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UNJUST DISMISSAL FOR NONUNION WORKERS: ADJUDICATION DECISIONS IN THE CANADIAN FEDERAL JURISDICTION*

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ABSTRACT

This study involves an analysis of the determinants of adjudicator decisions dealing with complaints of unjust dismissal from nonunionized workers in the Canadian federal jurisdiction. All decisions rendered between the enactment of the legislation in 1978 and up to March 1989 were analyzed and the relevant decisions (395 cases) were coded according to the factors believed to determine arbitral decision making. The results, based on logit analysis, suggest that *some* of the major just cause principles developed by arbitrators in the unionized sector appear to have been adopted by adjudicators in the nonunion sector; however, it cannot be stated conclusively that the arbitral approach to just cause in the unionized sector has been adopted. Implications for public policy as well as for the participants in the adjudication process are discussed.

Statutory protection against unjust dismissal for nonunionized workers has received increasing attention in the last decade. In the United States, legislation to require some form of "just cause" to dismiss employees was *introduced* in ten state legislatures between 1981 and 1988, albeit so far it was *passed* only in Montana, in 1987. In 1991, the National Conference of Commissioners on Uniform State Laws adopted a Model Employment-Termination Act that urges reliance on arbitration rather than the civil courts or administrative agencies. As unionization has declined, increased attention has been paid to adopting some of the procedures developed in the union sector into the growing nonunion sector.

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In Canada, three jurisdictions have enacted legislation providing for the adjudication of unjust dismissal complaints for nonunionized employees—Nova Scotia (1976), the federal jurisdiction (1978), and Quebec (1980). Interest in such legislation has also been exhibited in Ontario. This interest may become more acute if the percentage of workers covered by collective agreements continues to decline, resulting in a decreased percentage of the work force who have some protection against unjust dismissal over and above the common law. Further, with the cost of litigation soaring, there is increasing interest in mechanisms to settle disputes outside the courtroom, commonly referred to as ADR (alternative dispute resolution mechanisms). Statutory protection against unjust dismissal is an example of one such mechanism.

This study involves an analysis of adjudicator decisions dealing with complaints of unjust dismissal under the *Canada Labour Code.* Section 240 *et seq.* of the *Code* provides statutory protection against unjust dismissal for nonunionized employees under the federal jurisdiction. The federal jurisdiction covers only about ten percent of all employees, but legislation from the federal jurisdiction often sets precedents for other jurisdictions. As well, it includes workers in a number of particularly important areas of the economy: interprovincial air, rail, shipping, ferry, and trucking operations as well as banks, radio broadcasting, grain elevators, uranium mines, atomic energy, and certain Crown corporations.

The main objective of this study was to determine the factors that adjudicators have utilized in their determination of what constitutes just cause for dismissal; that is, the factors that are associated with adjudicators' decisions to sustain or deny complaints.

This study contributes to the literature on decisions rendered under the *Code* by employing multivariate statistical procedures. The few past studies of unjust dismissal decisions under statutory regimes for the unorganized sector have been based on the citing of cases. Some studies dealing with arbitral decisions rendered under collective bargaining regimes, have used multivariate techniques, however, often with a limited array of explanatory variables. This study used a wider array of determinants of arbitral decisions than used in other studies.

THE LEGAL FRAMEWORK

In Canada, three legal regimes govern dismissal for cause—the common law, collective bargaining or arbitral law, and statutory law, for example, ss. 240 *et seq.* of the *Canada Labour Code.* The model for this study on dismissal under the *Code* was derived from a review of the jurisprudence covering nonunion workers under the common law and arbitration decisions under arbitral law in the unionized sector [1]. The principles of just cause adopted by judges under common law and arbitrators under collective bargaining law provide the framework for the analysis of the decisions of adjudicators under statutory law for nonunion employees. In fact, a central purpose of the analysis was to determine whether the just cause

principles developed under common law and collective bargaining law carry over to the newer statutory regimes in the nonunion sector.

Arbitral Law

While the common law dates back much longer, the notion of just cause is much more fully developed in the arbitral jurisprudence. Generally, neither legislation nor collective agreements define what is meant by just cause. The matter is left to the discretion of the third-party neutral deciding the case. The concept of just cause has evolved as a set of principles developed by several neutrals [1-7]. These principles are factors taken into consideration in deciding the outcome of discharge cases. The underlying concept is one of fair treatment toward employees. In determining whether just cause for discharge exists, arbitrators in the unionized sector consider myriad factors, such as the nature of the offense as well as a variety of mitigating and aggravating factors related to not only the behavior of the employee, but also the behavior of the employer. The employer has to show that due process was exercised in the decision to discharge.

Table 1 summarizes the results of studies that examined the factors associated with arbitral outcomes in collective bargaining regimes. Characteristics of the grievor effecting arbitral outcomes included previous disciplinary record, seniority, and gender, although the results were not consistent across studies. Surprisingly, employers' conduct as a variable affecting the decision to reinstate was analyzed in few studies. For the most part, these studies limited their analysis to few variables. The vast array of just cause principles developed by arbitrators have not been examined in previous studies. Further, few studies conducted significance tests or utilized statistical techniques that controlled for the independent effect of each variable. Moreover, it is questionable whether the results of the U.S. studies, which limited their analysis to published awards, are representative of all arbitral awards. To the extent that published decisions are not representative of all cases, reliance on them may present a misleading picture of the outcomes and characteristics of discharge cases.

Common Law

Under the common law, the definition of just cause has changed significantly over time. In the mid-19th century, sufficient proof that the employee committed the offense was all that was required to satisfy cause for dismissal, irrespective of the significance of the conduct or any mitigating circumstances [6]. As the jurisprudence of the courts has evolved into the 20th century, it has become no longer sufficient to prove that the employee was merely guilty of misconduct. In addition, the employer has to show that the employee's conduct constitutes a serious breach of contractual obligations [8].

Recently, judges under common law appear to have adopted many of the just cause principles developed by arbitrators under collective bargaining, but these

Table 1. Factors Affecting Discharge Arbitration Outcomes under Collective Bargaining

Study	Holly [17]	Ross [18]	Jennings and Wolters [19]	Adams [9]	Brody [20]
Data	1055 cases 1942-1956 U.S.A.	207 cases 1950-1955 U.S.A	400 cases 1971-1974 U.S.A	645 cases 1970-1974 Ontario	1396 cases 1976-1981 Quebec
Methodology	Frequencies	Frequencies	Frequencies Cross-tabulations	Frequencies	Frequencies Cross-tabulations Chi-square
Dependent Variable(s)	Decision to reinstate	Decision to reinstate	Decision to reinstate	Decision to reinstate	Decision to reinstate
Most likely reinstated	Violation of rules Insubordination Dishonesty	—	Intoxication Incompetence Union activities	Union activity Alcohol problems Failure to get along	Insubordination Fighting Safety violation
Least likely reinstated	Altercations with other employees Intoxication Absenteeism	—	Absenteeism	Absenteeism Dishonesty Work performance	Absenteeism
Factors effecting arbitral outcomes	Type of Offense; Employee Record; Service; Intent; Progressive discipline; Rule administration; Inconsistent and discriminatory treatment	Type of Offense; Employee Record; Seniority; Employer's conduct; Provocation	Type of Offense; Employee Record; Seniority; Rule administration; Arbitrary or discriminatory action of employer	Type of Offense; Employee Record; Seniority; Fewer reinstatements the longer the time lapse from discharge to hearing	Type of Offense

Study	Stieber, Block and Corbitt [21]	Ponak and Sahney [22]	Bemmels [23]	Bemmels [24]	Bemmels [25]
Data	759 published cases 1979-81 U.S.A. 454 unpublished cases 1979 and 1982 Michigan	159 cases 1982-1983 Alberta	104 cases 1981-1983 Alberta	633 cases 1977-1982 British Columbia	1812 cases 1976-1986 U.S.A.
Methodology	Multiple regression	Frequencies Cross-tabulations	OLS Logit	OLS Logit	OLS Logit
Dependent Variable(s)	1. Grievance sustained or denied 2. 4-category index grievance denied, reinstated with no, partial or full backpay	Grievance sustained or denied	1. Grievance sustained or denied 2. Penalty revoked or reduced 3. Length of suspension	1. Grievance sustained or denied 2. Penalty revoked or reduced 3. Length of suspension	1. Grievance sustained or denied 2. Penalty revoked or reduced 3. Length of suspension
Factors effecting arbitral outcomes	Publication status: published decisions positively associated with sustained grievances; use of legal counsel by one party gives that party advantage	Gender: women—more grievances sustained; if both parties use legal counsel, mgmt. has advantage	Gender: women—more grievances sustained, more penalties revoked; shorter suspensions	Gender: women—more penalties revoked; no other significant gender effects; employee record	Gender: women—more grievances sustained; more penalties revoked, longer suspensions; type of offense; employee's record; mitigating factors

principles do not appear as firmly entrenched in the common law. They have not been given the same emphasis nor appear with the same frequency as they do in arbitration cases. The prevailing view is that the vast array of just cause principles developed by arbitrators have imposed a greater degree of fairness onto the employment relationship than has been realized at common law [6, 7, 9, 10].

Statutory Law: The Federal Jurisdiction

An overall question considered in this analysis is: what model or approach to dismissal appears to have been adopted by adjudicators acting under the *Code* given that it covers nonunion employees as does the common law, but is legislated like the statutes governing the unionized sector? Have the vast array of just cause principles developed by arbitrators made their way into the decisions rendered under the *Code* and hence enhanced the fair treatment of nonunion workers under this regime?

The existing literature indicates that adjudicators acting under s. 240 of the *Code* have relied on the notion of just cause for dismissal as evolved in the arbitral jurisprudence in the unionized sector [4, 6, 11-16]. However, to date, no systematic analysis employing the use of statistical procedures has been conducted. The method of analysis is the citing of specific cases to support a particular proposition. Moreover, the analysis in these reviews of ss. 240 *et seq.* was based on the early experience of this legislation, and accordingly, was restricted to relatively few cases. Further, only select decisions were cited in support of the assertion that adjudicators under ss. 240 *et seq.* have adopted the interpretation of just cause developed by arbitrators. It is difficult to tell the extent to which these decisions are generalizable. As indicated, this study was the first to analyze the decisions systematically, using conventional statistical techniques. As well, it uses a wide array of potential determinants of adjudicative decisions.

DATA AND METHODOLOGY

Data for the analysis were collected from decisions rendered under the *Code* from its beginning in September 1, 1978 to March 31, 1989. There were 503 decisions rendered during this period. Decisions dealing solely with preliminary objections regarding the adjudicator's jurisdiction to hear the case were excluded from the analysis. As well, awards in which adjudicators merely incorporated the parties' agreed settlement were excluded because they do not reflect actual decision making by adjudicators. The exclusion of these cases reduced the sample to 395 cases. Information was coded by the author from the written awards utilizing a code-sheet designed specifically for this purpose (available from the author on request).

Determinants of Adjudicators' Decision

The dependent variable in this study is the adjudicator's award in each case. The decision was assigned a value of 1 if the complaint was sustained (i.e., the employee "won"), and 0 if the complaint was denied (i.e., the employer "won"). The independent variables were grouped under type of offense, characteristics of the employee, and characteristics of the employer.

Type of Offense

The nature of the offense is an important factor in third-party decision making. Some offenses may be considered more serious than others. Each of the offense categories is treated as a dummy, coded 1 if the offense was mentioned, 0 otherwise. No hypotheses were drawn with respect to the direction of the coefficients.

Characteristics of the Employee

Mitigating factors hypothesized to be positively associated with complaints sustained include a clean work record and long service. These were coded as continuous variables, respectively as an index of "cleanliness" with respect to the employees' work record (described in note b of Table 2) and as years of service. Other mitigating variables included: lack of intent in committing the offense; willingness to apologize for the wrongdoing; isolated incident of misconduct; compassionate grounds such as family circumstances and economic hardship; rehabilitative potential; and the absence of premeditation in committing the offense. The converse of these factors included aggravating factors, predicted to be negatively associated with complaints sustained. These included a deliberate intent to commit the offense; an unwillingness to apologize; a pattern of previous misconduct; an absence of compassionate grounds and rehabilitative potential, and premeditation in committing the offense. Each of these other mitigating and aggravating variables was dichotomously coded as 1 when acknowledged by the adjudicator that the condition was present and 0 otherwise. The omitted reference category for each pair of mitigating and aggravating variables is "no mention."

The complainant's occupation, assigned one of seven broad classifications, was also included as a dummy independent variable. Gender was also included, given the emphasis that has been placed on this variable. No hypotheses were drawn with respect to the expected impact of occupation or gender.

Characteristics of the Employer

Conduct of the employer hypothesized to be positively associated with complaints sustained included: failure to warn or apply progressive discipline; procedural errors; absence of a culminating incident; improper promulgation of work rules; unequal treatment of employees; provocation; and condonation. Each of

Table 2. Descriptive Statistics for 395 Discharge Cases, 1979-1989

Variable	Frequency	Percentage	Sign[a]
Offense			
Other	29	7.3	?
Dishonest	50	12.7	?
Absent	14	3.5	?
Absentwp	23	5.8	?
Rules	31	7.8	?
Neglignt	25	6.3	?
Alcohol	15	3.8	?
Insubord	29	7.3	?
Perform	102	25.8	?
Multiple	26	6.6	?
Attitude	30	7.6	?
Nodismis	21	5.3	?
Employee			
Record[b]	2.5[c]		+
Suspension	25	6.3	
Writtenwarn	111	28.1	
Oralwarn	52	13.2	
No reference	56	14.2	
Clean	151	38.2	
Service (yrs)	6.5[c]		+
Nointent	10	2.5	+
Ysintent	15	3.8	–
Ysremorse	13	3.3	+
Noremorse	27	6.8	–
Isolated	31	7.8	+
Pattern	20	5.1	–
Yscompsn	7	1.8	+
Nocompsn	12	3.0	–
Ysrehab	6	1.5	+
Norehab	5	1.3	–
Spontan	7	1.8	+
Premedit	8	2.0	–
Male	257	65.1	?
Female	138	34.9	?

Table 2. (Cont'd.)

Variable	Frequency	Percentage	Sign[a]
Occupation			
Admnmgr	66	16.7	?
Unskisrv	11	2.8	?
Skilled	87	22.0	?
Clerical	131	33.2	?
Sales	30	7.6	?
Proftech	70	17.7	?
Employer			
Nowarn	113	28.6	+
Procerror	86	21.8	+
Culminate	18	4.6	+
Workrule	2	.5	+
Unequal	7	1.8	+
Provoke	2	.5	+
Condone	10	2.5	+

[a]Expected direction of effect on probability of complaint being sustained. Overall 65 percent of complaints were sustained.
[b]Index 1 to 5 with 1 being most serious blemish on the employee's record (suspension) and 5 indicating a clean record.
[c]Mean

these mitigating variables was coded as 1 when acknowledged by the adjudicator as present, 0 otherwise.

Procedure

Both multiple regression and logit analysis were employed to identify the significant predictors of the dichotomous dependent variable, the probability of the complaint being sustained or denied. Although multiple regression is not the most appropriate functional form of dichotomous dependent variables, it may still be a useful approximation and is simpler and more readily understood than logit analysis. The logistic function is appropriate for obtaining probability estimates based on dichotomous dependent variables. As well, it enables estimation at various probability levels, which enhances our understanding of the effect of an increase or decrease in an explanatory variable when the probability of winning is already high or already low. In this analysis, the differences between the

regression and logit results were sufficiently different to merit focussing on the logit results (regression results are available from the author on request).

RESULTS

Descriptive Statistics

Table 2 presents descriptive statistics for the variables determinative of adjudicator decision making based on all 395 unjust dismissal decisions. Frequencies and percentages are reported. As well, the expected direction of each coefficient is noted by a + or – where there is a clear expectation of direction, and a ? where the direction is ambiguous. Overall, adjudicators have consistently ruled in favor of the employee in almost two-thirds of the cases. Specifically, 65 percent of complaints were sustained in the ten-year period covered by the analysis.

The descriptive statistics indicate that some of the major just cause principles used by arbitrators under collective bargaining regimes are referred to in adjudication decisions rendered under the *Code.* However, in most cases, the frequency with which such variables are mentioned is relatively low. For example, adjudicators specifically mentioned the mitigating circumstance of no intent (NOINTENT) in only 2.5 percent of the cases, and the aggravating circumstance of intent in only 3.8 percent of the cases.

Examination of the raw data revealed that several characteristics of both the employee and employer were perfect predictors of the decision to deny or sustain complaints, in that they were always associated with the complaint being sustained or denied. For each variable, the outcome was in the expected direction; that is, mitigating factors resulted in the decision to sustain complaints while aggravating factors led to denial of complaints.

Specifically, complaints were always sustained when the adjudicator acknowledged the presence of special compassionate or economic circumstances related to the employee (YSCOMPSN), where there was rehabilitative potential (YSREHAB), or where the act of misconduct was committed impulsively, or on the spur of the moment (SPONTAN). Complaints were always denied when the adjudicator referred to a pattern of previous misconduct (PATTERN), an absence of compassionate or economic circumstances (NOCOMPSN), a lack of rehabilitative potential (NOREHAB), or, a finding that the misconduct was premeditated (PREMEDIT).

With respect to employer characteristics, the complaint was always sustained when the employer committed a procedural error (PROCERROR), failed to prove a culminating incident, (CULMINATE), failed to promulgate work rules properly (WORKRULE), treated employees differently (UNEQUAL), provoked the wrongdoing (PROVOKE), or condoned the behavior (CONDONE).

Given that these variables are perfect predictors of the outcome, they were excluded from the regression and logit analysis. Caution must be exercised in the

interpretation of these perfect predictors, however, given the low frequencies in most cases. That is, while they are extremely important predictors in this data set, their usually low frequency of use suggests caution in generalizing about their importance.

Logit Estimates

Table 3 presents the logit estimates of the effect of the independent variables on the probability of the complaint being sustained for all 395 cases. Changes in the probability of the complaint being sustained are evaluated at three probabilities, .25, .65, and .80, the .65 figure being the mean of the dependent variable (i.e., 65% of the complaints were sustained). The results are discussed focusing on the middle column; that is, when the probability of the complaint being sustained is at its average value of .65.

In general, the results given in Table 3 confirmed our expectations. Specifically, in all cases where there was a sign prediction as given in Table 2, the logit coefficient was in the expected direction, and significantly so in all but one case (NOINTENT).

Significant results were obtained for five different offenses. In each case, negative coefficients were generated, indicating complaints involving these offenses were less likely to be sustained than complaints involving offenses in the omitted reference category "other offenses." For example, other things being equal, employees dismissed for dishonesty were least likely to win their case. The probability of the complaint being sustained was 58.3 percent less likely for dishonesty cases. Dismissal for absenteeism follows—employees were 51.3 percent less likely to win their case if dismissed for absenteeism cases as opposed to other offenses. For expositional purposes, the offense variables are listed in descending order of importance in reducing the probability that the complaint will be sustained.

Characteristics of the employee confirmed that, generally, mitigating and aggravating circumstances were significant predictors of the outcome. Mitigating circumstances were positively associated with the complaint being sustained while aggravating circumstances were negatively associated with the complaint being sustained. As expected, both record and service had a substantial influence on the outcome. The direction of the coefficients support the hypothesis that, holding other factors constant, the cleaner the employee's record, the more likely the complaint will be sustained. Similarly, the longer the service of the employee, the greater the probability of the employee winning the case.

Females were 2.8 percent more likely to win their cases relative to males; however, the difference is statistically insignificant and the quantitative magnitude is obviously small. There is no significant difference in the likelihood of cases being sustained or denied across occupations.

Table 3. Logit Analysis of Probability of Complaint Sustained (Disciplinary and Nondisciplinary Dismissals $N = 395$)

Independent Variable	Logit Coefficient	*t*-Statistic	Change in Probability Evaluated at $p = .25$	$p = .65$	$p = .80$
Constant	–1.139	–1.48	–0.154	–0.277	–0.239
Offense					
(Other)					
Dishonest	–3.212**	–4.38	–0.237	–0.583	–0.661
Absent	–2.449**	–2.61	–0.222	–0.513	–0.543
Absentwp	–2.042**	–2.49	–0.209	–0.457	–0.458
Rules	–1.718**	–2.33	–0.194	–0.401	–0.382
Neglignt	–1.649*	–1.91	–0.190	–0.387	–0.365
Alcohol	–1.232	–1.35	–0.161	–0.298	–0.261
Insubord	–1.086	–1.32	–0.149	–0.265	–0.226
Perform	–0.321	–0.51	–0.055	–0.076	–0.056
Multiple	0.165	0.20	0.032	0.036	0.025
Attitude	0.347	0.41	0.070	0.074	0.050
Nodismis	1.524	1.29	0.355	0.243	0.148
Employee					
Record (1-5)	0.625**	4.47	0.117	0.142	0.100
Service (mos)	0.004**	1.72	0.001	0.001	0.000
Intent					
(No mention)					
Nointent	0.962	0.80	0.216	0.178	0.113
Ysintent	–3.368**	–2.25	–0.239	–0.592	–0.679
Remorse					
(No mention)					
Ysremorse	2.595**	1.74	0.567	0.309	0.182
Noremorse	–2.034**	–2.49	–0.208	0.455	–0.456
Incident					
(No Mention)					
Isolated	1.319**	1.74	0.305	0.222	0.137
Gender					
(Male)					
Female	0.125	0.30	0.024	0.028	0.019

Table 3. (Cont'd.)

Independent Variable	Logit Coefficient	*t*-Statistic	Change in Probability Evaluated at $p = .25$	$p = .65$	$p = .80$
Occupation (Admnmgr)					
Unskisrv	0.031	0.03	0.006	0.007	0.005
Skilled	–0.043	–0.08	–0.008	–0.010	–0.007
Clerical	0.519	1.01	0.109	0.107	0.070
Sales	0.942	1.45	0.211	0.175	0.111
Proftech	0.684	1.29	0.148	0.136	0.088
Employer (No mention)					
NOWARN	5.153**	5.77	0.733	0.344	0.199

Note: Significance is denoted by ** at the .05 and * at the .10 level, where the critical values, respectively, are 1.65 and 1.28 for the one-tailed test (when the expected sign is unambiguous) and 1.96 and 1.65 for the two-tailed test (when the expected sign is ambiguous).

With respect to characteristics of the employer, the failure to warn or apply progressive discipline (NOWARN), was a strong mitigating factor increasing the probability of the complaint being sustained. Employees were 34.4 percent more likely to have their cases sustained if employers failed to meet these obligations in comparison to cases where no mention was made of this factor.

The OLS regression results (not reported but available on request) revealed that the coefficients give a fair approximation to the logit results at the mean probability of complaints sustained of .65. The variables used in the regression equation explained 44 percent (R^2) and 40 percent (R^2_{adj}) of the variance in complaints sustained. This suggests that adjudicators are generally fairly consistent in their evaluation and application of the facts in their determination of whether to deny or sustain complaints. However, future adjudication decisions cannot be predicted with complete accuracy from the variables in the model presented in this study. Whether the unexplained variance is a function of systematic consideration of information beyond the scope of this study, or a result of idiosyncrasies (such as personal values of individual adjudicators) is not clear. Nonetheless, the study provides a useful guideline by identifying those factors that appear to figure most prominently in discharge cases.

CONCLUSION

The study revealed that *some* of the major just cause principles developed by arbitrators in the unionized sector appear to have been adopted by adjudicators in the nonunion sector covered by the *Code.* The nature of the offense and some major mitigating and aggravating circumstances are significant factors in determining whether just cause for discharge exists.

Despite the finding of statistical significance for most mitigating and aggravating variables, it cannot be stated that adjudicators have adopted the arbitral approach to just cause. While employee's record, service, the failure to warn or apply progressive discipline, and procedural errors appear to be major ingredients in adjudicator outcomes, the low frequencies of the other mitigating and aggravating variables, even though statistically significant in most cases, do not support such a conclusion. This is consistent with the overall impression that the author gained from reading and coding the cases under the *Code,* when compared to a reading of numerous arbitration cases under the collective bargaining regime.

Generally, there appears to be an unevenness in the decisions rendered by adjudicators under the *Code.* Adjudicators do not refer to precedent cases nor just cause principles with the same frequency as arbitrators under collective bargaining regimes. It is somewhat surprising that some decisions do not refer to arbitral principles at all. Indeed, given that mitigating and aggravating circumstances developed by arbitrators in the unionized sector have also been given weight by the courts in the common law regime, the approach utilized by adjudicators appears to fall somewhere between the common law and arbitral law regimes. Just cause principles were referred to by adjudicators under the *Code* more frequently than is evident in common law cases, but are not as firmly entrenched as they are in the arbitral jurisprudence.

This view runs somewhat counter to the extant literature, which indicates that adjudicators acting under ss. 240 have adopted the just cause principles under collective bargaining regimes. The basis for that conclusion was somewhat questionable given that there was no evidence of a systematic analysis employing appropriate statistical techniques. This study adds to the literature in that it represents an effort to quantify the factors considered by adjudicators under the *Code.*

While there are many strengths of the statutory protection provided by the *Code* [1], one important weakness is the lack of rationale in adjudicator decision making. There was a fair degree of uncertainty regarding adjudicator outcomes, and this may have implications for the administration of human resources in an organization and the fair treatment of employees.

On one hand, it could be asserted that adjudicator decisions are forcing a reshaping and civilizing of termination among nonunionized employees, given some measure of predictability of complaints sustained. Forty percent of the variance in the dependent variable, complaints sustained or denied, was explained

by the model. On the other hand, given that there is still a fair degree of uncertainty of the outcome, employers may not feel compelled to make major changes in their industrial relations practices with respect to discipline and discharge. Further, it is not known what percentage of discharged workers actually pursue unjust dismissal complaints under this legislation. Another factor to be considered is that a fairly high percentage of unjust dismissal complaints are settled by Labour Canada inspectors prior to adjudication [1]. Employers may well weigh what could be a low risk of adjudication against any major change in practice.

Thus, early observations that statutory protection under the *Code* has brought a radical change to the employment relationship and has had a major impact on the administration of human resources are open to question. The author is not aware of any empirical evidence to support this view.

The further assess the protection provided by the *Code,* future research could be aimed in several directions including: an analysis of the remedies utilized by adjudicators; an analysis of settlements under the mandatory mediation process; time delays experienced under this legislation; postreinstatement experience; and the impact of adjudicator decisions on human resource management practices.

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