

DISMISSAL WITHOUT DUE REASON OR CAUSE: DAMAGE COMPENSATION ORDERED BY THE COURTS IN FRANCE

Compensation saga

Adoption

Order of 22 September 2017: Introduction of a scale of compensation for employees dismissed without due reason or cause.

Constitutionality and ratification

Decision of 29 March 2018 of the Constitutional Council: scale judged to be in conformity with the French Constitution.

Subject of the Scale: Before/after

Before €

Damages awarded by the courts to employees for “unjustified” dismissal (without due reason or cause):

- **Not capped**
- **Could not be less than the last six months' wages.**

After €

Damages awarded by the courts to employees for “unjustified” dismissal (without due reason or cause) henceforth calculated according to:

- **A scale with a minimum and maximum amount of compensation based on:**
 - **the employee's length of service;**
 - **the size of the company.**

Resistance of the courts of first instance

From 2018: Application of the scale disputed before the industrial tribunals on the following grounds:

- ❌ **Article 10 of Convention no. 158 of the ILO: adequate compensation or appropriate relief for wronged workers whose dismissal is unjustified;**
- ❌ **Article 24 of the Charter: protection in the event of dismissal;**

13 December 2018: The industrial tribunal of Troyes ruled out the application of the Macron scale, considering it contrary to international texts.

2019: Many industrial tribunals adopted this position (Paris, Angers, Lyon, Grenoble, Amiens, etc.)

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Validated by the Court of Cassation



Two opinions of 17 July 2019: conformity of the scale of compensation confirmed by the Plenary Session of the Court of Cassation

A “curb” on the resistance movement initiated by the industrial tribunals for the following reasons:

- The scale is compatible with the provisions of article 10 of ILO Convention no. 158;
- Article 24 of the European Social Charter cannot be invoked in a dispute between private individuals (i.e. between individuals as opposed to legal persons governed by public law).

Position of the Courts of Appeal : validation of the scale but possible exception on a case-by-case basis



In September 2019, the Courts of appeal of Reims and Paris upheld the scale but allowed judges to waive it in particular cases.

Further resistance from the industrial tribunals?



22 July 2019 and 29 July 2019 the industrial tribunals of Grenoble and Troyes spurned the opinion of the Court of Cassation and ruled out the scale of compensation “*in order to ensure adequate compensation as defined by article 10 of the ILO Convention no. 158*”

Resistance of the employees' lawyers?



The day after the opinion delivered by the Court of Cassation, the **Syndicat des Avocats de France**

- Called employees to resist on the grounds that an opinion of the Court of Cassation (unlike a judgement) is not binding on other courts
- Planned to elaborate a new statement of case.

Pending the position other institutions



We also await the positions of the following institutions in this respect:

- The **International Labour Office**;
- The **European Committee of Social Rights**;

However, their opinion will not be binding...



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