

## Resisting unfair dismissal: a campaigning approach

**A usual response to unfair dismissal is to go to court seeking compensation or reinstatement. Sometimes this is the best decision. Another response is to just go quietly.**

**But there's another powerful option: expose the unfairness to lots of people.**

You've just been dismissed — unfairly. Perhaps it was because you spoke out about problems at work. Perhaps it was discrimination. Perhaps you were the target of envious co-workers. Perhaps the boss just didn't like you.

What should you do? If you go to court, you may receive some compensation, but you probably won't get your job back. Even if you do, it can be pretty unpleasant if you have the same boss. If you obtain compensation, it usually won't be very much.

There's another option: campaigning. To understand how it works, it helps to examine the dynamics of public outrage.



### Outrage dynamics

Think of a really serious injustice, such as torture, genocide or shooting of peaceful protesters. Many people are outraged by such actions. Perpetrators typically use five methods to reduce the outrage.

(1) Cover-up: the action is hidden. Torture is almost always carried out in secrecy.

(2) Devaluation of the victim: if the victim is thought to be dangerous, inferior or worthless, then what's done to them doesn't seem so bad. That's why enemies are labelled as ruthless, subhuman and terrorists.

(3) Reinterpretation: a different explanation is given for the action, making it seem more acceptable, or blaming someone else. The protesters might be called dangerous and threatening. Or shooting them might be claimed to be an accident, or the action of "rogue" elements.

(4) Official channels: experts, formal inquiries or courts are used to give a stamp of approval to what happened. Justice appears to be done, but actually isn't. For example, an inquiry into prison abuse might take months or years and lead to minor penalties against a few scapegoats. Meanwhile, public anger dies down and the system remains in place.

(5) Intimidation and bribery: victims and witnesses are threatened or given incentives to keep quiet and not oppose what happened. Witnesses to a brutal assault might be threatened that they could be next.

Powerful groups regularly use these five techniques to reduce outrage. The Nazis used them in its genocide of the Jews. The US government used them during the Vietnam war. The Indonesian government used them to manage responses to massacres in East Timor.

Unfair dismissal is not nearly as drastic as genocide, but the dynamics of outrage are quite similar. Employers regularly use these same five methods in unfair dismissal.

(1) Cover-up. The person dismissed knows what happened, but others are kept in the dark. No announcement may be made. Settlements often involve a silencing clause. When the dismissal is public, often the reasons are covered up. Files may be destroyed.

(2) Devaluation. The person dismissed is slandered as a poor performer, difficult personality or slacker. Rumours may be spread alleging theft, bullying or unsavoury sexual behaviour.

(3) Reinterpretation. The dismissal is said to be due to restructuring, redeployments, financial difficulties or some other pretext. Alternatively, the dismissal may be justified as due to the victim's failures.

(4) Official channels. Dismissed workers are advised to go to tribunals, ombudsmen, courts, or any of a host of other agencies that supposedly offer justice. Seldom do these address the source of injustice in the workplace.

(5) Intimidation and bribery. Workers may be reluctant to oppose a dismissal because they will receive a poor reference or be sued for defamation. Co-workers may support management in the hope of retaining their own jobs, a form of implicit bribery.

### How to increase outrage

To increase outrage from unfair dismissal, you need to challenge the five methods. Here's the general approach.

(1) Expose what happened.

(2) Validate the person, by showing their good performance, loyalty, honesty and other positive traits.

(3) Interpret the dismissal as unfair, and counter the official explanations.

(4) Either avoid official channels or use them as tools in exposing the unfairness.

(5) Refuse to be intimidated or bribed, and expose intimidation and bribery.

#### Self-check

You think you've been dismissed unfairly. But will others think so too? You cannot succeed unless you can convince others. So the first step is to make sure that you have a strong case.

You need a reality check. Consult with others. Are they already upset about what happened? Do they need a lot of convincing? If they heard both sides, who would they support?

Remember: some workers are dismissed for good reasons. They were incompetent, disruptive, dishonest or otherwise damaging. Bosses aren't always wrong.

### Expose what happened

It's extremely helpful to write a short summary about what happened, giving the facts and revealing the injustice. You need to obtain documents that show what happened, such as records about your good performance or documents revealing prejudice. Get help from sympathisers to make your summary clear to outsiders and absolutely accurate. Avoid speculation and avoid abuse or attacks. Just give the facts and let readers come to their own conclusions.

When you've checked everything many times, you're ready to show the summary to others who might be sympathetic. Start small and build up. Show it to some co-workers or friends. Revise the summary if necessary. Then gradually show it to more people. You could email it to other workers. Or you could produce a leaflet and stand outside the workplace distributing it. Send it to the employer's clients.

The next step up is publicity to the wider community. Sometimes the media will be interested. There are also newsletters and email lists. You might set up a website. The key is to expose the injustice to people who will be receptive.



### Validate the person

The employer will try to discredit you, so you need to be prepared. Have documents showing your good performance. Have others vouch for you and stand up for you.

You also need to behave in an exemplary fashion. If you shout, swear, abuse others, don't do your work or dress poorly, it will be easier for others to blame you for your misfortune. You need to behave as if you're the best worker on earth. Of course it's hard and unfair, and you're under incredible stress. Do as well as

you can, and trust that others will see the unfairness in the way you're treated.

### ***Interpret the dismissal as unfair***

In your conversations, your written summary and other communications, emphasise what's unfair about the dismissal. If you were sacked for speaking out, show double standards: point to other workers with the same performance, who didn't speak out and weren't sacked. If you were dismissed in violation of the rules, point that out.



### ***Be sceptical of official channels***

Rather than rushing to tribunals or courts for vindication, use them only with care. Check out what happened to others, similar to you, who used the same tribunal or court. Find out how much effort and money is required, and estimate your chance of success. Find out the likely delay and what you're likely to receive at the end. Remember that if a court rules against you, it will make the dismissal seem more legitimate, even if it was unfair in practice.

Sometimes you can use official channels as part of your campaign. You can ask supporters to attend hearings, or circulate email updates about proceedings. You can post your submissions on a website.

Alternatively, you can avoid official channels altogether. Often that's the best option.

### ***Resist intimidation and bribery***

If you are threatened, you need to make a careful decision: proceed or acquiesce. If you decide to proceed, try to collect evidence of

threats, attacks and bribes. Expose these along with the unfairness of the dismissal.

### **Mobilise support**

Your campaign will be much more powerful if others are willing to join in. If other workers have been dismissed at the same time, try to join forces with them. Try to find others, including co-workers and friends, who will help. If many people join the campaign, it will greatly increase your chance of having an impact.

If your union is willing to support you, that's a tremendous advantage. But sometimes you may need to proceed on your own. If so, make absolutely sure you're prepared and able to follow through. Sometimes it's safer to go quietly and survive to fight another day.

### **Backfire**

If you're successful, lots of people will hear about your dismissal and believe that you've been wronged. If there's enough disturbance from your dismissal, the employer will regret doing it. In other words, firing you will backfire on the employer.

What happens next depends a lot on the case. If there's enough public pressure, you might get your job back. More likely, you will be offered a bigger compensation package. Or the employer may tough out the uproar.

Even if you don't obtain compensation, a good campaign will damage the reputation and undermine the authority of the employer. You will thus obtain "punitive justice." That can be quite satisfying! Finally, and not least, you will gain greater credibility and self-respect.

Probably the biggest benefit will be for those who remain on the job. The employer will be more reluctant to dismiss them, in fear of another backfire. Your efforts will help prevent further injustice.

### **Deterrence**

If you're prepared to take action against unfair dismissal, then you're less likely to be dismissed in the first place. Employers dislike bad publicity. They hate organised campaigns that might hurt their business. So here are some ways to prevent dismissal by good preparation.

- Collect lots of information about your own good performance. Keep copies in safe places. If you plan to act against corruption or bad

practices, collect extensive information to back up your claims.

- Develop your skills in speaking and writing. Know how to talk with others. Learn how to write persuasive accounts, how to prepare a leaflet, how to run a publicity campaign and how to set up a website — or have reliable friends willing to assist.

- Avoid doing things that can be used against you. If you spend much of your time bad-mouthing others, getting others to do your work, and claiming credit for what you didn't do, you can't expect support when the crunch comes. Have others help you gain insight into being collegial, collaborative, approachable and civil.

- Be prepared to survive. You may need financial reserves. You will need psychological toughness. You need exercise and good diet to maintain your health. You need supportive relationships. When you come under attack, you may need all your reserves: financial, psychological, physical and interpersonal. If you're living on the edge, you're more vulnerable.

- Build alliances: there is great strength in collective action. If you have a decent union, join it and be active.

- Develop options. Find out about other potential jobs. Think about a career change. Consider downshifting to a less costly lifestyle. Sometimes it's better to walk away from a stressful job. If you have such options, you're actually in a stronger position to campaign against an unfair dismissal — if that's your choice.

- Be prepared to fight. Many workers learn to be subordinate and can't bring themselves to resist even the worst abuse. When dismissed, they do just what the boss wants: leave quietly, perhaps with token compensation. If you're known as a fighter, you're less likely to be targeted.

- Help others. If you assist other workers who come under attack, you develop useful insights and skills — and others are more likely to help you should you need it.



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Thanks to Sharon Callaghan, Truda Gray, Yasmin Rittau, Jeff Schmidt, Kylie Smith and Ian Watson for helpful comments.

#### **Cartoons**

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#### **Further reading**

On the limitations of official channels: [www.uow.edu.au/arts/sts/bmartin/pubs/03utslr.html](http://www.uow.edu.au/arts/sts/bmartin/pubs/03utslr.html)

On making injustice backfire: [www.uow.edu.au/arts/sts/bmartin/pubs/backfire.html](http://www.uow.edu.au/arts/sts/bmartin/pubs/backfire.html)

This version 29 September 2005