



Fourth Study Commission
Public and Social Law

Meeting in San Juan, 13-16 October 1997

Conclusions

THE RIGHTS OF THE DISMISSED EMPLOYEE

1. Generally, all legislation is agreed on not granting compensation to the employee who has committed a fault that motivated his dismissal.

2. To those who have not committed a fault, on the contrary, the law of all countries recognizes that employees have certain rights. These are: compensations for previous notice, dismissal or departure from the job as well as the damages and interest for abusive (unjustified) dismissal; re-employment is equally possible.

The Commission recommends the institution of unemployment insurance in those countries that do not have it at present in order to protect dismissed workers.

It proposes for those countries that have not anticipated it, the introduction in their legislation of measures that allow the worker to recuperate the sums that may be owed to him in case of need.

3. The criterion unanimously held for the payment of the rights owed to the employee is his seniority on the job; in some countries the age of the employee is taken into account. The legal nature of the contract (whether it is a temporary contract or of indeterminate duration) is also a criterion adopted in some legislations.

4. As concerns procedure, all legislations accept the jurisdiction of the courts.

The competent jurisdiction may be invoked by the worker himself or through a union representative or through a lawyer.

Generally, the legislations have accepted the invoking of primary jurisdiction by a labor commission with increased competence and with the power to adopt decisions that are binding on the parties, or by an administrative body. That procedure may constitute a way of attempting conciliation before the commencement of formal proceedings before the competent jurisdiction.

The attempt at conciliation, the interrogation, the expedite provisional procedure, the appeal and in many cases the revision in cassation are the most typical stages of the formal procedure.

The Commission recommends that an expedite provisional procedure or an accelerated procedure be instituted in those countries where they do not exist at present.