SECURITY OF EMPLOYMENT AND VICTIMIZATION IN SOUTH AFRICAN LAW

by Peter Galt

The more important factors determining the security of employment of a worker are economic and political economically the general state of the economy and the extent to which that worker is skilled or qualified (the less skilled he is the more tenuous is his employment); and politically the extent to which workers are organised and the existence or non-existence of legal rules protecting their job security.

Security of employment has a static and a dynamic aspect - it describes not only the keeping or not keeping of a job, but also the realization of those terms of the employment contract favourable to the employee, as well as the fruition of expectations of employees as to future improvement in those terms. This note attempts to evaluate the recognition of the employee's interest in the security of his job in South African law.

To the extent that the law restricts an employer's freedom to terminate a contract of employment and provides procedural safeguards for the dismissal of an employee, it thereby recognises and protects the employee's interest in the security of his employment. At common law the employer's freedom to terminate the contract is very wide, and the recognition of the employee's interest in the continuity of his job is correspondingly very limited. Ordinarily the employer can terminate the contract by giving the employee notice, and in certain circumstances, summarily.

JOB SECURITY AT COMMON LAW

In the case of an employment contract, which runs indefinitely, on a periodical basis, the employer can terminate the contract by giving the employee 'reasonable' notice.(1) What is reasonable notice depends on the circumstances. The period of notice is usually the same as the period of work on which wages are calculated eg. one month's notice, given not later than the first day of that month, where

the contract is a monthly one.(2) No reasons need be given for terminating the contract, nor does the employer have to follow any special procedure; in fact notice can be given to run concurrently with leave due to the employee.(3) The employer can dispense with the need for notice by paying the employee in lieu of notice and requiring him to leave immediately. Even the right to notice can be forfeited by the employee's misconduct.

In all employment contracts the employer is able to dismiss his employee summarily for any conduct which is substantially incompatible with the obligations undertaken by that employee. There are no fixed rules of law defining the degree of misconduct which will justify summary dismissal - it is a question of fact for the court to decide in each case.(4) Where wealth is unequally distributed (especially where employees are unorganized) the litigant having more money has a better chance of success; consequently standards of misconduct have tended to be stringently interpreted in the employer's favour.(5) The common law does not require an employer to give his employee a warning, or an opportunity of improving his performance, before treating that lapse as justifying dismissal. Should the employer give a warning, he is not obliged to allow a reasonable interval to pass before taking action against the employee. Nor is the employer obliged to give reasons for the dismissal at the time, in fact summary dismissal can be justified *by facts unknown to the employer* and only discovered subsequently.(6) When deciding whether or not to dismiss the employee, the employer does not have to give him a hearing as the *audi alteram partem* rule is not applicable.(7) There is no provision for alternative penalties of differing severity that can be imposed on the errant employee.

Where the summary dismissal has been wrongful (i.e. the employer's reasons for dismissing the employee are not legally valid) the damages to which the employee is entitled are limited to the remuneration he would have earned had his employment continued until the earliest date for terminating the contract, less any amount he has earned,

or could reasonably have earned during that period in similar employment, as the employee is under a duty to mitigate his losses.(8) The fact that the wrongful dismissal adversely affects his attractiveness to potential employers is not relevant in determining the question of damages - only the manner of dismissal is relevant.(9) Nor is the state of the labour market and the unlikelihood of the employee finding other work relevant. The employee cannot get an order of specific performance against his employer.(10)

Theoretically the same rules apply to the employee - he, too, is free to terminate the contract on reasonable notice, and where the employer is guilty of misconduct, the employee can terminate the contract summarily. But this appearance of symmetry conceals a real inequality of bargaining power between the employee and the employer. 'Normal' economic conditions in a capitalist economy presuppose a residual pool of unemployed people, so that while the employee is usually eager to keep his job, his employer is free to hire and fire as he pleases. This imbalance emphasises the "social irrelevance of the law of master and servant and its failure to express the realities of the contemporary employment relationship."(11) The *laissez-faire* principle of the freedom of contract allows the employer to treat labour as a market commodity, while the standard of conduct demanded of the employee is regulated by an almost feudal notion of hierarchical duty, these duties being far more onerous than those of the employer.(12)

Both the employer and the employee have a real interest in the continuance of their relationship (over and above the mutual exchange involved), the employer in the increased skill and reliability of the employee; the employee in the accrual of certain benefits etc. which increase in importance as his employment endures.

STATUTORY PROTECTION OF JOB SECURITY

To some extent statutory inroads have been made into the employer's unrestrained freedom to fire indiscriminately. These statutory limitations can

operate negatively, by limiting the employer's power of firing, or positively, by recognising the employee's right to security in his job.

The Shops and Offices Act (75 of 1964, s8) provides certain minimum periods of notice to which employees covered by the Act are entitled, and prevents the notice period running concurrently with annual leave, sick leave, or compulsory military training. But the Act explicitly leaves intact the employer's common law right to dismiss summarily. (s8(3)(a)). The Apprenticeship Act (37 of 1944 s29) provides that a contract of apprenticeship cannot be terminated except by the mutual consent of both parties as well as the consent of the Registrar of Apprenticeships. Wage regulating measures made under other industrial legislation can also regulate the periods of notice required to terminate the employment relationships to which they apply.(13) These provisions focus on the employee's right to notice - provided the employer complies with the provisions he can still fire his employees as he pleases.

PROTECTION AGAINST VICTIMIZATION

A different type of limitation on the employer's freedom to fire is that imposed by the statutes which prohibit the victimization of employees. This is the closest South African law comes to recognising the employee's interests in the security of his employment both as to duration and content. As will appear, this recognition, pale as it is, is more theoretical than practical.

The earliest prohibition against victimization was contained in the Wage Act (27 of 1925 s13) which made it an offence for an employer to dismiss an employee or adversely alter his conditions of employment, because the employee gave information, which he was required to give under the Act, to certain officials or in court. The onus was placed on the employer to prove that the dismissal or alteration of employment conditions had taken place for reasons other than victimization. If the employer was convicted the court could also order the reinstatement of the employee or order the employer to pay him

compensation. A similarly worded provision was introduced into the Industrial Conciliation Act (24 of 1930, s16), and the Shops and Offices Act (44 of 1939, s11).

The Industrial Legislation Commission of 1937 (14) recommended that the concept of victimization be extended to prohibit the victimization of employees because they were members of a trade union or played an active part in its *legitimate* activities. Because of the serious nature of victimization, the Commission also recommended a more drastic penalty and greater damages for the victims.

These recommendations were adopted in the Industrial Conciliation Act (36 of 1937, s66,74) and the Wage Act (44 of 1937, s25,33). The wording of these provisions has been substantially repeated in the other statutes which contain prohibitions against victimization.(15) When these statutes were replaced by updated ones in 1956 (Act 28 of 1956) and 1957 (Act 5 of 1957), the provisions relating to victimization were repeated with one modification viz that where previously the court could order the reinstatement of a victimized employee, for such period and subject to such terms as it determined, this power is now with the Minister of Labour (see below).

These provisions make it an offence for an employer, whether or not a determination, agreement or order made under some industrial legislation is binding on him, to

i) dismiss an employee, or

ii) reduce his renumeration, or

iii) alter the conditions of his employment to his disadvantage, or

iv) alter his position unfavourably in relation to other employees

because the employer believes or suspects, whether or not the belief or suspicion is true, that the employee

a) has given information (eg. relating

to his condition of employment) which by that statute he is required to give to certain officials or in court(16), or

b) has refused to waive or evade the provisions of that statute (eg. by repaying portion of his wages or accepting wages lower than those prescribed), or

c) belongs to a trade union or has taken part in the *lawful* activities of a union.(17)

When it is proved that the employer has done any of these four acts, it is presumed that he did so for the reasons stated in the charge, (ordinarily the prosecution must prove all the elements of the charg beyond a reasonable doubt) and it is then for the employer to prove otherwise. The penalties provided are in most statutes a fine not exceeding R600, or imprisonment not exceeding 2 years, or both.

Where reinstatement of the victimized employee is one of the remedies provided (eg. Bantu Labour Relations Act and Bantu Building Workers Act), it is only available if the employer is prosecuted and convicted. Where the employee feels he has been victimized but the state declines to prosecute the employee can institute a private prosecution against the employer, in terms of the Criminal Procedure Act 56 of 1955 CH111. This Act provides that any private person, who proves some substantial and peculiar interest in the issue of the trial, arising out of some injury which he individually has suffered in consequence of the commission of the offence, can institute criminal proceedings against that person. Before the employee can commence proceedings he needs a certificate from the attorney general that he declines to prosecute. If the accused is acquitted, the court may order the private prosecutor to pay his costs.

Africans are excluded from protection against victimization for trade union activity, either because the statute concerned excludes Africans by its definition of employee (eg. the Industrial

Conciliation Act) or by defining 'trade union' to mean a registered trade union, which Africans cannot form (eg. Wage Act, Shops and Offices Act, Apprenticeship Act and Factories Act). Similarly, the provisions under the Industrial Conciliation Act whereby compulsory arbitration can be made to apply to a dispute arising from victimization, do not apply to Africans. Nor does the procedure whereby the Minister of Labour can order the reinstatement of victimized employees apply to Africans if the reason for victimization was trade union activity.

JUDICIAL INTERPRETATION OF THE VICTIMIZATION PROVISIONS

The cases interpreting and applying the victimization provisions indicate a restrictive approach by the courts - an attitude that often defeats the purpose underlying these sections. The courts have held that because the sections are penal, they should be restrictively interpreted, and not extended to cover situations which do not clearly fall within their ambit. Although they are penal as far as the employer is concerned, they are beneficial from the point of view of the employee.

If the person to whom the employee gives the information concerning his employment is not an official, as defined by that statute, then it is not victimization for his employer to fire him for giving that information (R v Bolon 1933 CPD 208). Here the appointment as inspector of the person to whom the information was given, was irregular. This ignores the good faith with which the information was given, and deprives the employee of the protection given him for a technical reason.

Similarly, it was held in R v Sachs 1940 (2) PH K53 (T) that the employer rebutted the presumption by showing the the information given by his employee was, in fact, false. It would still amount to victimization where the employee gave information which he believed was false, but which was in fact correct, but it would not be victimization if the employee in good faith gave false information believing it to be true. That no distinction was

drawn between *bona fide* but mistaken information and information given with knowledge of its falsity, seems wrong. Again, it appears unfair to deprive the employee of protection on this basis.

Where the employer's motives are 'mixed' ie. if apart from the reasons mentioned in the victimizatio sections, there are other reasons for the dismissal which are valid at common law(18), then it is not victimization to dismiss that employee (R v Wilson 1948 (i) SA 117 (t); R v Singleton 1952 (2) PH K145 (c)). The giving of information, union membership etc. must be the *effective* cause for the dismissal to be victimization. If the employer can show that there exist grounds on the basis of which a reasonable employer (one who would consider a week's notice to a breadwinner 'reasonable') might well consider it prudent to terminate on notice the services of that employee, then he rebuts the presumption that victimization was the cause of the dismissal. It is significant that in these cases the motive of the employer is ignored. In both cases the court chose not to follow its own ruling in R v Sarkin (1944 TPD, unreported, but discussed in Wilson's case) where it had been held that where there are 'mixed' motives, if the illegal motive influences the employer in any way, he is guilty of victimization. This latter view seems preferable.

In R v Watson 1948 (i) SA 11(T) the employee, a union shopsteward, was dismissed for opposition to a certain condition of his employment. Because it was not the policy of his trade union to oppose that particular condition, the court found that he was not taking part in the lawful activities of a trade union and consequently his dismissal was not victimization. Surely one of the ways in which union policy is determined is by the opinions of individual members.

The onus that is placed on the employer has also been treated unsympathetically by the courts. In interpreting a similar provision the appeal court held that it was not necessary for the employer to prove beyond doubt that he had not underpaid the employee, that the presumption was rebutted if the employer proved this on a balance of probabilities

(*Ex Parte Minister of Justice* in re R v Bolon 1941 AD 345). In R v Bassa 1944 NDP 239, which dealt with victimization, the court drew attention to the difficulties facing an employer in proving a negative, as he must, to rebut this presumption. This ignores the employee's difficulty of proving that he has been victimized. The detailed knowledge of the reason for the dismissal is with the employer, whose decision it would be rather than the employee's, so it would appear that the fears expressed by the court in Bassa's case are unfounded. In this case the court treated as insignificant the fact that the employer had stated that he was opposed to trade unions (the dismissed employee was an active union member) but as very significant the economic reasons - reduction in the selling price and a smaller market for his product - advanced by the employer for the dismissal.

Because the prohibition against victimization is absolute, i.e. it is not permitted on pain of a penalty, the victimized employee can raise the question of victimization indirectly e.g. where a term of his employment is that he has the occupation of a house, and he has been dismissed in contravention of the section against victimization, he can prevent his ejectment from the house by proving that his dismissal was unlawful because it amounted to victimization. In effect he proves that the contract between the employer and himself has not been legally terminated. (Rooiberg Mineral Development Co. Ltd. v Du Toit 1953 (2) SA 505 (T)), though the correctness of this decision was questioned in Kuruman Cape Blue Asbestos (Edms) Bpk v Boshoff 1973 (2) 663 (NC), 670.

EVALUATION OF THE VICTIMIZATION PROVISIONS

Evidence given before the Industrial Legislation Commission of 1951(19) criticized the existing provisions as being totally inadequate: employers still succeeded in evading the spirit and underlying motive of the sections. It was not an offence for an employer to intimidate an employee against joining a trade union of his choice; an employer's opposition to, or dislike of trade unions was not an offence, even where membership of a union was a bar to an employee's progress in that employment;

cases of genuine victimization were often concealed under other legitimate grounds for discharging an employee, for example reorganisation. Several witnesses, including a senior industrial magistrate, were of the opinion that judicial interpretation of the existing provisions had rendered them 'practicall negatory'. Public prosecutors, in the light of these decisions, refused to prosecute employers even where an industrial council was of the opinion that the evidence was sufficient to prove a charge of victimization.

In the face of this criticism, the Commission recommended that no changes be made to the existing provisions concerning victimization because they found the interpretation of the sections by the courts acceptable; the Department of Labour was satisfied with the provisions as they were; and trade unions had established themselves and no longer needed protection. This last point may be true of white unions but is not true of African unions.

These reasons do not appear to be very convincing and the reservations expressed by one of the members of the Commission seem as applicable now as then. In his opinion there was no doubt that workers were still at the mercy of unscrupulous employers. It was a serious reflection that prosecutors declined to prosecute because they were unable to obtain convictions under the victimization sections as framed.(20) He recommended that the sections be amended so that if an element of victimization was present in the dismissal, even if it was mixed with other legitimate motives, the employer would be guilty of victimization (para.1338f). In addition it is submitted that the concept of victimization, as set out in these sections, affords inadequate protection for workers. Where victimization takes the form of dismissal, the provisions cover both *summary dismissal and termination of the contract* by notice, but it seems unlikely that the courts will construe the provisions to include 'constructive dismissal'. As was pointed out before the 1951 Commission, the ways are numerous - and are not exhaustively covered by the sections.

I.L.O. AND ENGLISH LAW AND JOB SECURITY

It is interesting to compare briefly the protection afforded employees in South African law with that recommended by the I.L.O., and that actually given employees in English law. In 1963 the I.L.O. adopted Recommendation No. 119 on the termination of employment at the initiative of the employer, the kernel of which provides that 'termination of employment should not take place unless there is a valid reason for termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking.' Certain unacceptable reasons for terminating employment are listed, the more important being trade union membership; the lodging of complaints in good faith against an employer; and consideration peculiar to that employee e.g. race, sex, marital status, religion etc.

In English law the employee was initially as unprotected as his South African counterpart. He too had no rights other than the right to a reasonable period of notice and even that could be forfeited by misconduct. The statutory modifications brought about have also been of the two kinds mentioned above; either focussing on the right to a minimum period of notice or else recognising a right to job security on the part of the employee.(21) The Contracts of Employment Act of 1963 (22) is of the former type. It compels employers to give at least a minimum period of notice to employees who have been employed for a qualifying period.

The Redundancy Payments Act of 1965 combines aspects of both. Where an employee who has worked continuously for his employer for 104 weeks loses his job for reasons for which he is not responsible (i.e. redundancy) he is entitled to compensation from his employer. 'A redundancy payment is compensation for the loss of a right which a long-term employee has in his job. Just as a property owner has a right in his property so a long-term employee is considered to have a right analogous to a right of property in his job, he has a right to security and his rights gain in value with the years. Therefore when he is deprived of them by reason of redundancy he is entitled to ... compensation for the loss of that

right.'(23) There is a presumption that the reason for every dismissal is redundancy, unless the contrary is proved by the employer.

The Industrial Relations Act of 1971 was the first labour legislation in English law to create a right against unfair dismissal for employees.(24) This Act was replaced by the Trade Union and Labour Relations Act of 1974 which re-enacted the provisions relating to unfair dismissal. With some important exceptions, every employee is given a right against his employer not to be unfairly dismissed. If he is unfairly dismissed the employee can complain to an industrial tribunal, which may recommend that the employee be re-instated or re-engaged, or it may award him compensation. The exceptions are persons employed in small businesses, or by spouses or close relatives, or part-time workers. To qualify for protection the employee must have worked continuously for 26 weeks with that employer.

By definition 'dismissal' covers termination of employment by the employer, with or without notice; the expiry of fixed-term contracts of employment without renewal; as well as constructive dismissal (i.e. where the employer by his acts makes it impossible for the employee to continue working for him). The reason for the dismissal must be shown to be acceptable in principle and fair in fact. The onus is on the employer to show why he dismissed the employee and that the reason is one of the five considered as acceptable in the Act. These are that the employee could not do the job (i.e. physical or mental incapability or a lack of appropriate qualifications); that the employee was guilty of misconduct; that the employee is redundant (in which case he may be entitled to compensation under the Redundancy Payments Act); that it would be a breach of some statute to continue to employ him in that job; or that there is some other substantial reason which would justify the dismissal of that sort of employee. Even if the employer shows that his reason for the dismissal is acceptable, he must still satisfy the tribunal that the dismissal was fair and reasonable. The compensation cannot exceed £5,200 or 104 weeks pay, whichever is less.

CONCLUSION

All labour law attempts to regulate, in varying degrees, the relations between employers and employees. Against the background of common law rules of master and servant, any labour statute has the effect of cutting down 'managerial perogatives' and will be seen as interfering with private proprietary and contractual rights. Because of this 'such legislation is peculiarly apt to be ineffective unless it is both carefully drawn, and administered by persons who understand and are sympathetic to its purpose.' (25)

It seems unlikely that a right of unfair dismissal will be created in South African law in the near future. The majority of workers lack a meaningful right of organisation and should many of them become 'foreign' workers there will be even less opportunity for organising themselves. In fact it is ludicrous to speak of job security in a system which makes involuntary migrants of so many of its workforce.

FOOTNOTES:

1. The irony is that the reasonable period may be as short as a day or a week.
2. *Tiopazi v Bulawayo Municipality* 1923 AD 317
3. *Carstens v Ferreira* 1954 (4) SA 704 (T)
4. *Wallace v Rand Daily Mails Ltd* 1917 AD 479, 491
5. e.g. *Gogi v Wilson & Collins* 1927 NLR 21
6. *Flemmer v Ainsworth* 1910 TPD 81
7. *Gründling v Beyers* 1967 (2) SA 131 (W)
8. *Brown v Sessell* 1908 TS 1137, 1141,1143
9. *McMillan v Mostert* 1912 EDL 184
10. *Schierhout v Minister of Justice* 1926 AD 99, 107
11. M.R. Freedland *The Contract of Employment* O.U.P. 1976 p1
12. A. Fox *Beyond Contract: Work, Power & Trust Relations* Faber & Faber London, 1974 p181ff

13. e.g. agreements and awards made under the Industrial Conciliation Act 28 of 1956, s24; determinations under the Wage Act 5 of 1957 s8, and the Bantu Building Workers Act 27 of 1951, s13 (4); and orders under the Bantu Labour Relations Regulation Act 48 of 1953, s13 (1). Although the Defence Act 44 of 1957, s16 prohibits the dismissal of employees in certain circumstances, it is beyond the scope of this note.

14. Report of the Industrial Legislation Commission UG 37-1935, para 601-603.

15. Factories Machinery & Building Act 22 of 1941 s41,44 Apprenticeship Act 37 of 1944 s34,41. Soldiers & War Workers Employment Act 40 of 1944 s25,28
Training of Artisans Act 38 of 1951 s3
Bantu Building Workers Act 27 of 1951 s25,31
Bantu Labour Relations Regulation Act 48 of 1953 s24,30
Shops & Offices Act 75 of 1964 s22,30

16. This is the only reason that amounts to victimization in the first 4 statutes mentioned in footnote 15.

17. In the Bantu Labour Relations Regulation Act this protection relates to the establishment of a liaison or works committee, or participation in its activities. Confining protection to legitimate union activity is significant because the right to strike by white employees is very limited, and of black employees was until recently non-existant.

18. The employer's wide freedom to fire at common law has been described above.

19. Report of the Industrial Legislation Commission UG 62-1951 para 1327ff.

20. Since 1952 there have been no reported cases dealing with victimization, which seems to indicate that prosecutors still feel this,

rather than that there is now industrial peace.

21. For a detailed analysis of the development of a law of job security in English law see B. Perrins *Labour Relations Law Now* Butterworths London 1975 ch.7, and D. Jackson *Unfair Dismissal: How & Why the Law Works* C.U.P. 1975

22. which has been replaced by the Contracts of Employment Act 1972.

23. *Wynes v Southrepps Hall Broiler Farm Ltd* 1968 Industrial Tribunal Reports p407.

24. The concept of unfair or unreasonable dismissal exists also in French, German, Dutch, Italian, and American law; see G.N.De Clark: *Remedies for Unfair Dismissal A European Comparison* (1971) 20 ICLQ 397.

25. Ibid 427.

THE CASE OF WILSON VS. REX 1948
1948(1) S.A. 1170

"Accused who carried on a garage business, was convicted of contravening Section 66(1)(a) of the Industrial Conciliation Act, No. 36 of 1937" "in that upon or about the 14th February, 1947, the Accused being an employer did wrongfully and unlawfully dismiss HOREA MAKGATE and ISAAC RANTHLA, employees employed by him, by reason of the fact that he suspected or believed that they had given information which by or under the said Act they were required to give, or which related to the conditions of their employment or those of other employees of their employer to an Industrial Council, to wit. the Industrial Council of the Motor Industry, Transvaal and Orange Free State, or to the designated agent or other official of the said industrial council."

In terms of Section 74(12) of the Act, the onus of proving that he did not dismiss the employee by reason of the suspicion or belief stated in the charge is upon the employer charged under Section 66(1)(a).

The two complainants had complained to the Industria. Council about their wages and apparently stated to the designated agent that they were less than the prescribed rate of wages. As a result, an agent of the Industrial Council, one F, visited Accused on the 14th April, 1947. He interviewed complainants separately in the presence of Accused and his Cashier, Mrs N. Each complainant denied that he received the amount of wages shown in the wage book register and their denial implied, and was understood by Accused and Mrs N. as implying, that she had paid them less than the amount shown in the register as having been paid to them and had kept the difference for her own benefit. Subsequently Mrs N. gave Accused a month's notice because she felt she had been accused of taking the difference in the wages of the two complainants. Accused asked her to stay on but she persisted in her decision because she said she had never before been accused of theft, and in due course she left. After receiving notice from Mrs N., Accused dismissed the two Natives.

Accused gave as his reasons for dismissing the

complainants that he had previously missed money, the shortage appearing to be in the cash takings for sales of petrol, of which complainants had been in charge as part of their duties. He therefore suspected the two complainants. His evidence on this point was corroborated by the complainant HOREA who said, in F's presence, that Accused had asked him for an explanation about shortages in the petrol cash. ISAAC admitted having been questioned on a previous occasion. Accused said he did not dismiss the two Natives at the time on account of the shortages because of the difficulty of finding honest Natives. He said that he also dismissed them because of their insolence and lies which he maintained they told in regard to the amount of wages they had received and their suggestion that Mrs N. had taken the amounts by which they were underpaid. He denied that he was upset by the statements made by the two complainants to F.

The question was whether the Accused had discharged the onus upon him of showing that the dismissal was due to the grounds stated by him and not to the fact that they had given information to F or to the Industrial Council.

HELD:

1. The proper test is whether the belief or suspicion, that the employee has made a complaint about wages or conditions of employment, in the mind of the mind of the employer was the effective cause of the dismissal. Dismissal could not be said to have occurred by reason of a suspicion or belief which was only one of a number of other and perhaps more cogent considerations which led to the dismissal. As the statute is a penal one, Section 74 (12) should not be extensively construed.

2. On the facts:
Accused had discharged the onus upon him of proving that he did not dismiss the complainants by reason of suspicion or belief stated in the charge, but because of the cumulative

effect of the three considerations which he had in mind and that the factor which ultimately led him to dismiss them was Mrs N's decision to leave his employment because of the accusation against her.

Ordered:

Appeal allowed conviction and sentence set aside.