THE CONCEPT OF GROSS MISCONDUCT AND THE TERMINATION OF LABOUR CONTRACTS IN CAMEROON: A COMPARATIVE PERSPECTIVE

Written by ***Irene Ngum Asanga***

Senior Lecturer in Law, University of Douala, Cameroon

ABSTRACT

The termination of labour contracts for gross misconduct usually has grave consequences, especially for the dismissed worker, who is not entitled to most of the benefits associated with termination of contacts of employment such as prior notice or payment in lieu of notice, severance pay and damages. The appreciation of the gravity of the employee's conduct for the purpose of determining a misconduct is at the discretion of each individual judge and varies from case to case. It is the Supreme Court that reviews the decisions of lower courts in determining the gravity of conduct. In this connection, the Supreme Court has an important role to play in giving direction and has decided a number of cases laying down the type of misconduct to be envisaged by stating that serious misconduct must relate to an intentional act of the worker in the course of employment, which excludes professional errors. This paper analytically examines in a comparative perspective, the labour relations in contemplation, what brings them to an end and more particularly, gross misconduct on the part of both the employer and the worker. It is suggested that statutory guidelines found in other systems, while apparently rigid could help in creating certainty by properly defining and determining what would amount to gross misconduct.

Keywords: Labour Contracts, Termination, Gross misconduct, summary dismissal

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INTRODUCTION

Labour relations concretized by labour contracts are diverse and normally come to an end as agreed upon by the parties or through natural occurrences such as the death of one of the parties, (especially the worker) or by mutual agreement of the employer and employee. The labour contract could equally be brought to an end prematurely due to unforeseen natural events, such as re-organization for economic reasons and prolonged illness of a worker. There are on the other hand, certain circumstances that lead to a unilateral termination through resignation of the worker or a dismissal by the employer as an expression of the parties' freedom, provided the legally required prior notice is given, failure of which attracts financial consequences for the defaulting party. There are nevertheless circumstances which arise, inherent in the conduct of the employee, justifying a summary dismissal for gross misconduct. One can equally talk of constructive dismissal, when the resignation of the employee is due to the gross misconduct of the employer. What however amounts to gross misconduct is statutorily left to be determined by the courts, which have come up with various categories over time in various jurisdictions.

We are going to examine the types of contracts that are legal and what is meant by gross misconduct as envisaged by the law maker, with reference to decided cases, in a comparative perspective. This is in order to see how best summary dismissals on those bases could be justified with certainty and avoid being abusive or unjust.

The Nature of a Labour Contract

Labour contracts are special contracts with specific characteristics governing them. Section 23 (1) of the Cameroon Labour Code[i] defines a contract of employment to be "an agreement by which a worker undertakes to put his services under the authority and management of an employer against remuneration." Section 1(2) of the same code equally provides that a "worker" shall mean any person, irrespective of sex or nationality, who has undertaken to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, considered as the "employer".

It thus has certain major characteristics that distinguish it from other contracts. First of all, you have someone[ii] providing services of a physical intellectual or artistic nature which is diversified depending on the type of work to be carried out, as long as it is not illegal in nature. A labour contract is equally characterized by the subordination of the worker under the

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employer's direction and control[iii] in consideration of some agreed remuneration. The worker receives instructions from the employer, who can equally subject the former to disciplinary measures. Subordination was established as a vital element in determining whether there is a labour contract in the Supreme Court case of *Arret N° 26 of 2 February 1965*.[iv] This has been confirmed in a more recent case of 1996 *Arrêt n° 1/S d 10 octobre 1996* affaire *Bureau regional pour la recherché géologique et minière contre Docteur Bougha Pierre* in which the supreme court quashed and annulled the decision of the Court of Appeal for assuming jurisdiction over a matter which did not fall within its jurisdiction because there was no labour contract between the parties. This is due to the fact that the agreement signed between the parties expressly stated that *Docteur* Bougha would carry out his medical services independently within the stipulated hours agreed upon with the management. There was therefore found to be no subordination.[v]

A labour contract is also a contract of services as opposed to a contract for services provided by an independent contractor, who is self-employed. The issue of control is not sufficient due to the increasing numbers of professionals (Medical doctors, architects, engineers etc) in salaried employment. In this case, the crux of the matter is whether a worker's work is integral to the employer's business, in which case it would be a contract of service; or if it is simply accessory to it, in which case it would be considered to be a contract for services as was adumbrated by Lord Denning in the English case of *Stevenson Jordan and Harrison V. Mac Donald and Evans ltd.*[vi] He said, "The test usually applied is whether the employer has the right to control the manner of doing the work."[vii] In fact, the modern approach in English law is now pragmatic and multiple, and involves looking at all the factors for and against a contract of employment. In *Market Investigations Ltd V Minister of Social Security,* Cook J said that the question actually is whether the person in question is performing the services as 'a person in business on his own account…'

If we look at German law on its part, the definition of a labour contract also talks of subordination of the employee in the service of the employer in § 611 a (1) of the German Civil Code (BGB).[viii]

All these questions of subordination and control are therefore important in determining whether someone is a worker or not. It is equally important to understand the various types of contracts before delving into issues of their termination.

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Types of Labour Contracts

It is imperative to understand the various types of labour contracts envisaged by the Cameroon labour code. In this connection, one can talk of a contract of specified duration, a contract of unspecified duration and other forms of labour contracts such as that of temporary, seasonal and occasional labour. According to Section 25: (1) (a) of the Labour Code, a contract of specified duration is a contract whose termination is fixed in advance by both parties. It may not be concluded for a duration of more than (2) two years renewable once. Associated to this type of contract of specified duration but with a non-renewable period are contracts whose termination are subject to the occurrence, which does not depend exclusively on the will of the parties, of a future but certain event that is precisely indicated, as well as contracts concluded for the execution of a specified task.[ix] After the maximum four years period, if working relations continue, the contract shall be transformed into one of unspecified duration.[x]

On the other hand, a contract of unspecified duration is a one whose termination is not fixed in advance but may be terminated at any time by the will of the worker or the employer, provided that the required prior notice is given.[xi] This is the most common type of labour contract because it provides secured and stable employment opportunities for workers who expect to end the contact upon retirement.

Apart from the contract of specified and unspecified duration, the labour code also envisages the conclusion of labour contracts for temporary, occasional and seasonal labour. Section 25 (4) of the labour code gives us a definition of such employment to be "(a) a temporary job in replacement of an absent worker or one whose contract has been suspended, or the completion of a piece of work within a specific time limit and requiring additional manpower; (b) an occasional job aimed at coping with unexpected growth in the activities of the company as a result of certain economic conditions or entailing urgent works to prevent imminent accidents, organizing emergency measures or repairing company equipment, facilities or buildings which are dangerous for the workers; and (c) a seasonal job generated by the cyclical or climatic nature of company activities." These types of contracts could take the written or oral form (unless it concerns labour supplied by a third party recruitment agency).[xii] Temporal labour can be employed for a maximum of three months, occasional labour for at most fifteen (15) days and seasonal labour for a maximum period of six months per year.[xiii] The temporal and occasional contracts could be renewed once, while the seasonal contract could be renewed

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every year with the same employer. These contracts have the possibility of being transformed into contracts of unspecified duration if the maximum period is exceeded.[xiv]

TERMINATION OF LABOUR CONTRACTS

A Labour contract could be terminated through natural causes such as retirement of the worker, who has attained the stipulated age, the death of the worker as well as mutual agreement. It could equally be the case of a contract for a specified duration, which has come to an end. Such cases are normal as opposed to involuntary circumstances such as resignations and dismissals for various reasons ranging from redundancy to serious or gross misconduct.

Termination of Labour Contracts under Normal Circumstances

Death of the Employer or Employee-

The death of an employee is a natural cause of the termination of a labour contract. At common law, the death of both the employer and the employee could lead to the termination of a labour contract as in *Farrow V Wilson*[xv] where the personal representatives were held not to be liable to continue the engagement of the employee. This position has changed in English law. Normally, the death of the employer does not necessarily result in the end of a labour contract since most employers are either partnerships or corporations. This holds true even in cases of a change in the legal status of the employer through succession, sale, amalgamation, financial reorganization, or transformation into a partnership or company. All contracts of employment in force on the date of the change shall subsist between the new organization and the personnel of the undertaking. They shall be terminable only in the manner and subject to the conditions laid down in the labor code.[xvi] The Labour code protects employees in cases of restructuring and winding up of companies. The closure of the undertaking other than in cases of "force majeure" shall not absolve the employer from his obligation to pay all of the employee's dues. Neither bankruptcy nor liquidation by court order shall be deemed to be a case of "force majeure. However, in the case of a physical person employer, the death could mean the end of the labor contract.

On the other hand, the death of the worker obviously results in the end of the labour contract since the services rendered are supposed to be personal (Section 23 (1) of the Cameroon labour

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code). It would perhaps have been better to be expressly stated in the labour code as is the case with the German civil code (§§ 673, 675 BGB).

Retirement-

The labour contract normally comes to an end upon the attainment of the stipulated age of retirement by the worker. The normal age of retirement for workers governed by the labour code is sixty (60) years as deduced from Article 9(1) of law N° 84/007 of 4th July 1984 to amend law N° 69/LF/18 of 1àh November 1969 governing old age pension, invalidity and death as further amended by Law N°90/063 of 19th December 1990. The retirement age could equally be extended by a collective agreement. The retirement age is usually determined by collective agreements in some countries such as Germany. Early retirement is also envisaged and possible at the age of fifty years with at least 180 months of contributions, 6 months of which were affected in the last ten years.

Expiry of a contract of Specified Duration-

A contract of specified duration is a fixed term contract, which also incorporates task or purpose contracts. Such a contact could only be terminated before the normal date in cases of gross misconduct, *force majeure* or the written consent of both parties.[xvii] *Force majeure* in this case could be an act of God, which frustrates the contract. In this connection, only the death of the employee could be considered as a case of force majeure. Sickness and accidents only lead to a suspension of the labour contract. On the part of the employer, only cases of accidental destruction of the company such as by fire, could amount to *force majeure.* In a bid to protect employees, the labour code provides that the contract of employment subsists in cases of restructuring, bankruptcy and liquidation, all of which cannot be considered as cases of *force majeure*. Generally speaking, concerning all labour contracts, the closure of the undertaking other than in cases of "force majeure" shall not absolve the employer from his obligations under the contract.[xviii]

Mutual Agreement of the Parties-

A labour contract could come to an end by mutual agreement of the parties concerned. This is inherent in the parties' freedom to terminate a contract. In the case of a contract of specified duration it has to necessarily be in writing. A contract of unspecified duration could equally be

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terminated by mutual agreement of the parties.[xix] In the English case of *S W Strange Ltd v Mann*[xx] for instance, the defendant was employed as the plaintiff company's manager under a contract which included a restraint clause, restricting his post-employment activities. Following disagreements, the parties agreed that the defendant should no longer be manager but rather take over the running of only one department. He was eventually dismissed and the plaintiff-employer tried to enforce the restraint clause but the court held that the original contract had been terminated by mutual agreement. In this case there is bilateral discharge of the contract for, *eodem modo quo oritur, eodem modo dissolvitur*.[xxi] This can also be envisaged in cases of agreed early retirement, which could be negotiated by the parties.

Unilateral Termination of Labour contracts

Parties to a contract of employment are free to terminate it at will under given conditions. In this connection, Section 34(1) of the Cameroon Labour Code specifically provides: "A contract of employment of unspecified duration may be terminated at any time at the will of either party. Such termination shall be subject to the condition that prior notice is given by the party taking the initiative of terminating the contract. Notification of termination shall be made in writing to the other party and shall set out the reason for the termination." The period of notice, which must be given in writing, begins to run from the date of notification of the worker or employer and is no subject to any condition precedent or subsequent.[xxii] In the case of *N. Nso Richard V. Parc Nationale de Génie Civil*[xxiii], the termination of the plaintiff's contract without notice was held to be a violation of section 34 (1) of the Cameroon Labour code.

An employer who condones a worker's misconduct and allows him to continue working cannot later on rely on that misconduct as a reason for termination. He would be estopped from doing so. In every case, if the termination emanates from the worker, it is considered as a resignation but if it is on the part of the employer, it would be termed a dismissal.

The termination of a labour contract without notice or without observing the entire period of notice prescribed will entitle the other party to payment lieu of notice corresponding to the salary and allowances due the worker during the unobserved period of notice.

Resignation-

A labour contract can come to an end through the resignation of an employee for various reasons. In this case, prior notice in writing, stating the reasons as required by section 34(1) of

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the labour code must be given to the employer, in order to enable him look for a replacement and avoid any disruption of the smooth functioning of the company or work. Failure of the employee to give notice would result in the payment in lieu of notice to the employer as well.[xxiv]

There could be a case of constructive dismissal that is effected through resignation, especially when it concerns the restructuring of a company or in general, if the resignation can be imputed to the employer's conduct.[xxv] In English law, an express resignation could be by unambiguous wording or a combination of wording and circumstances that would enable a reasonable employer to understand that the employee is resigning.[xxvi] Apart from express resignation, there are cases in English law, where an employee walks out or where he/she does not return from his or her annual leave on time.

The question is whether and under what circumstances the resignation of an employee could be imputed to the gross misconduct of the employer? Gross misconduct of the employer could lead to the resignation of the employee without giving prior notice in writing.

Dismissal-

When the initiative to terminate a labour contract emanates from the employer, one talks in terms of a dismissal of the employee. The principle of freedom of contract is also inherent in the employer's being able to unilaterally terminate the contract provided he gives prior notice[xxvii] to the worker as required by Section 34 (1) of the labour code, stating the reasons for termination. The employer equally has the right to dispense with such notice by choosing to make certain statutory payments in lieu of notice according to section 36 (1) of the labour code. Apart from that, the employer would be required to pay to the worker with at least two years of service, severance pay to be calculated according to seniority.

Dismissal could be for a number of reasons ranging from those inherent in the conduct of the parties to economic reasons.[xxviii] The labour code is however protective of certain employees and as such, understandably prohibits the dismissal of pregnant women. On the other hand, any pregnant woman whose pregnancy has been medically certified may terminate her contract of employment without notice and without being obliged on that account to pay the required compensation. During the statutory fourteen weeks period of maternity leave (which may be extended by six weeks in case of any pregnancy or confinement-related illness, the employer is equally forbidden from terminating a pregnant woman's employment.[xxix]

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The dismissal of staff representatives requires the prior authorization of the competent labour inspector[xxx] and a worker suffering from occupational disease or accident cannot be dismissed or permanently replaced according to section 52 (g) of the Labor code. All these are reasonable provisions intended to protect the worker.

GROSS MISCONDUCT AND SUMMARY DISMISSAL

Summary dismissal is the right or power of the employer to instantly dismiss an employee without giving any notice to the latter.[xxxi] Summary dismissal is seen as an important part of the employer's armory in managing the workplace since the threat of dismissal can act as a disciplinary tool.[xxxii] Article 11 of the 1982 International Labour Organization (ILO) Convention 158 on the Termination of Employment[xxxiii] provides that, "a worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period." This is reflected in the Cameroon Labour Code, for gross misconduct gives room for summary dismissal without notice in both contracts of specified and unspecified duration. In this connection, section 36 (2) of the Labour code provides that a contract of unspecified duration may be terminated without notice in cases of serious misconduct, subject to the findings of the competent court of law as regards the gravity of the misconduct. In like manner, a contract of specified duration can be terminated before its normal date due to gross misconduct amongst other reasons.[xxxiv] The question actually is what amounts to gross misconduct. The Cameroonian legislator has expressly submitted the determination of that to the appreciation of the courts in every specific case. It is important to determine what amounts to gross misconduct, given the implications and consequences of its existence reflected in the forfeiture of severance pay and payment in lieu of notice that a party would otherwise be entitled to.

In fact, in case of a termination of the contract of employment of unspecified duration on the ground of gross misconduct, the guilty party shall not be entitled to any form of payment in lieu of notice envisaged by section 36 (1) of the labour code according to which " Whenever a contract of employment of unspecified duration is terminated without notice or without the

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full period of notice being observed, the responsible party shall pay to the other party compensation corresponding to the remuneration including any bonuses and allowances which the worker would have received for the period of notice not observed."

At common law the right to dismiss summarily could be based on the ground that the conduct of the employee was such that it showed a repudiation by him of the contract of employment, which the employer then accepted and treated as terminating the contract immediately as in *Pepper v Webb*.[xxxv]According to the facts of that case[xxxvi], the defendant's wife engaged the plaintiff as their head gardener. Under the written contract of employment, the plaintiff was entitled to live in a particular cottage and there was provision for termination of the by either side. At first the plaintiff worked well but later his work became less satisfactory. The defendant and his wife found the plaintiff's conduct and efficiency to be somewhat lacking Maters came to a head when the defendant's wife told the plaintiff to plant some plants and the plaintiff refused. The defendant asked again but the plaintiff refused saying, "I couldn't care less about your bloody green house and your sodding garden." He was summarily dismissed. His claim for damage was rejected because, per Karminski L.J. the plaintiff had wilfully disobeyed a lawful and reasonable order. This decision ties in with the inherent insubordination that defines a labour contract and as such qualifies the misconduct to be very serious. The essential conditions of the contract of service must have been disregarded. While an employer may not be justified in dismissing summarily for a single offence, a previous history of similar transgressions, even though not as serious as the immediate one may be important and act in the employer's favour.[xxxvii]

Meaning of Gross Misconduct

The concept of gross misconduct has not been defined in the Cameroon labour code, leaving it entirely to the interpretation of the courts. In fact, neither "misconduct" nor 'dismissal" have been defined by the code[xxxviii], giving room for all sorts of inconsistencies that sometimes result in unfair dismissals. As was stated by B E Fodjock, JCA in the Bamenda Court of Appeal in *SODEPA Dumbu v Biebu Martin Fang*, [xxxix]the appreciation of the gravity of the employee's conduct for the purpose of determining a misconduct is at the discretion of each individual judge and varies from case to case. It is the Supreme Court that reviews the decisions of Lower courts in determining the gravity of conduct. In this connection, a Supreme Court decision in the case of *Arret N° 97/s of 12th September 1985* laid down the type of misconduct to be

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envisaged by stating that serious misconduct must relate to an intentional act of the worker in the course of employment, which excluded professional errors.[xl] It is of such a degree or nature that the contractual relation can no longer be maintained as in *CS Arrêt n° 84/s du 18 Septembre 1980.*[xli]

It would have perhaps been better to give a proper definition of what is meant by gross misconduct as is the case with the Australian Fair work Regulations 2009 which defines serious misconduct in Chapter 1, Division 2, r.07 (2) to include the following: "(a) Wilful or deliberate behavior by an employee that is inconsistent with the continuation of the contract of employment; (b) conduct that causes serious and imminent risk to the health and safety of a person or the reputation, viability or profitability of the employer's business." It equally includes the employee engaging in theft, fraud, assault, being intoxicated at work or refusing to carry out lawful instructions…" Such a definition would give guidelines to the courts and create certainty.

Gross misconduct needs to be notified and sanctioned immediately, else it would amount to it having been condoned and cannot be relied upon subsequently as a ground for dismissal. The burden of proof of gross misconduct equally lies with the person who is alleging such conduct and in all cases of dismissal for that matter, it shall be up to the employer to show that the grounds for dismissal alleged by him or her are well founded.[xlii]

Gross Misconduct on the Part of the Employer-

Considering the nature of a labour contract, in which an employee is in subordination to the employer and carries out the required work under the supervision and control of the latter, it is but normal that the bulk of cases of gross misconduct are in connection with employees. The Cameroon labour code however makes it clear in section 36 (2) and 38 for contracts of unspecified duration and specified duration respectively that a labour contract could be terminated without prior notice in cases of gross misconduct either on the part of the employee or the employer.

Gross misconduct on the part of the employer has been established in cases of irregular or non-payment of salaries. In the Supreme Court case, *Arret n° 66/S du 30 mai 1972, affaire Me Nkili,* the non-payment of a worker's salary for several months was considered as serious misconduct on the part of the employer.[xliii] The remuneration of a worker is considered to be one of the

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most important obligations of the employer, since it constitutes consideration, which is the basis of the contract. The Supreme Court clearly stated that there is no greater misconduct on the part of the employer in the execution of the labour contract, than not to regularly pay the worker's salary, in consideration of the work done. According to Section 68 (1) and (2) of the Labour code, wages shall be paid at regular intervals not exceeding one month and monthly payments shall be made not later than eight days following the end of the month of employment in respect of which the wages are dues. It would however be desirous that what constitutes obvious gross misconduct on the part of the employer should be clearly stated in the labour code and not left only to the interpretation of the courts in each case.

Gross misconduct on the part of the employer could equally arise as a result of the non-respect of certain obligations on his part. These could be for instance, the failure to provide safety and security measures for the employee as required by Section 95 of the Labor code.

Physical and psychological violence as well as sexual harassment on the part of the employer could also constitute gross misconduct, warranting a resignation without notice by the employee. These all render working relations intolerable and impossible. All these are a violation of the personal integrity of the employee, which could be construed as constructive dismissal giving room for damages.[xliv] Sexual harassment is actually a criminal offence contrary to section 302-1 of the Cameroon Penal Code according to which "(1) whoever takes advantage of the authority of conferred on him by his position to harass another using orders, threats, constraints or pressure in order to obtain sexual favours, shall be punished with imprisonment for from six months to one year and with fine of from CFA one hundred thousand to one million francs." Such an offence could sufficiently qualify as gross misconduct.

Gross Misconduct on the Part of the Employee-

There are a number of established reasons imputed to the intentional conduct of an employee, amounting to gross misconduct, as confirmed by the Supreme Court in a number of decisions over time. These include embezzlement at the detriment of the employer (*C.S arrêt n° 49/S of 14th March 1983*), theft (*CS Arrêt n°129/s of 18th July 1967*), assault occasioning harm on the employer or any hierarchical superior (*CS arrêt n°112/S of 30th June 1972*), defamation with regards to the employer or superiors (*CS n° 18/S du 21 Novembre 1967*),prolonged and unjustified absences from work (*CS arrêt n° 74/S of 31st March 1970*), and a security guard

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who is caught sleeping in a drunken state (*CS n° 30/S du 29 décembre 1967*).[xlv] These have acted as a guide over the years to the lower courts but with no consistent clear cut definition or category of offences amounting to gross misconduct.

Gross misconduct has been defined as that which is very serious and as such renders the continuation of labour relations inconceivable, thereby justifying the immediate dismissal of the employee without notice or payment in lieu of notice.[xlvi] The Supreme Court likewise decided in *C/S Arret N° 121/S du 18 mai 20, affaire Savonnerie de l'Ouest c/ Téné Ide,* that such serious misconduct is that which causes real and serious loss to the employer, thereby rendering the continuation of labour relations with the guilty employee impossible.[xlvii] There must be honesty, trust and confidence in the discharge of a worker's duties.

On the other hand, Summary dismissal at common law could be used when the employer has sufficient cause to do so. It could in particular be for moral misconduct (pecuniary or otherwise), wilful disobedience or habitual neglect as per Parke B in *Calo V. Brouncker*.[xlviii] Summary dismissal is actually a serious matter that affects the career and livelihood of an employee. As was stated in the English case of *Jupiter General Insurance C° Ltd v Shroff*[xlix], summary dismissal is a strong measure justified only in exceptional circumstances and that the test to be applied in determining whether a dismissal was justified must vary with the nature of the business and the position held by the employee. Decisions in other cases were said to be of little value. A relatively minor instance of dishonesty for example, may warrant summary dismissal, especially if the employee's job involves handling finances as in the English case of *Sinclair V Neighbour*. [l]

Criminal and in particular fraudulent conduct could constitute gross misconduct that justifies summary dismissal of an employee. In this case, the burden of proof is on the employer to prove the criminal conduct beyond reasonable doubt according to section 135 of the applicable Nigerian Evidence Ordinance. That was the case in *Victor Oyebog V C.D.C.*[li] In the more recent South West Regional Court of Appeal case of *Epale Evelyn v. Chantier Naval et Industriel du Cameroun*,[lii] the Court of Appeal confirmed the decision of the High Court which decided in favour of the employers in a case of summary dismissal. The plaintiff/Appellant was summarily dismissed on the 9th of March 2009 on the grounds that her certificate was fraudulent and her conduct amounted to gross misconduct. She had disregarded internal rules of the company in raising a purchase order for security equipment from only two manuals instead of three as

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provided in the company's manual. The plaintiff filed a claim for wrongful termination of employment in the High court but the court dismissed the claim. Her appeal was equally rejected. The Court of Appeal found that not only was she employed on the basis of fake certificates, she had also been an undisciplined worker right from the beginning and violated laid down internal standing orders of the defendant.

Gross misconduct does not lead to the summary dismissal of a staff representative because the labour inspector must in all cases, be notified. A staff representative could only be suspended pending the approval of the labour inspector within a period of one month. In case the authorization is not granted such a staff representative must be immediately reinstated with full payment for the period of suspension.[liii] This measure is intended to protect staff representatives who could be victimized because of their sensitive functions. It has however been suggested that this remedy should not be available only to staff representatives but rather extended to other cases of unfair dismissals.[liv] I am however of the opinion that reinstating such a worker when trust and confidence has been destroyed would be counterproductive and run the risk of insubordination, which is at the core of a labour contract.

Gross Misconduct and Wrongful Termination

In the event of an inability of the employer in particular, to prove gross misconduct on the part of the worker, the dismissal could amount to an unfair one. The same holds true for a worker who resigns without giving notice to the employer, sometimes on the ground of the latter's gross misconduct. One can in this case think of four different remedies for wrongful termination.

An unjustly dismissed worker can lay claims to severance pay. According to section 37 (1) of the Cameroon Labour Code, except in cases of serious misconduct, where a contract of unspecified duration is terminated by the employer, the worker with no less than two successive years of seniority in the enterprise shall be entitled to **severance pay** (distinct from **pay in lieu of notice),** which should be determined, giving regard to the worker's seniority. The ministerial order N° 16/MLSS of 26th May 1993, clearly lays down the modalities for calculating severance pay. This is calculated as an average percentage of the worker's monthly pay for the last twelve months preceding dismissal for each year of service as follows: 20% from 1 to 10 years; 25% for 11-15years; 35% from 16 to 20 years and 40% from 21 years above.[lv] This is

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the basis for calculation unless there are more favourable provisions in individual contracts or any applicable collective agreement.

Damages could also be claimed for wrongful dismissal according to Section 39(4) of the labour code. In fact, every wrongful termination of a labour contract may give rise to damages, irrespective of whether it is the employer or worker who is responsible. In cases of dismissal, the burden is on the employer to how proof that the grounds for dismissal alleged are well founded.[lvi] This could constitute special damages (rent allowance, leave claim, salary arrears, and irregular deductions from a worker's pay of all types post allowances, reclassifications payments etc)[lvii] and general damages. General damages on the other hand are not at the discretion of the court as in other civil matters. The bases for assessment have been clearly laid down in section 39(4) of the labour code to have regard to all factors indicating that prejudice has been caused and all factors determining the extent of such prejudice, in particular, (a) Where the worker is responsible, to his qualification and post; (b) Where the employer is responsible, for whatsoever the type of employment, the worker's seniority with the employer, his age and any vested rights.

However, the damages shall not be less than three months' salary or more than one month's salary per year of service in the enterprise. The wages to be considered and taken into account is the average monthly gross wages in the last 12 months of service of the worker. This minimum and maximum limit of damages prevents the existence of too great a discrepancy between the amounts allocated by the various courts of law. It is intended to prevent excessive discretionary awards of general damages, which is commendable. This is also available in cases of a contract of specified duration.

Apart from the above remedies, there is also the payment in lieu of notice that would have to be made to the aggrieved party if the termination of a contract of unspecified duration is not justified to be due to gross misconduct. This is compensation corresponding to the remuneration including any bonuses and allowances, which the worker would have received for the period of notice not observed.[lviii]

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CONCLUSION

Labour contracts could be terminated naturally, consensually or unilaterally with the payment of whatever prescribed dues. However, in cases of unilateral termination through resignation or dismissal on the part of the worker and employer respectively, the situation becomes complicated if gross misconduct is alleged. This will lead to termination without prior notice and a forfeiture of statutorily prescribed payments. The matter is not made easier by the non-definition of what is meant by gross misconduct, which is totally left to be interpreted by the courts. The Supreme Court has come up with guidelines intended to act as precedent but decisions emanating from various courts indicate that there is need for precision and clarity.

It is therefore suggested that what is meant by "gross misconduct" should be statutorily defined, following the example of other jurisdictions, without on the other hand creating any rigid set of rules.

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[iii] In the case of *Assurance des Provinces Réunis V. Tiogum David* (1999) CCLR part 4, 62 The degree of control required was said to be that of supervisory management of the worker, backed with the power to discipline for non- compliance. Cited by MICHAEL A.YANOU, LABOUR LAW: PRINCIPLES AND PRACTICE IN CAMEROON, (2009) REDEF,9-10
[iv] PAUL-GERALD POUGOUE, CODE DU TRAVAIL CAMEROUNAIS ANNOTE (1997) P. 22
[v] JEAN-MARIE TCHAKOUA (ed), LES GRANDES DECISIONS DU DROIT DU TRAVAIL ET DE LA SECURITE SOCIALE, Jus Print, 2016, 15-16
[vi] (1952)T.L.R. 101, IAN SMITH & AARON BAKER, SMITH & WOOD'S EMPLOYMENT LAW (2010) Oxford University Press, P.47, note 12. See also, MICHAEL A.YANOU, LABOUR LAW: PRINCIPLES AND PRACTICE IN CAMEROON, P. 11, NOTE 23
[vii] Ibid, at P.111
[viii] *Durch den Arbeitsvertrag wird der Arbeitnehmer im Dienste eines anderen zur Leistung weisugsgebundener, fremdbestimmter Arbeit in persoenlicher Abhaengigkeit verpflichtet. Das Weisungsrecht kann Inhalt, Durchfuehrung, Zeit und Ort der Taetigkeit betreffen. See also 611(1) BGB*
[ix] Such as the employment of labourers for the construction of a building or other structure, which must be finished but the exact date of termination cannot be determined with precision. PAUL-GERARD POUOGOUE, CODE DU TRAVAIL CAMEROUNAIS ANNOTE (1997) P.U.A. P. 28
[x] Section 25 (3) Cameroon labour code
[xi] Section 25 (1) (b) Cameroon Labour Code
[xii] Decree N° 93/577/PM of 15th July 1993 fixing the conditions of employment of temporal, occasional and seasonal workers, section 6 (1) as read with section 26 (5) of the Labour code.
[xiii] Ibid, sections 2, 3 and 4 respectively.
[xiv] Ibid, Section 7 (1)
[xv] (1869) LR 4 CP 744 P.373, note 2
[xvi] Cameroon Labour code, Section 42 (1)

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[xvii] Cameroon Labour Code, Section 38
[xviii] Ibid, Section 42 (1) (c)
[xix] Ibid, Section 38
[xx] (1965) 1 All E R 1069 , IAN SMITH & AARON BAKER, SMITH & WOOD'S EMPLOYMENT LAW, op cit. , 383, note 65
[xxi] What has been created by agreement may be discharged by agreement
[xxii] Cameroon Labour code, Section 34 (2)
[xxiii] Suit Number HCB/5 L/98-99 cited by MICHAEL A YANOU, LABOUR LAW, PRINCIPES AND PRACTICE IN CAMEROON, op. cit. P. 68, note 122
[xxiv] Cameroon Labour Code, Section 39 (4)
[xxv] Cameroon labour code, See section 42.
[xxvi] IAN SMITH & BAKER, EMPLOYMENT LAW, op.cit. 438-439
[xxvii] The duration of the notice is prescribed by Ministerial Order N° 15/MTPS/CJ of 26th May 1993, taking into consideration the classification of workers and longevity.
[xxviii] Cameroon Labour code, Section 40(2).
[xxix] Cameroon Labour code, Section 84 (1) & (2)
[xxx] Ibid, Section 130 (1). In the Court of Appeal case, *Cour d'Appel de l'Ouest, Arret n°04/Soc du 03 mars 2011, affaire Kouokam Abraham c/ Secrétariat Médical du CEBEC*, cited in *Les Grandes Décisions du Droit du Travail et de la Sécurité Sociale* (ed. Jean-Marie Tchakoua) op.cit. , 349, the dismissal of a staff representative without consulting the labour inspector was fund to be null and void. The said worker had to be reinstated.
[xxxi] Lambropoulos Victoria E, *Unravelling the Muddles of Summary Dismissal under Contacts of Employment*, (2016) 44 (2) AUSTRALIAN BUSINESS LAW REVIEW, *119-137,119.* Available at https://ssrn.com/abstract=3469938
[xxxii] *Ibid, P. 4*
[xxxiii] Ratified by Cameroon on 13th May 1988
[xxxiv] Cameroon Labour code, Section 38 (1)
[xxxvxxxv] (1969) 2 ALL ER 216
[xxxvi] app.croneri.co.uk
[xxxvii] Pepper v Webb supra, IAN SMITH & BAKER, EMPLOYMENT LAW, op.cit. 392-393
[xxxviii] See also MICHAEL A YANOU, LABOUR LAW, PINCIPLES AND PRACTICE IN CAMEROON, (2009) REDEF, , op. cit. 72
[xxxix] BCA/7L/2006, Unreported, Ibid P. 73
[xl] Ibid, P. 73
[xli] PAUL-GERARD POUGOUE, CODE DU TRAVAIL CAMEROUNAIS ANNOTE, (1997) P.U.A., 64
[xlii] Cameroon Labour code, section 39(3)
[xliii] JEAN-MARIE TCHAKOUA (ed) LES GRANDES DECISIONS DU DROIT DU TRAVAIL ET DE A SECURITE SOCIALE, (2016) Jus Print, .283-309
[xliv] Ibid, 290
[xlv] Ibid, 65
[xlvi] *C/S arrêts n° 80 S du 14 Avril 1970 et n° 84 /S du 18 Septembre 1980*
[xlvii] « *Celle qui cause a l'employeur un préjudice réel et sérieux et qui rend impossible le maintien du travailleur qui s'en est rendu coupable au sein de l'entreprise qui en a subi les conséquence.* »
[xlviii] (1831) 4 C & P, P. 158. Cited by IAN SMITH & AARON BAKER, SMITH & WOOD'S EMPLOYMENT LAW (2010*)* Oxford University Press, 391, note 113
[xlix] (1937) 3 All ER 67 PC.
[l] (1967) 2 QB 279, note 119
[li] Suit N° CASWP/L; 10/2004 cited by MICHAEL A YANOU, LABOUR LAW: PRINCIPES AND PRACTICE IN CAMEROON, op.cit. 76
[lii] CASWR/L.6/2011 (unreported)
[liii] Cameroon Labour code, Section 130 (4).
[liv] Michael A Yanou, *Labour Law: Principes and Practice in Cameroon*, op.cit.105
[lv] The employer must take account of periods of paid leave; unpaid leave, periods of suspension of the labour contract as well as periods of professional training and internship
[lvi] Section 39 (3) of the labour code.
[lvii] MICHAEL A YANOU, LABOUR LAW: PRACTICE AND PRINCIPLES IN CAMEROON, op. cit. 96
[lviii] Section 36(1) labour code

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