as other labor benefits that an employee deserves as a result of dismissal such as notification allowance, termination indemnity in indefinite contracts and compensation for the penalty clause in fixed-term contracts, have also been set out. If there are any other benefits, and I have also made some claims regarding the effects of arbitrary dismissal, such as the extent to which the court is required to reinstate the employee, which we found to be a discretionary matter for the court, which is constrained by the employer's desire and the possibility of returning the employee to work.

We therefore propose some recommendations:

1. We suggest that when issuing a ruling to return the dismissed worker to his work, he follows the following criteria in order to avoid the negative aspects of this decision:
 - A- The capacity of the institution in which the separated employee was working, and if its capacity and number of employees were large, the judge could rule on the return. If the contrary is found, compensation is awarded.
 - B. The extent to which an employee has engaged with the employer, if supervision and association with the employer are indirect, the judge may rule on the return or he may only be sentenced for monetary compensation.
 - C. The employer's desire to return the employee to work; as for the employee, the return request is a presumption of seriousness and willingness to return to work.
2. The addition of the words "real and serious error" to article 107/2 of the Labor Code, particularly since the error committed by the employee is often unintentional.
3. To set a period of time for the warning and a period of time for the return to work in the text of article 107/4 of the Bahraini Labor Code.
4. Add the words "provided they contain A legal offense" at the end of the text of article 107/6 of the Bahraini Labor Code.



5. The right of the employee to apply to the judge of the urgent matters to suspend the execution of the dismissal pending a decision on the action taken by the employee against the employer.

Margins:

- (1) Published in Official Gazette No. 3064, dated 2/8/2012
- (2) According to some jurisprudence, there is no measurable criterion for arbitrariness, which is noted in the numerous provisions of the Court of Cassation that the termination of the contract or dismissal of the employee was arbitrary or not arbitrary in accordance with the circumstances and the requirements of justice. Refer to several Jordanian Court of Cassation judgments, Hashem, Hisham Refaat, 1990, 323.
- (3) Appeal No. 269 of 2013, Fourth District of the Bahraini Court of Cassation, 10/3/2015
- (4) see also Bahrain Court of Cassation decision No. 335 of 2005, issued by the first Chamber of the Court of Cassation on 25/1/2010
- (5) where the responsibility arising from the abuse of the right to terminate by providing for the obligation of contract in the provisions of the contract of employment is a contractual responsibility; Because they are the result of a breach by the contract of an obligation, the criterion of arbitrariness cannot be determined by the three images provided for in the comparative civil legislation, whatever the extent of the contract; Because the arbitrariness of the termination does not limit its determination to those images and is therefore broader than it is, and the idea of simple error is a criterion for it.
- (6) The aforementioned article stated that: "Each party may terminate the contract after notifying the other party at least thirty days before termination. The contract of employment remains in place during the notification period and is committed to the implementation of all the obligations arising therefrom.

If the termination of the contract by the employer is, it may be agreed that the notice period shall be more than 30 days.

B. If the contract is terminated without taking into account the notice period, the party that terminated the contract was required to provide the other party with compensation for this time limit, which is equivalent to the employee's remuneration for the full or remaining period, as the case may be.

If the termination by the employer is calculated as the time limit for the notification or the remainder of the period of service of the employee; if the termination by the employee has ended the contract from the time he left work.

C. If the notice of termination by the employer is, the employee may be absent from work for a full day of work a week or eight hours during the week in order to



seek further work, but be absent at a time appropriate to the conditions of work. The employee is entitled to pay for the day or hours of absence.

D. The provisions of this article do not prejudice either party to the contract to claim compensation for termination if so required”.

- (7) It is considered leaving the employee without giving notice.
- (8) Although some jurisprudence considers that the provisions of arbitrary dismissal do not apply to fixed-term contracts without mentioning any justification or basis for this. See: Hashem, Hisham Refaat, p. 326.
- (9) Article 223 of the Bahraini Civil Code, No. 19 of 2001, states: "If the award is not an award in contract or a provision of law, the Court shall award it, including the loss and loss of the creditor's loss and loss of profits, provided that this is a natural consequence of failure to fulfill or delay in fulfilling the obligation. The damage is a natural consequence of the fact that the creditor cannot expect a reasonable effort to be made.

However, if the obligation originates from the contract, the debtor that has not committed a serious offense or offense is obligated only to compensate for the damage that would normally have been anticipated at the time of the contract".



References

1. Abdul Rahman, Ahmad Shawqi. (1988). *Explaining the Labor Law and Social Insurance*. Third edition. Cairo: New Galaa Library.
2. Abu Shanab, Ahmed. (2006). *Explain the Labor Code in accordance with the latest amendments*. Second edition. Amman: Culture Publishing and Distribution House.
3. Al-Houari, Ahmad Rashad Amin Khalil. (2010). *Summary of the provisions of the Bahraini Labor Code*. First edition. Bahrain: Publications of Applied Sciences University.
4. Al-Allawi, Nusseibeh Mahmoud. (2006). *Law applicable to the arbitrary dismissal of an employee*. M.S.A., Jordan: Mu'tah University.
5. Al Attar, Abdel Nasser Tawfiq. (1989). *Explaining the provisions of the Labor Code*. Cairo: Arab Renaissance House.
6. Almugraby, Jaafar. (2004). *Arbitrary dismissal*. Spirit of laws Journal. No. 32. Egypt: Tanta Press.
7. Badawi, Ahmed. (1982). *Individual employment contract in Arab and foreign labor legislation*, first edition. Without publication.
8. Diab, Salah. (2015). *Brief In explaining the provisions of the Labor and Social Insurance Act in the Kingdom of Bahrain*. First edition. Bahrain: Publications of the University of applied Sciences.
9. Ghandour, Zahir. (1982). *Arbitrary dismissal in Lebanese law*. Beirut: Dar Al-Read for Publishing and Distribution.
10. Ghanem, Ismail. (1961-1962). *Labor Law*. Cairo: Abdullah Wahba Library.
11. Hashem, Hisham Refaat. (1990). *The Jordanian Labor Law: (legislation, jurisprudence, jurisprudence, case law, comparative study of texts, jurisprudence and judiciary in Arab and foreign countries)*. Second edition. Amman: Without publication.
12. Jaber, Mahmoud Salama. (2007). *Arbitrary termination of the employment contract in accordance with the Omani Labor Code and the laws of the GCC States and the Arab and International Labor Standards (comparative study)*. The Legal Books House. Dar-SITT for Publishing and Software. Egypt: The Great Mahalla.
13. Kira, Hasan. (1969). *Origins of the Labor Law*. Part I, Second Edition. Alexandria: Knowledge Institution.
14. Khalifa, Abdulaziz Abdul Moneim. (2004). *General provisions for individual employment contract*. Alexandria: Knowledge facility.
15. OTom, Mansour. (2002). *A paper entitled Arbitrary dismissal in Jordanian Labor Law*. Published in Al-Balqa Magazine. AL-Ahliyya Amman University. Vol. IX, No. 1, April 2002.
16. Ramadan, Sayed Mahmoud. (2006). *The mediator in explaining the Labor Law*. First Edition. Second Edition, Amman: Culture Publishing and Distribution House.



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17. Shanab, Mohamed Labib. (1983). *Explaining Labor Law*. Fourth edition. Cairo: Arab Renaissance House.
18. Zahran, Mohammad Mahmoud. (1997-1998). *The Labor Code "individual Labor Contract"*, Act 137 of 1981, and the new bill were passed by the State. Alexandria: University Press House.
19. Zaki, Mahmoud Jamal al-Din. (1982). *Contract of work in Egyptian Law*. Second Edition. Cairo: Egyptian Public Book Authority.