Justice de Paix
de et à Esch-sur-Alzette
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Esch-sur-Alzette, le 23 janvier 2006

THE RESOLUTION OF EMPLOYMENT DISPUTES IN LUXEMBOURG.

1. The Employment Tribunal (Tribunal du Travail) is the main forum for resolving employment disputes.

There are three of them in Luxembourg, one in Luxembourg City for the centre of the country, one in Esch-sur-Alzette for the south and one in Diekirch for the north.

The Employment Tribunal is made up of a Chairperson, who has the status of a professional Judge at the local Tribunal of the Peace, and two lay members, one from the employer's side and one from the employee/worker's side, though all are appointed by the Minister of Justice following consultation. Each Judge at the Tribunal of the Peace can be Chairperson of the Employment Tribunal. When the dispute concerns a employee, the member of the Employment Tribunal representing this side must also be an employee; when the dispute concerns a worker, the member of the Employment Tribunal representing this side must be a worker.

The appeal is to the Appeal Court of the Grand Duchy of Luxembourg (Cour d'Appel), competent for all the country. Two chambers (from ten) treat the employment disputes.

If one of the litigants thinks that there has been violation of the law by the Court of Appeal he can apply to the Supreme Court of the Grand Duchy of Luxembourg (Cour de Cassation).

2. The principal jurisdictions of the Employment Tribunal are unfair dismissal (including transfer of undertakings claims) and a number of contractually based rights such as unpaid wages, holiday pay and notice pay. Discrimination claims are extremely rare and only concern the equality of rights of man and woman.

The contractual claims mentioned above are usually dealt with by a Chairperson sitting alone.

There is no qualifying period but in unfair dismissal cases there is a time limit of three months for the presentation of all claims (it is at present

uncertain if this time limit concerns also the notice pay as there are affirmative and negative decisions of the Appeal Court; a decision of the Supreme Court has to come in this matter) from the date of dismissal (when dismissal is given without notice) or the date the employee/worker has asked for the reasons of the dismissal (when he doesn't get any answer to his request) or the date the employer has answered the request for reasons of the dismissal.

Dismissal without notice may only be given when the employer alleges a serious fault of the employee/worker and in this case the fault must be described with the greatest accuracy in the dismissal letter, which has to be sent by registered delivery. The employer has to prove the serious fault later before the Employment Tribunal.

Normally dismissal should be given by a registered letter with a notice of two months (length of service until 5 years), four months (length of service from 5 until 10 years) or six months (length of service of 10 years at least). Then the employer hasn't to give the reasons for the dismissal in the letter of dismissal. The employee/worker may ask for the reasons for the dismissal within one month from the day he received the dismissal letter. In this case and only in this case the employer must give the reasons for dismissal with the greatest accuracy in a registered letter in the time limit of one month.

The tribunal has to decide whether the reasons given by the employer have been described with enough accuracy or not and if the answer is yes whether they are proved and may justify a dismissal. Reasons may be capability, conduct or redundancy.

In theory the primary remedy for unfair dismissal is re-instatement, but this occurs rarely. Normally a compensation depending on age and length of service is awarded. There is no maximum for compensation. When the tribunal suggests re-instatement to the parties and the employer doesn't agree, a special compensation may be awarded to the employee/worker up to a maximum of one month's salary.

There are two categories of dismissal which are not only unfair but null and void: the dismissal of pregnant employees/workers and the dismissal of employee's/worker's representatives in the undertakings.

3. Before the Employment Tribunal applications and only applications must be in writing. They are followed by an oral hearing which lasts normally one to two hours. The decision is given by the tribunal one to two months after the oral hearing. It must be in writing together with its reasons.

A party may appear in person or be represented by a lawyer, a relative, a trade union's representative but as most claimants are members of a trade union and the trade unions pay the costs of their members, lawyers appear in a substantial majority of cases. Parties may receive state legal assistance.

At the Appeal Court and the Supreme Court all the procedure is in writing. Parties must compulsorily be represented by lawyers and by lawyers only.

There is no court fee. The Employment Tribunal, the Appeal Court or the Supreme Court may order in their decision a substantial sum in costs, but orders are not automatic.

Jean-Marie Hengen

Honorary Councillor at Appeal Court
Chief Justice of the Peace