Unfair Dismissal Remedies

Nat Kessuwan *

ABSTRACT

The main objective of this research is to study on the law, concept, and the principle of Labour Law on Unfair Dismissal and Remedies in Thailand’s Labour Law, England’s The Employment Rights Act 1996 and ILO Convention No.158 and Recommendation No.166 to recommends guidelines for solving unfairness in measures to protect and employees remedies against unfair dismissal.

It was found that the missing in description of unfair dismissal in section 49 of The Labor Court Establishment and Dispute Procedure Act B.E. 2522 cause unclear judgments in unfair dismissal case. According to section 49 the law is only specified for cases to be ruled upon based on the discretion of Labor Court judges, causing employers to have no freedom to dismiss employees to solve problems from fear of being prosecuted at the Court, loss of reputation and risk of paying compensation for unfair dismissals.

And found that the law did not specify clear principles in setting unfair dismissals compensation, the law only placed this matter to be under the Court’s judgment to set the aforementioned compensation based on the Court’s discretion by considering employee’s age, work period, employee’s vexation from dismissal, causes of dismissal and employee’s severance pay, causing un-standard unfair dismissal compensation, can be summarized as unfair against employers.

Hence, Thailand’s labour law should have the Act to provide the description of unfair dismissal for fairness of employer and clearly specify methods for calculating of unfair dismissal compensation.

Introduction

In the past, Thailand was a purely agricultural society. Most of the population relied on the agricultural occupation. Later on, Thailand is more developed and so on the government has focused the development on the industrial economy. Thus, mass

* This journal is a part of Independent Study of Graduate School of Law on the topic, “Unfair Dismissal Remedies” Graduate School of Law Assumption University,” 2016.
employment became the main force in driving the country forward. According to the statistical information of National Statistical Office and International Labor Organization (ILO), Thailand, as in B.E. 2559 has a working population as much as 38 million individuals and there are 38% of Thai population or 14 million individuals who are the employee of the private corporation\(^1\). Because of the massive working population Thailand, the country has legislated many labor laws, in order to control and supervise any legal relations, included the duties and obligations between the employer and employee, the employment itself, the dismissal and the termination of employment.

Furthermore, the number of employment in private sections in Thailand has shown that being employee is the main source of income for almost half of country’s population and thus, the occupational stability is the prominent necessity for the employees. Even Thai labor law has a measure of remedy for the dismissal but the sudden state of unemployment can be detrimental for the employee and his/her family because of the deprivation of incomes. Such problem can lead to another social issues or can be affected to the whole economy or other related business. The problem of labor cases for nowadays is usually the problem of dismissal and such problems always lead to a strike\(^2\) or closing down\(^3\). The Government has to specify Labour law to rule the dismissal to be fairness.

Unfair dismissal remedies under Thailand’s Labour Law is regulate in Section 49 of The Labor Court Establishment and Dispute Procedure Act B.E. 2522 (1979 A.D.), “Regarding case procedures in the case where the employer terminated employment of the Employee, if the Labor Court has the opinion that the termination of employment was unfair to the Employee, the Labor Court may order the employer to re-hire the employee with the wages received while employment was terminated. If the Labor Court has the opinion that the employee and the employer may no longer work together, the Labor Court is to specify the amount of damage for the employer to compensate. The Court is to..."
consider the Employee’s age, the Employee’s work periods, the Employee’s suffering when employment was terminated, the cause of employment termination and compensation entitled to the Employee”.

According to Section 49 of The Labor Court Establishment and Dispute Procedure Act B.E. 2522 (1979 A.D.), if an employer unfairly terminates an employee’s employment, the employee may file a lawsuit with the Labor Court. If the court deems the employment termination to be unfair, the court may render any of the following verdicts:

1. Having the employer re-hire the employee at the rate of paying at the time of employment termination.

2. Having the employer pay compensation due to the unfair termination of employment, taking the employee's age, work duration, and degree of suffering into the consideration.

In addition, Section 49 does not define the causes or characteristics of unfair dismissals against employees in order to consider dismissals as unfair to employees. Article 49 only specifies for courts to rule based on the judgment of the Labor Court bench consisting of judges who are justice civil servants, associate judges of the employer and associate judges of the employee and the judgment of the Supreme Court in ruling appeal cases.

It was found that the missing in description of unfair dismissal in section 49 of The Labor Court Establishment and Dispute Procedure Act B.E. 2522 cause unclear judgments in unfair dismissal case. According to section 49 the law is only specified for cases to be ruled upon based on the discretion of Labor Court judges, causing employers to have no freedom to dismiss employees to solve problems from fear of being prosecuted at the Court, loss of reputation and risk of paying compensation for unfair dismissals as example follow:

Supreme Court Verdict No. 7602/2541: The employer was confronted with problems from economic recession, reduced profits and overstaffing. The employer needed to dismiss employees to reduce costs and prevent future losses. However, the employer’s business operations were still profitable and not confronted with losses preventing any business operations with need to disband entire agencies or terminate the business. This was only the employer’s estimation to prevent future losses without
adequate and proper cause. Therefore, the fact that the employer dismissed employees was an unfair action.

Supreme Court Verdict No. 621/2544: The employer was confronted with losses from 1998 to 1999. Therefore, the employer had a policy to reduce expenses by dismissing employees. The employer’s losses were reduced and the employer opened two additional facilities for distributing goods. Hence, the Court has ruled that the employer did not have appropriate and sufficient cause for dismissal, meaning the dismissals were unfair.

Supreme Court Verdict No. 2124/2555: The Defendant adjusted management structure and reduced employee manpower rates. This resulted in some agencies being disbanded and downsized company-wide from the divisional or departmental level in order for agencies to have small sizes with higher performance efficiency, flexibility, ease for administrative control and reduced corruption in the Procurement Department where the Plaintiff held the position of Department Manager. The Defendant restructured to leave only the level of procurement work with no dependence on the management. Procurement employees had no authority to make procurement decisions, which was an adjustment based on current and heightened global business competition to reduce production costs and expenses without discriminating against the Plaintiff and dismissing only the Plaintiff. The Court rendered the opinion that the Defendant had dismissed the Plaintiff because the Defendant was restructuring management as a whole and had to reduce the number of employees. This restructuring disbanded and downsized some agencies company-wide from the divisional or departmental level down to the work level. Moreover, the Procurement Department where the Plaintiff had been a manager was downgraded to procurement work without a Procurement Department Manager position. In all actions, the Defendant had not singled out the Plaintiff for dismissal. Thus, the Defendant can be considered to have dismissed the Plaintiff with reasonable cause and the dismissal was not unfair.

In addition to the fact that there is no clear definition of fair dismissals for employees, Section 49 has not specify clear principles in setting compensation for unfair dismissals. Moreover, Section 49 only empowers courts to set the aforementioned compensation based on the Court’s decision by considering employees’ age, work period, employees’ grievances from dismissal, reason for dismissal and compensation entitled to employees.
And they found that the law did not specify clearly principles in setting unfair dismissals compensation, causes of dismissal and employee’s severance pay, causing unstandard unfair dismissal compensation, can be summarized as unfair against employers.

From the aforementioned legal issues on lack of clarity in defining unfair dismissals and setting compensation in previous paragraph, there should be the study of legal measures or concepts for the remedy and resolve of such issues by comparative study with the foreign law or measures for the economically advanced country and more advanced in human management in Thailand also the international conventions to make a comparison with other legal materials and standard of Thailand to see through the difference or seek more suitable solution appropriately for the beneficially of changing or improving or lay down on the pattern in the improvement of labor law in Thailand.

**Unfair Dismissal Remedies According to Thai Law**

Based on the aforementioned contents, labor laws have prescribed various measures to build job security and remedy for employees in case of unfair dismissal as follows:

1. **Advance Notice**

   Advance notice was decreed in Article 582 of the Civil and Commercial Code with the objective for the employer to notify employees of dismissal in advance in order for dismissals to take effects upon the next payment of wages or the employer may pay compensation to employees in lieu of advance notice in order for dismissals to take effect immediately in order to allow employees sufficient time to look for new jobs before being dismissed in addition to easing suffering from loss of income caused by dismissals.

2. **Severance Pay**

   Labor laws require employers to pay severance compensation when dismissing employees to ease employees’ difficulties caused by dismissals. Article 5 of the Labor Protection Act of B.E. 2541 (1998 A.D.) defined compensation as money which the employer is required to pay to employees by law upon dismissal of employees, even though employment contracts or agreements on employment conditions contain no specifications. In cases where the employer sets criteria for compensation payments on
employment contracts or agreements on employment conditions, the employer cannot specify employees to receive severance compensation under the requirements of the law.

Compensation specifications were prescribed by labor laws in Article 118 of the Labor Protection Act of B.E. 2541 with criteria consisting of requirement for compensation payments to be the end of employment contracts with the employer as the party which dismissed employees and employees did not resign. Furthermore, employees are required to have a work term of more than 120 days with the employer by calculating compensation based on employees’ work periods with the employer.

3. Compensation for Unfair Dismissal

Although employees are a key labor force in employers’ business operations, employees are at a disadvantage to the employer, who can dismiss employees at any time. Therefore, labor laws empower courts to control dismissals to be fair in order to prevent employees from suffering or incurring damage due to unfair dismissals.

Article 49 of the Act On Establishment Of The Labor Court And Labor Dispute Procedure Of B.E. 2522 (1979 A.D.) Specified That Courts Have The Authority To Cancel Dismissals Or Order The Employer To Pay Compensation For Unfair Dismissals In Cases Where The Court Ruled Dismissals As Unfair. In Addition, Courts Can Only Issue Orders In One Direction.

The International Labour Organization Model on the Unfair Dismissal Remedies

The International Labour Organization (ILO) is an international organization established in 1919 and was raised as the first expert organization of the United Nations in 1946. The ILO was founded for the purpose of promoting social justice and international labor protection. The ILO currently has 187 member countries, including Thailand which became a member on the ILO founding date of 28 June 1919.

The ILO has significant roles in specifying various areas of labor protection guidelines, criteria and international standards in the form of conventions, which are

---

considered international treaties under ratification from member countries, and recommendations specified to be consistent with convention principles in order to ensure that member countries implement the aforementioned labor protection guidelines, criteria and standards to study, analyze and modify properly in line with the economic and social conditions of each member country\(^5\). From its founding in 1919 to the present day, the ILO has announced a total of 189 conventions and 204 recommendations\(^6\).

And because the ILO has an important role in setting guidelines for regulating laws related to labor protection in various areas, the ILO issued Convention No. 158 and Recommendation No. 166 on Termination of Employment Initiated by Employers in 1982 with the objective of having member countries implement as guidelines in drafting laws, regulations, agreements or criteria related to protection against termination of employment to create a single standard. This includes Thailand which implemented principles under Convention No. 158 as a guideline for specifying the employer’s duty and employees’ rights in cases of employment termination in the Labor Protection Act of B.E. 2541 (1998 A.D.)\(^7\).

According to the International Labour Organization Convention No. 158 and Recommendation No. 166 on Termination of Employment Initiated by the Employer as approved by the General Assembly of the International Labour Organization on 2 June 1982, practice guidelines in cases where the employer will terminate employees’ employments were specified. ILO member countries, including Thailand, utilized the guidelines in drafting laws, regulations, agreements or criteria related to protection against unfair termination of employment.

---


According to the International Labour Organization Convention No. 158 and Recommendation No. 166, employees should not be terminated from employment unless there is reasonable cause for termination of employment from the employees' capacity or behaviors or because of work specifications of that business operation facility or service facility.

The following reasons are not considered acceptable causes for termination of employment or dismissal:

1. Membership or participation in activities with labor unions outside working hours or during working hours with permission from the employer.
2. Positions in representing workers.
3. Submission of complaints or participation in processes to make demands from the employer regarding violations of the law or regulations to authorized agencies.
4. Taking maternity leave.

---

8 Article 3 of the ILO Convention 158, “For the purpose of this Convention the terms termination and termination of employment mean termination of employment at the initiative of the employer.”

9 Article 4 “The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.”

10 Article 5 “The following, inter alia, shall not constitute valid reasons for termination:

   (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
   (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
   (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
   (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.”
5. Ethnicity, skin color, gender, marital status, responsibility to facilities, pregnancy, religion, political opinions, citizenship or social origins.

6. Temporary leaves caused by sickness or injury.\textsuperscript{11}

\section*{The United Kingdom Model on the Unfair Dismissal Remedies}

In the past, United Kingdom was a feudal country with a manorial system. Human labor in that period was forced labor enforced by a lord on a vassal with serfs as forced labor in an agricultural society. A great plague spread throughout Europe in 1665, namely, the Great Plague of London, causing over 100,000 deaths from the plague out of London’s population of 460,000\textsuperscript{12} and ending with the Great Fire of London which burned most plagued areas\textsuperscript{13} in 1666. The aforementioned incidents caused a shortage of serfs. Therefore, consensual employment took place and became more widespread. When the first industrial revolution took place during the 18\textsuperscript{th} century in the United Kingdom, the first Health and Morals of Apprentices Act was enacted as the first labor law in 1802\textsuperscript{14}. This was considered the world’s first labor law on employer and employee characteristics.\textsuperscript{15}

At present, the United Kingdom specifies employment contracts under the following three laws: 1. Common Law; 2. Written law and 3. European law. The law at the heart of protection and remedy for employees from termination of employment is the Employment Rights Act of 1996.

\begin{itemize}
  \item \textsuperscript{11} Article 6 (1) of the ILO Convention 158, “Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.”
  \item \textsuperscript{12} Contagion Historical Views of Diseases and Epidemics, The Great Plague of London, 1665, at \url{http://ocp.hul.harvard.edu/contagion/plague.html}, (last visited 19 July 2016).
  \item \textsuperscript{13} C N Trueman, The Plague Of 1665, at \url{http://www.historylearningsite.co.uk/stuart-england/the-plague-of-1665/}, (last visited 19 July 2016).
  \item \textsuperscript{15} Natha Kumpeela, Labour Law and Thailand, p. 3., at \url{http://www.law.cmu.ac.th/law2011/177404../read.php?id=81}, (last visited 7 July 2016).
\end{itemize}
The Employment Rights Act of 1996 is a primary law that decrees specifications regarding employment and work conditions between the employer, employees and workers such as the preparation of employment agreements, wage payment protection, wage payment guarantees, Sunday work performed by some types of workers, holidays, temporary suspension of work, maternity leave, unfair dismissal, reductions to the number of employee, protection in cases where the employer is bankrupt and types of employment, etc.

According to studies of labor protection about employment conditions under the Employment Rights Act of 1996, United Kingdom’s labor law protects employees from unfair dismissals by primarily considering the reasons for dismissal because England accepted concepts of the International Labour Organization’s conventions and recommendations to implement in specifying laws on protecting employees from unfair dismissal by decreeing the following in the Employment Rights Act 1996 Section 94 (1): “An employee has the right to not be unfairly dismissed by his employer.” Employees with rights under the Employment Rights Act 1996 Section 94 (1) are employees who have worked with employers for a consecutive period of two years under the Employment Rights Act 1996, Section 108 (1), “Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.”

According to the decrees in Section 94 (1), not being unfairly dismissed is considered a basic employee right under the law. The Employment Rights Act 1996 clearly prescribes regarding situations in which cases of dismissal are fair dismissals with the following details:

The Employment Rights Act 1996 Section 98 “(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show;

(a) The reason (or, if more than one, the principal reason) for the dismissal, and

(b) That it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it;

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) Relates to the conduct of the employee,

(c) Is that the employee was redundant, or

(d) Is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.”

In case Employment tribunal’s found that the termination of employment, Employment tribunal will order one single order¹ to the following:

¹ Section 112 (1) of the Employment Rights Act 1996, “This section applies where, on a complaint under section 111, an employment tribunal finds that the grounds of the complaint are well-founded:

(2) The tribunal shall;

(a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and

(b) ask him whether he wishes the tribunal to make such an order.

(3) If the complainant expresses such a wish, the tribunal may make an order under section 113;

(4) If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 126) to be paid by the employer to the employee.”
(1) Employment tribunals may order the employer to reinstate the employee to original positions (Reinstatement) or re-engage employees to new positions that are the same as or are similar to original positions (Reengagement).

Section 114 (1) of the Employment Rights Act 1996 An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed:

(2) On making an order for reinstatement the tribunal shall specify:

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,

(b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(c) the date by which the order must be complied with.

(3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed;

(4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer’s liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of:

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer, and such other benefits as the tribunal thinks appropriate in the circumstances.”

Section 115 “(1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment;

(2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including;
(2) Employment tribunals may order the employer to pay compensation for unfair dismissal as requested by the employee who won the case.

Comparison among ILO Convention, United Kingdom and Thailand Labour Law on Unfair Dismissal Remedies

According to studying of the topic as unfair dismissal remedies under foreign and Thai law, can be summarized as following:

Article 49 of the Act on Establishment of the Labor Court and Labor Dispute Procedure of B.E. 2522 (1979 A.D.) empowers courts to control dismissals by employers to prevent employees from being troubled or damaged by unfair dismissals. This act empowers courts to order employers to accept employees back to work or pay compensation for unfair dismissals in cases where courts ruled that dismissal to be an unfair dismissal for employees.

However, Article 49 does not define causes or characteristics of unfair dismissals against employees in order to consider dismissals as unfair to employees. Article 49 only

(a) the identity of the employer,
(b) the nature of the employment,
(c) the remuneration for the employment,
(d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,
(e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
(f) the date by which the order must be complied with.”

Section 118 (1) of the Employment Rights Act 1996 “Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of:
(a) a basic award (calculated in accordance with sections 119 to 122 and 126), and
(b) a compensatory award (calculated in accordance with sections 123, 124, 124A and 126).”
specifies for courts to rule based on the judgment of the Labor Court bench consisting of judges who are justice civil servants, associate judges of the employer and associate judges of the employee and the judgment of the Supreme Court in ruling appeal cases. Therefore, employers will recognize dismissals as unfair only when dismissed employees pressed charges against employers with the Labor Court, and when rulings are issued by the Labor Court. Thus, employers have no confidence in dismissing employees from fear that dismissals will result in unfair dismissal charges. This may cause employers to pay compensation for unfair dismissal and/or cause employers to suffer loss of reputation due to litigation. This prevents employers from dismissing employee.

According to ILO Convention No.158 Article 4 and Employment Rights Act 1996 Section 98 that show the definition of fair dismissal and clarify characteristics of unfair dismissal that made the standard of judgment of unfair dismissal case and made employer feel free to dismissal employee to fix their problem.es to solve business problems or carry out business plans.

Studying on unfair dismissal definition found that, Thai Law does not specify definition of unfair dismissal clearly, just only empower from the court to use decision on judgment, but ILO and UK. ILO specified the definition base on employee’s capacity or conduct or based on the operational requirements of the undertaking, establishment or service that similarly with UK. But UK has additional definition base on redundancy and legal consequence of continue employ the employee.

In addition to the fact that there is no clear definition of fair dismissals for employees, Article 49 does not specify clear principles in setting compensation for unfair dismissals. Moreover, Article 49 only empowers courts to set the aforementioned compensation based on the Court’s decision by considering employees’ age, work period, employees’ grievances from dismissal, reason for dismissal and compensation entitled to employees.

According to studies of Supreme Court verdicts, Court use the following concept to specify unfair dismissal compensation.

1. Consideration of the Employee’s work period is consideration regarding how much time the employee spent working for the employer and how much compensation the
employee should receive. In practice, the Court prescribed a general principle for setting compensation for damages at a month’s wages for a work period of one year\textsuperscript{21}.

2. Types of labor employment contracts - with and without definite or fixed employment periods. For labor employment with definite or fixed employment periods in an unfair employment termination case, the court may or may not rule that the damage is equal to the remuneration to which the employee is entitled starting from the date of employment termination until contract expiration, depending on the case\textsuperscript{22}.

3. Losing the opportunity to receive the wage in the future will consider from the age of the employee, the trouble of the employee if he/she does not have any income when employment agreement is terminated, also the ability to find a new job\textsuperscript{23}.

According to 3 concept that Court use to specify unfair dismissal compensation found that number of compensation is too difference. Lack of clarity for setting compensation, causing un-standard unfair dismissal compensation creates an injustice for employers.

According to study Foreign Laws on the Unfair Dismissal Remedies found that United Kingdom’s Employment Rights Act 1996 has specify the clarify Principle of Unfair Dismissal Compensation Calculation.

Unfair Dismissal Compensation under United Kingdom’s Employment Rights Act 1996 has consist of 2 part, Basic Award and Compensatory Award that calculate as follow:

1. Basic awards are starting compensations which the court orders employers to pay. The Employment Right Act 1996 specifies the following calculation details

   Employees aged 41 years and up have the right to receive compensation equal to 1.5 times weekly pay per year of work.

   Employees aged 22 years and up but no more than 41 years have the right to receive redundancy pay equal to 1 times weekly pay per year of work.

   Employees aged under 22 years have the right to receive redundancy pay equal to 0.5 times weekly pay per year of work.

\textsuperscript{21} Supreme Court Verdict No. 6024/2533, 1850/2547.

\textsuperscript{22} Supreme Court Verdict No. 4126/2549, 4126/2549.

\textsuperscript{23} Supreme Court Verdict No. 4126/2545.
However, Employment tribunals can reduce the aforementioned compensation if employees do not have sufficient reason to refuse Reinstatement or Reengagement according to the employer’s proposals or because employees’ behaviors are causes contributing to dismissal.

2. Compensatory award means any compensation received by employees as a result of unfair dismissals. The aforementioned compensation is calculated from employees’ loss of income to the date of procedures, loss of benefits gained while working, bonus payments, loss of future income which requires data to refer to possibility of future damage, loss of pensions, support funds, expenses in seeking new employment including traveling costs to apply for new work. The Court will consider the right amount of compensation by giving consideration to accompany employee behaviors, new jobs, employees’ new work durations and employees’ income from new jobs.

According to Employment Rights Act 1996, that show the clarify method of unfair dismissal compensation calculation that made the standard of compensation of unfair dismissal.

Study in calculation of unfair dismissal compensation found that, Thai law does not specify clearly method to calculation of unfair dismissal compensation, just empower the court to specify the compensation based on age of employee, length of service, affliction, reason of termination and severance pay, but UK specify the clearly method to calculate. According to UK law, unfair dismissal compensation consist of basic award and compensatory award based on employee damaged by unfair dismissal.

**Conclusion**

Due to the aforementioned lack of clarity in defining unfair dismissals and setting compensation, laws on unfair dismissal in compliance with Article 49, Act on Establishment of the Labor Court and Labor Dispute Procedure of B.E. 2522 (1979 A.D.), can be summarized as unfair.

According to study guideline for revising problem on foreign laws found that, ILO Convention No.158 Article 4 and Employment Rights Act 1996 Section 98 show the clarify characteristics of unfair dismissal by specify definition of fair dismissal based on employee’s capability, conduct and economic or business reason such as operational
requirements of the establishment or redundant. That made the standard of judgment of unfair dismissal case and made employer feel free to dismiss employee to fix their problem.

And found that, Employment Rights Act 1996 specify the method of unfair dismissal compensation calculation that consist of basic award that calculate by specified formula and compensatory award that consist of any affliction received by employees as a result of unfair dismissals. That made the fairly standard unfair dismissal compensation to employer and that compensation can cover all of affliction received by employees as a result of unfair dismissals.

According to studies of measures to protect and aid employees against dismissals in compliance with Thailand’s labor laws, legal measures in foreign countries and associated international conventions, the researcher recommends guidelines for solving unfairness in measures to protect and aid employees against dismissals in compliance with Thailand’s labor laws as follows:

1. **Definition of Unfair Dismissal**

   Labor laws should specify definition of unfair dismissals in Article 49 of the Act on Establishment of the Labor Court and Labor Dispute Procedure of B.E. 2522 (1979 A.D.) in order to create standard for judging unfair dismissal cases as following:

   The dismissal without following reason is unfair dismissal
   1) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
   2) Relates to the conduct of the employee,
   3) Is that the employee was redundant, or
   4) Is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

2. **Calculation of Unfair Dismissal Compensation**

   Labor laws should clearly specify methods for calculating compensation for unfair dismissals in compliance with Article 49 of Act on Establishment of the Labor Court and Labor Dispute Procedure of B.E. 2522 (1979 A.D.) as a norm for judging unfair dismissal cases as following:
In cases Labour Court order the employer to pay compensation for unfair dismissal. Compensation is consist of:

1) **Basic Award**

   Employees aged 41 years and up have the right to receive compensation equal to 1.5 times weekly pay per year of work.

   Employees aged 22 years and up but no more than 41 years have the right to receive redundancy pay equal to 1 times weekly pay per year of work.

   Employees aged under 22 years have the right to receive redundancy pay equal to 0.5 times weekly pay per year of work.

2) **Compensatory Award**

   Compensatory award means any compensation has been received by employees as a result of unfair dismissals. The aforementioned compensation is calculated from employees’ loss of income to the date of procedures, loss of benefits gained while working, bonus payments, loss of future income which requires data to refer to possibility of future damage, loss of pensions, support funds, expenses in seeking new employment including traveling costs to apply for new work. The Court will consider the right amount of compensation by giving consideration to accompany employee behaviors, new jobs, employees’ new work durations and employees’ income from new jobs.

**Recommendations**

According to studies of measures to protect and aid employees against dismissals in compliance with Thailand’s labor laws, legal measures in foreign countries and associated international conventions, the researcher recommends guidelines for solving unfairness in measures to protect and aid employees against dismissals in compliance with Thailand’s labor laws as follows:

1. **Definition of Unfair Dismissal**

   Labor laws should specify definition of unfair dismissals in Article 49 of the Act on Establishment of the Labor Court and Labor Dispute Procedure of B.E. 2522 (1979 A.D.) in order to create standard for judging unfair dismissal cases as following:

   The dismissal without following reason is unfair dismissal
1.1 relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

1.2 Relates to the conduct of the employee,

1.3 Is that the employee was redundant, or

1.4 Is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

2. Calculation of Unfair Dismissal Compensation

Labor laws should clearly specify methods for calculating compensation for unfair dismissals in compliance with Article 49 of Act on Establishment of the Labor Court and Labor Dispute Procedure of B.E. 2522 (1979 A.D.) as a norm for judging unfair dismissal cases as following:

In cases Labour Court order the employer to pay compensation for unfair dismissal. Compensation is consist of:

2.1 Basic Award

Employees aged 41 years and up have the right to receive compensation equal to 1.5 times weekly pay per year of work.

Employees aged 22 years and up but no more than 41 years have the right to receive redundancy pay equal to 1 times weekly pay per year of work.

Employees aged under 22 years have the right to receive redundancy pay equal to 0.5 times weekly pay per year of work.

2.2 Compensatory Award

Compensatory award means any compensation has been received by employees as a result of unfair dismissals. The aforementioned compensation is calculated from employees’ loss of income to the date of procedures, loss of benefits gained while working, bonus payments, loss of future income which requires data to refer to possibility of future damage, loss of pensions, support funds, expenses in seeking new employment including traveling costs to apply for new work. The Court will consider the right amount of compensation by giving consideration to accompany employee behaviors, new jobs, employees’ new work durations and employees’ income from new jobs.
Bibliography

Books

Dissertations and Thesis

**Law, Regulation and Statute**

Financial Institution Business Act B.E. 2551.
Gemmell V Darngavil Brickworks Ltd.
Hindle V Percival Boats Ltd.
Labor Relations Act B.E 2518.
Taylor V Parsons.
Tayside Regional Council V McIntosh.
Thailand’s Supreme Court case no. 788/2499.
Thailand’s Supreme Court case no. 791/2513.
Thailand’s Supreme Court case no. 2453/2523.
Thailand’s Supreme Court case no. 2909/2524.
Thailand’s Supreme Court case no. 2923/2524.
Thailand’s Supreme Court case no. 1/2525
Thailand’s Supreme Court case no. 645/2525.
Thailand’s Supreme Court case no. 1061/2525.
Thailand’s Supreme Court case no. 541/2526
Thailand’s Supreme Court case no. 2281/2526
Thailand’s Supreme Court case no. 2388/2526.
Thailand’s Supreme Court case no. 3049/2526.
Thailand’s Supreme Court case no. 459/2526.
Thailand’s Supreme Court case no. 888/2527.
Thailand’s Supreme Court case no. 1604/2528.
Thailand’s Supreme Court case no. 3077/2528.
Thailand’s Supreme Court case no. 3526-3530/2530.
Thailand’s Supreme Court case no. 5256/2530.
Thailand’s Supreme Court case no. 5568/2530.
Thailand’s Supreme Court case no. 1188/2533.
Thailand’s Supreme Court case no. 6024/2533.
Thailand’s Supreme Court case no. 3415-3417/2538.
Thailand’s Supreme Court case no. 510/2540.
Thailand’s Supreme Court case no. 1999/2540.
Thailand’s Supreme Court case no. 5396/2540.
Thailand’s Supreme Court case no. 6250/2540.
Thailand’s Supreme Court case no. 359/2542.
Thailand’s Supreme Court case no. 5180/2542.
Thailand’s Supreme Court case no. 6458/2544.
Thailand’s Supreme Court case no. 3173/2545.
Thailand’s Supreme Court case no. 3933/2546.
Thailand’s Supreme Court case no. 1850/2547.
Thailand’s Supreme Court case no. 5025/2548.
Thailand’s Supreme Court case no. 5026/2548.
Thailand’s Supreme Court case no. 2629/2550.
Thailand’s Supreme Court case no. 2863/2552.
Thailand’s Supreme Court case no. 8241/2555.
The Employment Rights Act 1996.
The ILO Convention 158.

Internet


