THE TRIPARTITE GUIDELINES ON WRONGFUL DISMISSAL REVISITED: JJF V JJG [2026] SGECT 9

Posted on August 26, 2026

Category: CNPupdates

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This article updates our April 2019 CNPupdate on the Tripartite Guidelines on Wrongful Dismissal ("Guidelines") in light of the Employment Claims Tribunals' ("ECT") recent and detailed judgment in JJF v JJG SGECT 9 ("JJF"), which raises important questions about the legal status of the Guidelines and the correct framework for analysing "wrongful dismissal" claims under s 14(2) of the Employment Act 1968 ("EA").

A. Background: The 2019 Framework

On 1 April 2019, a number of amendments to the employment law landscape in Singapore came into force, including the transfer of wrongful dismissal claims to the ECT and the expanded definition of "dismissal" in the EA. The Ministry of Manpower ("MOM"), together with the National Trades Union Congress ("NTUC") and the Singapore National Employers Federation ("SNEF"), issued the Tripartite Guidelines on Wrongful Dismissal to clarify how the revamped statutory protections would operate.

A central proposition in the Guidelines — and a key takeaway of our April 2019 article — was that certain dismissals are "presumed not wrongful", most notably a termination effected pursuant to a contractual right to terminate with notice or payment of salary in lieu of notice ("SILON"), where no reasons are required. Under this framework, the burden falls on the employee to prove that the dismissal is wrongful. This involves proving a positively "wrongful reason", such as discrimination on the basis of protected characteristics, intended deprivation of contractual or statutory benefits, punishment for exercising employment rights, or that a stated reason was false.

Our previous article also noted the Guidelines' treatment of misconduct (the only legitimate basis for summary dismissal under s 14(1) EA, after "due inquiry") and poor performance (which must generally be substantiated if it is relied on for dismissal with notice).

We cautioned that the Guidelines are not exhaustive and advised careful management of dismissals with contemporaneous records.

JJF now clarifies the analysis. It raises — for the first time in a detailed ECT judgment — a series of questions about the methodological relationship between the Guidelines and the statutory text of s 14(2) EA, and in doing so recasts how both employers and employees should approach wrongful dismissal disputes. This article will focus on the effect *JJF* has on employers.

B. Case Summary

In *JJF*, the claimant (referred to in the judgment as "Mr C"), a managerial employee of the respondent ("RPL"), was dismissed pursuant to an express contractual termination clause (the "Termination Clause") by the payment of salary in lieu of notice. No reason was given, whether in the dismissal letter or at the meeting where the decision was communicated.

In the months leading up to the dismissal, Mr C had taken extended medical leave and produced medical memoranda diagnosing major depression and anxiety linked to long working hours. He was subsequently moved to different duties at the headquarters to assist with a tender project before being dismissed the day after completing a tender submission, with the termination letter citing only the contractual right of termination.

Mr C brought a claim against RPL under s 14(2) EA and alleged that he was dismissed without just cause or excuse. Tribunal Magistrate Jared Kang found at first instance that Mr C had been dismissed “without just cause or excuse” within the meaning of s 14(2) and awarded him $11,437.50 in compensation. RPL then obtained leave to appeal under s 23 of the Employment Claims Act 2016 (“ECA”) on the basis that the decision gave rise to a question of law. The judgment discussed in this update is the Tribunal’s detailed grounds of decision, issued on 7 August 2026 following the grant of leave. The scope of the High Court's review on appeal is limited to questions of law.

The Tribunal identified four dispositive issues in this case: (1) who bore the burden of proof under s 27(2)(b) of the ECA, (2) whether Mr C established discrimination, (3) whether he was nevertheless dismissed without just cause or excuse, and (4) how that dismissal was to be remedied.

The Tribunal held that (1) the legal burden of proving that Mr C’s dismissal was without just cause or excuse remained upon Mr C, (2) although the proximity of the disclosure, reassignment, tender submission, and dismissal required careful examination, the evidence did not make it more likely than not that Mr C’s condition or its disclosure caused the dismissal, (3) on a balance of probabilities, the absence of a sufficiently established, operative, and just cause or excuse was more probable than its existence, and (4) RPL was to pay Mr C $11,437.50 as compensation for harm. No award was made for loss of income. The claims for an apology and a mutually agreed statement were also declined.

The resulting judgment is significant not merely for its outcome, but because the Tribunal identified a systemic methodological error in how parties (including legally represented ones) had been framing wrongful dismissal claims. Parties had been conflating contractual termination rights, the common law concept of "wrongful dismissal", the Guidelines, and the distinct statutory inquiry under s 14(2) EA.

<u>C. Key Legal Propositions from *JJF*</u>

1. **Interaction between s 14(2), common law, contracts and non-binding administrative guidance**

The Tribunal started by highlighting that the expression “wrongful dismissal” performs more than one legal function in Singapore. At common law, it ordinarily describes a breach of the employment contract in connection with termination. Under the EA and ECA, it is also used for a claim arising from dismissal without just cause or excuse under s 14(2), and for

Given this multiplicity of meanings, there was a propensity for parties’ cases to slide between contractual termination, common law ‘wrongful dismissal’, the Guidelines, and s 14(2), invoking these sources by rote to address the issue of ‘wrongful dismissal’ without clear understanding of how they related to each other and to s 14(2).

(i) S 14(2) should be the starting point

In *JJF*, Mr C's claim rested plainly on s 14(2), invoking a right to seek redress where an employee has been dismissed 'without just cause or excuse'. The starting point of the claim should have been the statutory text of s 14(2) EA. This is because the protection conferred by s 14(2) of the EA acquires its force of law from s 14(2) itself, given that the protection only exists by virtue of that provision. The other sources the parties relied on, such as the Termination Clause, s 11(1) of the EA, the Guidelines, and the common law authorities on wrongful dismissal, should be arranged around that statutory inquiry.

While the ECA supplies the procedural and adjudicative framework through which the protection is enforced, and imposes associated obligations on the ECT, nothing in the ECA relocates the source of protection. The binding force of the protection remains statutory and within the EA.

(ii) The common law lends no authority to s 14(2)

Although both the statutory protection and the contractual action are commonly described as concerning 'wrongful dismissal', the shared label does not establish that the statutory protection derives some part of its binding force from the common law rules governing termination of the contract of employment, or that the statutory expression is somehow confined by those rules. It does not displace the fact that the statutory protection and contractual action have different juridical sources, procedures, and remedies. As such, the common law label of 'wrongful dismissal' contributes no independent authority or content to the statutory protection. An action under s 14(2) must remain confined to the enacted words.

Nevertheless, the contract remains relevant to the statutory inquiry, although for different reasons. It may identify the employee's duties, the governing standard of performance or conduct, an agreed disciplinary process, and the notice position which bears upon proof, related claims, or double recovery. A contractual breach may therefore form part of the cause relied upon. Its existence does not, however, dispense with the statutory inquiry into whether it operated upon the dismissal and carried sufficient gravity to justify that response, as will be discussed below.

(iii) The Guidelines had no binding force and cannot lead the interpretation of s 14(2)

As for the Guidelines, they plainly do not have the force of primary legislation, nor the force of subsidiary legislation despite being assigned an express role by ss 20(7)(a) and 35(2) of the ECA. The Guidelines only exist by virtue of the Minister's exercise of power under s 35 of the ECA, which does not state that their contents are to have binding effect, much less that they are to be conferred the status of subsidiary legislation. As such, the contents of the Guidelines do not possess binding force independently of the words enacted in s 14(2).

It must also be noted that the Guidelines cannot lead the interpretation of s 14(2). Their consideration must instead take place within the ordinary exercise of statutory interpretation where primacy is accorded to the text of the provision read in its statutory context.

(iv) The Guidelines must be considered but s 14(2) prevails in situations of inconsistency

The Tribunal acknowledged that the ECA directs the ECT to “have regard to” the Guidelines (under ss 20(7)(a), 35(2), and 25(4)(a) of the ECA). As such, the ECT must have regard to and consider the Guidelines, which may provide valuable illustrations and make earlier administrative experience accessible.

Where a proposition in the Guidelines accords with the meaning of s 14(2) independently ascertained, the ECT may adopt it and use the accompanying illustrations to assist the application of that provision. Where the Guidelines do not address a situation, their silence cannot be treated as excluding it from the statutory protection, particularly where their illustrations are expressed to be non-exhaustive. Where a proposition in the Guidelines contradicts, narrows, enlarges, or otherwise displaces the meaning which s 14(2) bears upon its proper construction, the ECT must consider that proposition but decline to follow it. The inconsistency is itself a decisive reason for doing so. Having regard to the Guidelines does not require the ECT to commit an error of law, and the ECT’s judicial duty is discharged—not avoided—when it identifies the inconsistency and explains why the terms of the enacted provision must prevail.

Within those boundaries, the Guidelines may nevertheless perform some useful and substantial work. Most obviously, they may assist the ECT in understanding the industrial setting in which s 14(2) operates, including recurring grounds for dismissal and the prevailing practices which MOM, the NTUC, and the SNEF considered relevant. Their illustrations may identify recurring situations in which just cause or excuse will ordinarily exist or be absent, while any reasoning which they contain may persuade the ECT that one construction available from the statutory language is preferable to another. They may also assist in applying a properly ascertained statutory standard to particular facts. In these ways, the Guidelines may materially influence adjudication without themselves supplying the governing rule.

2. **Core inquiry under s 14(2)**

The meaning of s 14(2) EA must be derived from the ordinary exercise of statutory interpretation where primacy is accorded to the words enacted, read in their statutory setting and as part of the Act as a whole.

<u>(i) Four questions</u>

The Tribunal clarified that the ECT should address four questions.

First, whether the employee was dismissed within the applicable statutory meaning. A termination does not cease to be a dismissal merely because the employer . The statute deliberately uses the words "with or without notice" and "for cause or otherwise" in the definition of dismissal, so a s 14(2) inquiry may still arise even where the employer had, and validly exercised, a contractual power to bring the employment relationship to an end.

Second, the ECT must identify the cause or excuse asserted by the employer. Reasons discovered or assembled only after dismissal cannot retrospectively become the “cause or excuse” that justified the dismissal. The statutory inquiry looks for the cause or excuse that actually operated to justify the dismissal as it was made.

Third, the ECT must determine whether the material facts comprising the basis existed and operated, at least materially, upon the decision to dismiss. A "cause" ordinarily connotes something which brought about, or bore upon, the decision, while an "excuse" connotes a reason advanced to account for or justify it.

Fourth, the ECT must decide whether the proved and operative basis carried sufficient weight, in the employment and industrial setting, to make dismissal a just response. The word "just" calls for an evaluative judgment about that basis.

Altogether, the asserted basis must possess a sufficient connection with the dismissal, and it must be sufficient, in the circumstances, to justify it. Mere proof that some adverse fact concerning the employee was true does not, without more, establish either requirement. The fact must also have operated upon the dismissal and carried sufficient weight to justify it.

<u>(ii) Absence of justification vs wrongfulness</u>

The word "without" in s 14(2) frames the statutory condition negatively. The question posed is therefore whether the requisite justification was absent, rather than whether the employee can attach some independently recognised label of "wrongfulness" to the employer's reason.

The employee may establish the absence of just cause or excuse without proving discrimination, retaliation, deprivation of a benefit, or some other positively improper purpose. This is a significant departure from the framework in the Guidelines, which suggest that an employee must prove a positively wrongful reason.

<u>(iii) Relevance of Guidelines</u>

As mentioned above, the ECT must genuinely consider the Guidelines' principles and illustrations, whose legal significance derives from the direction to have regard to them and which may illuminate the statutory standard and assist its application. Where a proposition cannot be reconciled with s 14(2), however, the statutory provision must prevail.

JJF clarified many points in the Guidelines, especially with regard to the common conflation of wrongful reason and "just cause or excuse for dismissal", and highlighted that the Guidelines have to be read and applied carefully. This article identifies some of the areas of error that the Tribunal pointed out.

(a) Contractual termination and notice

Our previous article noted that under the Guidelines, dismissals pursuant to a contractual right to terminate were presumed not to be wrongful. Illustration 3 treats as non-wrongful a dismissal where the employer gave no reason and the employee could identify no facts suggesting some intention beyond contractual termination. This implies that termination in accordance with a contractual right, where no wrongful reason arises, immediately bypasses the question of 'just cause or excuse for dismissal'.

The Tribunal expressly critiqued the Guidelines' approach on this point. The starting point is that this approach potentially narrows the statutory protection by substituting proof of a wrongful reason for the broader statutory inquiry into the absence of just cause or excuse.

Providing contractual notice cannot sensibly constitute a "just cause or excuse for dismissal", and the Legislature enacted no presumption that it should be treated as one. Even where no wrongful reason can be proven, the ECT must still ask whether the employer in fact had a sufficient, operative, and genuine justification for the dismissal.

The Guidelines had also, as we noted, differentiated between dismissals with notice and without notice. However, s 14(2) applies expressly with or without notice and does not organise substantive liability around the distinction. As such, the Tribunal expressed discomfort with organising liability around contractual rights and the presence of notice.

(b) Falsity of reason

Our April 2019 article described a dismissal as wrongful if an employer gives a reason for dismissal with notice which turns out to be false. In light of *JJF*, the Guidelines' framework on this point should be read more carefully. Paragraphs 9 and 13 of the Guidelines suggest that truth is treated as tending towards sufficiency and falsity as conclusive. However, the Tribunal expressed that the natural reading of s 14(2) requires the ECT to examine and distinguish between factual truth, causal operation, and justificatory sufficiency. A true fact may have played no part in the decision, or may be insufficient, while a false communication may be evidence of pretext even though another operative cause or excuse remains possible. The ECT must work through all four questions of the inquiry, and must not stop upon establishing the truth or falsity of a stated reason.

(c) Discrimination, misconduct and other grounds

The Tribunal warned against treating labels such as misconduct, poor performance and redundancy, and discrimination, deprivation of benefits and punishment for exercising an employment right (wrongful grounds) as answers in themselves to the statutory inquiry. While the former grounds can point towards cause or excuse for dismissal and the latter grounds can point towards its absence, the ECT must still determine what constitutes the ground, whether it existed and actually bore upon the dismissal, and whether it justified dismissal in the circumstances.

In evaluating whether a ground justified dismissal, the ECT should give the employer room to assess operational needs, organisational fit, performance, and workplace conduct. Relevant considerations may include the nature of the employment, the employee's duties and length of service, the importance of the standard engaged, the seriousness and persistence of the conduct or deficiency, the employer's operational needs, consistency of treatment, and the alternatives realistically available. These considerations are non-exhaustive, but must exist, play a part in the decision and possess sufficient weight to justify termination.

(d) Dispensing with notice and justifying the dismissal

The Guidelines conflated two separate questions and treated them as one. Whether the employer may dismiss immediately without notice and whether the dismissal is justified are two separate questions. Poor performance may, for example, be sufficiently serious to supply just cause or excuse for dismissal while falling short of the misconduct or wilful breach required to dispense with notice. The employee may then be entitled to salary in lieu, but it does not follow that the dismissal was also without just cause or excuse.

3. **Burden of proof**

The applicable legal burden depends upon the provisions governing the particular case.

The starting point is s 27(2) of the ECA, which provides that where an employee is dismissed without notice by an employer “under section 14(1)” of the EA and brings a claim under s 14(2), the employer bears the burden of proving the allegation that the employee was dismissed with just cause or excuse. Where an employee is dismissed with notice and that notice is or purports to be given on the ground of poor performance or misconduct, the employer bears the burden of proving “that ground for giving the notice of dismissal”. For cases falling outside those two situations, ss 103 and 104 of the Evidence Act 1893 (“Evidence Act”) place the legal burden upon the party whose asserted facts must exist before judgment can be given in her favour, and upon the party which would fail if no evidence were adduced on either side. Applied in the ordinary way, those provisions would leave the employee with the ultimate legal burden of proving that her dismissal was without just cause or excuse, although an employer may bear an issue-specific legal burden concerning a positive fact which it asks the ECT to find.

One area of uncertainty is that s 21(1) of the ECA provides that the ECT is not bound by the rules of evidence and may inform itself in any manner which it thinks fit. It is therefore uncertain whether the provisions of the Evidence Act apply directly and without qualification, or instead furnish principles by which the ECT may properly inform itself.

<u>Unbounded negative problem</u>

The Tribunal candidly acknowledged the practical difficulty facing employees in pure no-reason notice dismissal cases where there are a silent employer and an objective record which reveals no apparent reason: the employee may be left proving an "unbounded negative" without knowing what reason to negate. A party cannot sensibly be required to refute one unadvanced hypothesis after another. While an employee can attempt to invoke s 108 of the Evidence Act to allocate the legal burden concerning a particular fact onto the employer, it only applies in very limited exceptional cases.

Instead, an employee may rely upon circumstantial proof and the ordinary movement of an evidential burden. The employee may rely upon the objective record as a whole and ask the ECT to infer that, more probably than not, no cause or excuse sufficient to justify the dismissal actually operated. The question is whether the evidence, considered cumulatively and in its setting, makes the statutory conclusion more probable than its converse.

In such cases, the legal and evidential burdens rest upon the employee at the outset. Once she adduces evidence capable, if accepted and left unanswered, of supporting an inference that the dismissal was without just cause or excuse, the evidential burden may move to the employer. The legal burden remains with the employee. What will suffice necessarily depends upon the circumstances. Consistently strong appraisals, a recent promotion, and the absence of any prior warning may provide powerful answers to suggested performance or conduct concerns.

Where the employer fails to provide an answer, for instance an answer that would expose weaknesses in the employee's case, support an equally probable converse inference, or adduce evidence of a consideration which in fact operated upon the dismissal, the ECT may conclude that she has discharged her legal burden, though it is not bound to do so. The employer may elect to give no answer and maintain that the employee's evidence remains insufficient. However, if the ECT considers that her evidence called for an answer, the employer runs the risk that the unrebutted inference will be accepted. Note that where a prima facie case has not been established by the employee, the employer's mere refusal to formulate or advance a positive reason in the proceedings is not a withholding of "evidence" from which an adverse inference may be drawn.

The Tribunal can be seen as observing that if a legal system gives employees a reasons-based protection — meaning a right not to be dismissed without a good reason — it makes obvious sense for that same legal system to also require the employer to state its reason when it dismisses. The two things fit naturally together.

This is not just a theoretical observation. Other jurisdictions have done exactly this:

- In the United Kingdom, s 92 of the Employment Rights Act 1996 gives qualifying employees the right to a written statement of reasons for dismissal.
- In Malaysia, once dismissal is admitted, the employer must generally prove just cause or excuse — which effectively brings the employer's reason into the inquiry from the start.

The Tribunal raises this solution to acknowledge it is logical and appealing — but immediately goes on to explain why it cannot simply impose such a requirement under Singapore law as it currently stands. Singapore has not enacted a general duty to give reasons at the point of dismissal, and the Tribunal cannot create one by reading it into s 14(2) merely because the protection would be easier to enforce if such a duty existed. The Tribunal recognises that such a duty may promote transparency and permit disputes to be addressed upon a more informed footing. However, it would apply to every dismissal within the provision, including the great majority which never produces a claim, and may also encourage defensive record-keeping, more accusatory termination letters, and greater cost and formality in ordinary employment decisions. Because there are policy arguments going both ways, the choice between them is for Parliament, ordinarily informed in this setting by the tripartite process. It is not a duty which a judicial body can safely create from the silence of s 14(2).

Practical significance for employers: Employers who dismiss with notice and no stated reason should not assume they are automatically protected. If surrounding circumstances invite an inference of improper motivation or the absence of a legitimate reason, the ECT may expect the employer to provide an explanation. An evidential burden may shift to the employer — so maintaining silence carries real litigation risk.

4. **Remedy**

Section 14 identifies two remedies, namely reinstatement and compensation, while the Employment Claims Regulations ("EC Regs") divide compensation into "loss of income" and "harm". It remains unclear whether the word "either" in s 14(2) prevents compensation from being claimed in the alternative should reinstatement fail.

(i) Reinstatement

Reinstatement is the restorative remedy and should be considered by asking whether the protected relationship can sensibly and fairly be restored. Relevant matters include the employee's wish to return, the continued existence of the position or a materially equivalent one, the parties' practical ability to work together, the effect upon other employees and operations, the employee's own conduct, and whether restoration would answer the wrong established. Those considerations derive their relevance from the statutory object of restoration. The common law's aversion to specific performance cannot supply a presumption against the very remedy which s 14(3) expressly authorises.

(ii) Compensation

Compensation supplies the monetary alternative where restoration is not sought or should not be ordered. Under para 1 of the Second Schedule to the EC Regs, compensation consists of two components: the claimant's loss of income determined under para 2, and the harm caused to the claimant by the respondent as a result of the wrongful dismissal determined under paras 3-7.

(a) Compensation: Loss of Income

Loss of income concerns causation, proof, the appropriate counterfactual, and mitigation.

While para 2 prescribes a ceiling for compensation of loss of income at three months of the claimant's gross rate of pay on the date of dismissal, it does not provide much guidance beyond that. The Tribunal expressed that the relevant counterfactual must concern when and how the employment would probably have ended had the statutory wrong not occurred, but acknowledged that the EC Regs leave tribunals without guidance on how to apply that in practice. It must be noted that compensation for the statutory wrong may extend beyond the notice period, subject to whichever measure the EC Regs require and the avoidance of double recovery. Section 14(2) imposes a statutory restraint additional to the notice power; thus, the employer's minimum contractual obligation cannot be the automatic measure of income loss.

A claim for salary in lieu and a claim for loss of income are separate claims. The former is fundamentally contractual, whereas a claim under s 14(2) goes further and compensates the losses and harm caused by the distinct statutory wrong. However, the two claims cannot be used to obtain double recovery. Where salary in lieu has compensated a period for which income-loss compensation would otherwise be awarded, the same wages cannot be recovered twice. The two claims may overlap as a matter of fact while continuing to perform distinct juridical functions.

(b) Compensation: Harm

The Second Schedule to the EC Regs provides for a base amount not exceeding two months of the employee's gross rate of pay which may be increased or reduced by up to 50%. The aggravating factors include a humiliating or degrading manner of dismissal, physical harm, the use of a false accusation as the ground of dismissal, and a deliberate act adversely affecting the employee's later employment. The mitigating factors include misconduct, poor performance or insubordination which was taken into account by the employer but was insufficient to amount to just cause or excuse.

The Tribunal pointed out that the listed factors move among consequence, manner, culpability, and the employee's responsibility without disclosing a single identified form of harm. The Schedule also provides no guidance on the ordering or the relative weight which the aggravating and mitigating factors should receive. Until Parliament or a higher court clarifies the framework, employers face unpredictability as to the extent of liability. **D. Updated practical guidance for employers**

In light of *JJF*, we set out below updated guidance for employers.

- **The starting point should be the statutory provision, s 14(2) EA.** Parties and their legal representatives should take care not to treat the Guidelines as the substantive legal test. The correct legal question is always what s 14(2) EA requires on a proper statutory construction. Consideration may be given to the Guidelines as they provide useful illustrations, but where there are contradictions, the statutory provision prevails.
- **Keep contractual and statutory questions distinct.** A termination which complies with an express notice clause or s 11(1) may be contractually effective and leave no notice pay outstanding. However, a termination does not cease to be a dismissal merely because the employer gave notice, complied with the contract, or acted for an asserted cause. A s 14(2) inquiry may still arise even where the employer had, and validly exercised, a contractual power to bring the employment relationship to an end. Where the employee brings a statutory complaint, the employer must still identify the actual basis of its decision and answer that claim. The ECT will still conduct an inquiry into the four questions, which brings us to the next point.
- **Paying notice or salary in lieu of notice and relying on a contractual termination clause does not immunise an employer from a statutory claim under s 14(2) of the EA.** This point cannot be overstated: contractual compliance and statutory compliance are distinct matters and the latter must be addressed independently.
- There is no general rule in Singapore requiring an employer to state a reason whenever it terminates employment with notice. However, a reasons-based statutory inquiry remains necessary when a claim is brought. If the employer later relies upon misconduct, poor performance, redundancy,

operational requirements, or suitability, it should be prepared to place before the mediator or the ECT the contemporaneous material and witnesses capable of showing what the concern was, whether it actually bore upon the decision, and why it justified dismissal. High-level assertions, accounts supplied only after the event, or evidence from persons who did not directly observe the material events carry less weight.

- **Consider providing contemporaneous explanations**. A contemporaneous explanation may identify what actually caused the decision, define a factual case which can be tested, and expose inconsistency if a materially different account emerges only in the proceedings. The role of later evidence is confined to proving that a cause or excuse existed and operated at the material time; a historical cause which did not then exist cannot be created after the event.
- **Ensure the reasons are sufficiently connected to the dismissal.** Section 14(2) requires the cause or excuse to have carried sufficient weight to justify dismissal. Mere proof that some adverse fact concerning the employee was true answers only part of the inquiry. The fact must also have operated upon the dismissal and carried sufficient weight to justify it.
- **Conduct a genuine due inquiry process.** Where misconduct is the operative reason, even if the termination is effected with notice or SILON, a genuine inquiry should still be conducted. The quality of that process may bear on whether the ECT finds the asserted reason to be an established and operative one for s 14(2) purposes.
- **Do not assume notice pay exhausts your liability.** Once a finding of wrongful dismissal is made, statutory compensation under the EC Regs is separate from and not limited to contractual notice entitlements. Loss of income may extend beyond the notice period to cover post-termination earnings shortfall caused by the wrongful dismissal.
- **Keep meticulous records.** Continue to maintain careful, contemporaneous employment records and manage communications around termination thoughtfully. This practice remains good discipline regardless of the specific basis on which a dismissal is effected.

<u>Conclusion</u>

JJF v JJG SGECT 9 is an important judgment. It does not invalidate the Tripartite Guidelines on Wrongful Dismissal, which remain a relevant and practically useful reference that the ECT is required to consider, but it significantly recalibrates how those Guidelines should be used. The Guidelines are a tool for illuminating the statutory standard, not a substitute for it. Where they depart from the text and proper construction of s 14(2) EA, the statute prevails.

The four- step inquiry under s 14(2) articulated in *JJF*, consisting of dismissal, basis, causal operation, and justificatory sufficiency, provides a clearer and more principled framework for thinking through dismissal decisions and ECT claims alike.

The outcome of the appeal before the General Division of the High Court will be of significant practical importance. The current state of the law — as articulated by the Tribunal — should therefore be treated with some caution until the appeal is determined.

If you have any questions on the above or wish to discuss a specific employment matter, please contact our Employment Practice Group.

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