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JUSTIFIED WARNINGS -

What Would a Reasonable Employer Do?

When an employee is dismissed from their employment they can challenge that dismissal if they believe it is unjustified.

A personal grievance can arise if either the employer hasn't followed the correct process in carrying out the dismissal, or if there is no proper reason for the dismissal.

The test for a justifiable dismissal is whether the decision to dismiss was a reasonable and fair one (i.e. what would a reasonable and fair employer have done in these circumstances). This is consistent with good faith obligations under employment law and also ensures that the equalities in the employer-employee relationship are addressed. However, what is justifiable will depend on the facts of each case.

For example: Bill and John worked together in a small manufacturing company. Bill used to be the boss before the company was restructured and John was brought in to take his place. Bill still had ambitions to be the boss and although he did his job very well and there were no issues with his work performance, he did annoy John. John did not like Bill and could see that Bill resented the fact that he was now the boss. John had decided that it would be easier if Bill no longer worked for the company and he was looking to

get rid of him any chance he could.

One day Bill had turned up to work approximately five minutes late as he had had some trouble getting his six children off to school. John carried out a thorough investigation into Bill's lateness and determined that it was in breach of his employment contract, was unauthorised and warranted disciplinary action. John decided that it was a perfect opportunity to fire Bill for misconduct. Bill, of course, challenged this decision.

The Employment Court found that while John had carried out his investigations correctly and followed the correct process of procedural fairness, the decision to terminate Bill's employment for being five minutes late on just one occasion was not justified. In the circumstances a fair and reasonable employer would not have fired Bill, perhaps only given him a warning or docked his pay accordingly.

In all circumstances where you are looking to discipline an employee or terminate an employment contract, you should seek legal advice to ensure that the correct process is carried out and there is appropriate justification for the action being taken.

- **Next issue: Obtaining a Limited Licence—by Michael Moohan**