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Dear Sir or Madam

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Yours faithfully

Online Legal Advise

**ONLINE LEGAL ADVISE**

**ONLINE LEGAL ADVISE- Without prejudice letter:**

**Unfairly dismissed and reinstated on appeal**

[HR manager name]

[Company name]

[Address]

[Date]

**Without prejudice save as to costs, and subject to contract**

Re: Our client [Name]

Dear Sir / Madam,

We have been instructed on behalf of [Employee] to write to you on a “without prejudice” basis, in relation to the employment dispute between him and your client, [Company name].

We have had sight of the following documents:

* A letter of suspension dated [28th May 2018];
* The invitation, notes, and outcome letter relating to a disciplinary hearing held on [3rd September 2018], and dismissal on the same date;
* A letter informing him of the outcome of his appeal and reinstatement, dated [29th January 2019]
* [Employee] ET1 claim form, and your ET3 response and Grounds of Resistance;
* Your letter to [Employee] dated [6 March 2019].

Introduction

We accept that [Employee] employment terminated on [17th February]. It is our case that he was unfairly constructively dismissed, your client having committed a number of serious breaches of the terms of the employment contract between them, culminating in its decision to reinstate [Employee] with a “stage two” warning under the management of [Manager].

Unfair dismissal

On [12th February 2019, [Employee] submitted an ET1 claim form. He specified the following claims:

* Unfair dismissal (including constructive dismissal);
* Notice pay; and
* Another type of claim.
* For the avoidance of doubt, please be advised that [Employee] will argue that he was unfairly constructively dismissed.It is our position that [Company name] fundamentally breached a number of the terms of its employment contract with [Employee] including:
	+ The duty of mutual trust and confidence;
	+ The duty not to act in an arbitrary or capricious manner; and
	+ The duty to follow fair and proper disciplinary and grievance procedures.

It is our position that from [April 2018], your client conducted a disciplinary investigation that was procedurally and substantively unfair. On [16th April] and [16th May 2018], two surprise inspection visits were conducted at [Company name]. It is [Employee] case that [Manager] gave an untrue account of her meetings with him on those dates; a position that he has maintained throughout the disciplinary process. It is denied that [Employee] was “invited to attend an investigatory meeting on 16 May”. He was not given any notice of this. No notes of this meeting have ever been provided to him despite his repeated requests, including by way of a Subject Access Request in [July 2018], and most recently directly to the chairperson of the appeal panel on [7th January 2019].

Your Grounds of Resistance refer to accounts of witnesses, [Employee 2] and [Employee 3], whose statements were used in the case against [Employee]. However, no written statements were taken from these employees, and were never put to [Employee] or before the disciplinary panel. This was an unfair and unreasonable way to conduct an investigation, particularly in light of your client’s substantial size and resources, the gravity of the allegations and the seriousness of the consequences to [Employee] present and future employment.

It is our case that your client unreasonably delayed in conducting the investigatory proceedings. In a case in which the allegations against [Employee] were purportedly admitted by him, there is no justification for a delay of nearly four months between his suspension and the disciplinary hearing.

During the disciplinary hearing [Employee] raised a grievance against [Manager] in relation to her investigation report. This was denied to him. Towards the end of that meeting, he was “given the option to revoke the grievances… and does so”. This is a wholly inappropriate way for senior managers to deal with a grievance – [Employee] was in a highly stressful and vulnerable position, at risk of losing his livelihood, and this “option” was calculated to take unfair advantage of him when he was in no position to refuse it.

Despite the failings in the investigation and the lack of statements or evidence as to mandatory procedures, the management case as presented by [Manager] was accepted by the disciplinary panel. [Manager] was found guilty of admitting to serious procedural non-compliance and falsification of bank records.

These findings were overturned on appeal, by a panel which found, “no evidence that these checks had simply not been completed”. The appeal panel found no failure by [Employee] to comply with mandatory procedures, and certainly no “dishonesty” that he was accused of in his disciplinary hearing. There was also nothing in the appeal panel’s finding that [Company] or its customers had ever been at any risk of loss by [Employee] conduct.

During the appeal, [Employee] again raised concerns regarding [Manager] conduct, echoing his initial grievance. However, it was brushed aside by the appeal panel, and not referred to in their outcome letter. Rather, [Employee] was returned to the management of [Manager]. We are not aware of any action being taken against [Manager] for her biased and unfair conduct of the investigation against him, even though a formal request was made to [HR Manager] on [23rd February 2019].

The appeal panel’s findings effectively vindicated [Employee]. His only error was a late signature to the planner on [16 April]; this was not a breach of any mandatory procedure and was a fact which he always admitted and explained the reasons for, mainly lack of resources.

Despite this, his reinstatement was made conditional on his accepting a severe disciplinary sanction of a 12-month “stage 2” warning issued against him, with no further right of appeal.

After his initial dismissal on [3rd September], [Employee] was invited to raise a post-employment grievance. He did so on [13th September]. To date no action has been taken in relation to his grievance. This is further failure by your client to follow proper grievance procedures, and also an indicator of its total disregard for [Employee] employment rights.

As noted in your Grounds of Resistance, another employee, [Employee 2] was also named by [Manager 2] as one of the supervisors who instructed him to backdate checks. No action to date has ever been taken against [Employee 2], Nor was any action taken against [Manager 2] who, on your client’s own case, had been signing off checks as completed when they hadn’t been.

The investigators, disciplinary panel and appeal panel were aware of the conduct of these employees; however, they chose to investigate and discipline [Employee] but not one of his colleagues. The disciplinary action taken against him – suspension, dismissal, and reinstatement with a stage 2 warning – was arbitrary and unjustified.

Conclusion

It is our position that your client conducted a wholly unfair disciplinary procedure against [Employee], culminating in unreasonable decisions by the disciplinary and subsequently the appeal panel. Ultimately, this led to [Employee] losing trust and confidence in his employers. He could not return to a position with an unfair and unjustified stage 2 warning, with its attendant impact on his pay, bonus, holiday entitlement, and promotion prospects. Nor could he return to being managed by [Manager 1], who had been the instigator of the entire disciplinary procedure and whose treatment of him was effectively condoned by the findings of the disciplinary and appeal panels. If he had

accepted the reinstatement on the terms offered, he would only be setting himself up to fail. He had no realistic choice but to continue with an alternative employment, even though it meant accepting a lower salary and loss of substantial benefits, such as: pension, company share save scheme, and staff mortgage, as well as loss of qualifying service and its associated statutory rights.

It is difficult to over-state the stress and humiliation suffered by [Employee] who, after years of enthusiastic, loyal and impeccable service at [Company name] was treated in this arbitrary and unfair manner.

Consequently, we can identify a number of causes of action arising out of your client’s conduct towards our client. However, [Employee] has no desire to pursue with stressful and time consuming litigation if this can be avoided and has therefore instructed us, at least at this stage, to aim towards a suitable settlement.

Settlement

It is our position that a settlement should reflect the basic award (by my calculation [£4,176]), and an element of compensation for loss of earnings and loss of statutory rights. In his present employment [Employee] will not be able to match his earnings at [Company name] for at least [5 years]; his new employers have confirmed this and can provide evidence of the same. However, if this matter can be settled speedily he will accept [£7,140] loss of earnings in settlement of all his claims. (This is equivalent to the difference in his net earnings over 2.5 years.) The total amount that my client would therefore accept in settlement is [£11,316]. This would be subject to the withdrawal of all claims by all parties, including your client’s counter-claim.

It is our view that a greater award would be made by an Employment Tribunal. We would also seek to recover our legal costs and the costs of proceedings.

We look forward to hearing from you with any comments you may have on the above proposal in the hope that we can bring this matter to a mutually agreeable and timely conclusion.

Yours sincerely

[Lawyer's name]