

Date:

**<name of monkhouse lawyer>  
<lawyer's email>@monkhouselaw.com**

**Personal, Confidential & Without Prejudice  
  
Via Personal Service**

**<recipient first name last name>**<recipient job title>  
<company name>  
<company address>  
<company postal code>  
  
  
To <Honorific> <recipient's last name>  
  
**Re: <title of case>**

I wish to confirm that I have been retained as legal counsel on behalf of <Client first name last name> (“<Client First Name>”).I have reviewed the circumstances surrounding <Client first name>’s termination, and it is my position that he has been wrongfully dismissed in that he was terminated without sufficient cause, and as such is entitled to reasonable pay in lieu of notice of the termination of his employment.   
  
  
The salient factors of this case are:  
  
 Seniority: <#> years  
 Wage: $<###,###.##>  
 Age: <##>  
 Position: <client's position>

**<Client's first name>'s Employment**

**Insufficient Cause for Termination**

Although ERS is attempting to rely on allegations of just cause to substantiate Luke’s termination, it is my position that this argument is meritless due to the lack of support for same, and the corresponding failure to meet the high threshold required. When determining if there is sufficient cause for termination, the courts have routinely held that it is important to distinguish between actions demonstrating poor judgment, warranting discipline, and actions that are incompatible with the employment relationship continuing, warranting termination. As Iacobucci, J. held in McKinley v. BC Tel, [2001] 2 SCR 161, the proper approach in making this determination is a contextual one, regarding how the dishonesty or misconduct impacts the employment relationship. He described the proper framework as:

An analytical framework that examines each case on its own particular facts and circumstances, and considers the nature and seriousness of the dishonesty in order to assess whether it is reconcilable with sustaining the employment relationship.

The context of Luke’s employment must be taken into consideration; he worked diligently for ERS for approximately ten years. While there were occasional times when Luke was slightly late to work, he informs me that this was quite common with all employees, and in the context, would therefore not irreparably damage a working relationship.  
  
It is also my position that this is a scenario where the implementation of progressive discipline would be required. As noted, Luke received a written warning regarding tardiness at the same time he received his notice of termination. Providing an employee with a warning for their behaviour and simultaneously terminating them renders the warning redundant, and does not equate to progressive discipline. Luke was never given the opportunity to correct any behaviour that could have been cause for concern, because he was terminated at the same time he was notified of those concerns. As held in the case of Plester v. Polyone Canada Inc., 2011 ONSC 6068 (CanLII), in order to establish just cause on the basis of misconduct,

[I]n addition to providing that the misconduct is serious, the employer must demonstrate, and this is the aspect of the standard which distinguishes it from ‘just cause’, that the conduct complained of is ‘wilful.’ Careless, thoughtless, heedless, or inadvertent conduct, no matter how serious, does not meet the standard. Rather, the employer must show that the misconduct was intentional or deliberate. The employer must show that the employee purposefully engaged in conduct that he or she knew to be serious misconduct. It is, to put it, colloquially, being bad on purpose.

Luke cannot be said to have engaged in wilful misconduct as he was completely unaware that his actions would result in his termination. Luke genuinely enjoyed his job, and had invested ten years with the company. Luke would never deliberately engage in conduct that would jeopardize his employment, and had he received the courtesy of a warning or a discussion with Ali, he would have immediately corrected his behaviour.   
  
Considering the lack of progressive discipline involved, and the high threshold required, it is clear that ERS has failed to meet the strict legal tests in place that an employer must satisfy in order to terminate an employee for just cause. In the absence of same, Luke would be entitled to reasonable common law notice of the termination of his employment.

**Invalid Contract**

**Appropriate Notice Period**

The appropriate notice period is based on a holistic examination of how long it would reasonably take for an employee to get a new job. The most reliable method of knowing how long someone would get for their notice period is based on how long similarly situated persons have taken based on seniority and other factors.  
  
In assessing the reasonable notice period for breach of an employment contract, courts in Ontario and elsewhere have followed the leading case of Bardal v. Globe & Mail Ltd. [1960], O.J. No. 149 (Ont. H.C.J.) and the often-cited dictum of Chief Justice McRuer at p. 145:

There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with Constants to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

In light of Luke’s age, length of service, level of education, the allegations of cause against him, the lack of comparable positions, and the current state of the economy, he would be entitled to an elongated notice period.

**Human Rights Violations**

Considering the lack of legitimate reasoning behind his termination, Luke is concerned that his termination was due, at least in part, to discrimination under a protected ground of the Ontario Human Rights Code, R.S.O. 1990, c H.19 (the “Code”). As noted, Luke’s grandmother passed away on Thursday February 23, 2017. Luke took the following morning off work, and became ill over the weekend which required him to take a sick day on Monday February 27, 2017. Within an hour of reporting his illness to ERS, Luke was informed of his suspension without pay for the remainder of the week. Suspending an employee because they are ill and unable to work is a clear act of discrimination under the protected ground of disability.  
  
Furthermore, Luke informs me that over the past few months, his boss, Ali, has been terminating the Black employees at ERS, and only hiring Filipino people in their stead. This is discriminatory conduct under the protected ground of race, and also supports the position that Luke’s termination for just cause was a cover to facilitate his departure from the company.   
  
Pursuant to section 5(1) of the Code:

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record offences, marital status, family status or disability.

Despite any arguments to the contrary, jurisprudence is clear that the protected ground need not be the only factor in the decision to terminate an employee. As stated in Douglas v. SLH Transport Inc. [2010] C.H.R.D. No 1:

It is not necessary that discriminatory considerations be the sole reason for the actions in issue for a complaint to succeed. It is sufficient that the discrimination be but one basis for the employer’s actions or decisions.

In other words, despite any assertions that ERS did not discriminate against Luke, the discriminatory action only needs to be a contributing factor in the decision to terminate in order to be a violation of the Code.

**Punitive, Aggravated, Bhasin, and/or Moral Damages**

**Failure to Investigate**

Luke was suspended immediately after calling in sick to work on February 27, 2017. After Ali rebuffed Luke’s attempts to discuss this decision on February 28, 2017, he went home and received his notice of termination and a written warning that were dated February 27 and 28, respectively.   
  
The immediate decision to terminate Luke without having so much as a discussion or interview regarding the allegations against him confirms that ERS did not conduct an adequate or fair investigation into the matter. Luke was flat out refused an opportunity to defend himself, or detail his side of the story. Had there been a thorough investigation, it would have been apparent that Luke’s actions did not amount to wilful misconduct, and he would still be employed by ERS today.  
  
The requirement of an investigation being conducted by an employer wherein allegations of just cause exist is illustrated in the case of van WoerCamilles v. Marriot Hotels of Canada Ltd., 2009 BCSC 73 (CanLII):

An employer that fails to conduct an adequate and fair investigation into an allegation of sexual harassment or other misconduct and does not afford the employee a reasonable opportunity to respond to the allegations of misconduct, runs the risk that it may not be able to discharge the burden of establishing cause for dismissal. [Emphasis added]

A failure to complete its due diligence with respect to the allegations against Luke is conduct worthy of punitive damages. ERS’s disregard for this obligation has had a severe and negative impact on Luke and his professional reputation, and therefore can only be considered an independent, actionable wrong.

**Unsubstantiated Allegations of Cause**

Alleging cause for termination, when clearly no such cause existed is not only an aggravating factor in terms of elongating Luke’s reasonable notice period, it is also high-handed and malicious conduct. Allegations of insubordination and violations of company policies will also impede Luke’s efforts at finding new, comparable employment, and thus will have an adverse effect on him both mentally and financially.  
  
Compensation has been awarded at significantly high rates, particularly in instances similar to this matter, wherein cause allegations have been brought forth absent proper substantiation. For example, I would point you to the decision in Tipple v. Canada (Attorney General), 2012 FCA 158, wherein an employee who had been terminated on assertions of misconduct was awarded $250,000.00 for loss of reputation arising from the allegations.

**Bad Faith Damages**

The case of Ashton v. Perle Systems Ltd., 1994 CanLII 7404 (ON SC) supports the position that an employer has an obligation to carry out an employee’s dismissal in an open and honest manner, and to avoid unwarranted harm to the employee. Terminating Luke on unsubstantiated allegations of cause without providing any sort of progressive discipline, and leaving him without any income is indicative of dishonest, malicious behaviour and displays ERS’s blatant disregard for Luke’s well-being.  
  
ERS’s aforementioned actions would also result in the award of “bad faith” damages as categorized in the case of Bhasin v. Hrynew 2014 SCC 7. As per Bhasin, parties to a contract are under a duty to act honestly in the performance of their contractual obligations. ERS’s conduct in terminating Luke due to discriminatory reasons, and relying on frivolous allegations of cause to support his termination, depicts an utmost degree of bad faith conduct which would warrant a high quantum of damages should this matter proceed to trial.

**Moving Forward**

I have advised Luke that given the circumstances, he has a significant claim for wrongful dismissal, human rights violations, and punitive, aggravated, Bhasin, and/or moral damages in consideration of the factors discussed above.  
  
Notwithstanding the attached Statement of Claim, and in an effort to resolve the matter in good faith, Luke has informed me that he would be willing to settle this matter on the following conditions:

For a total monetary offer of $82,980 at this point in time.  
  
This offer will remain open until trial. We intend to rely on this letter as an official Rule 49 offer should this matter go to trial in order to seek substantial indemnity costs.  
  
Sincerely,  
  
Monkhouse Law,

The sum of $32,900.00 representing 12 months’ pay in lieu of notice;

Compensation accounting for 20% of benefits over the 12-month notice period in the amount of $6,580.00;

The sum of $20,000.00 in general damages in lieu of human rights violations;

The sum of $20,000.00 in general damages in lieu of punitive, aggravated, Bhasin, and/or moral damages;

A favourable reference letter and glowing letter of recommendation;

A contribution of $500.00 towards career counselling;

Partial indemnity fees as agreed or assessed to the date of acceptance of offer (estimate currently $3,000.00) towards Luke’s legal fees.