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Monaco Solicitors

**MONACO SOLICITORS ­**

**ET1 claim form: Details of whistleblowing claim**

CASE NO: xxx

IN THE EMPLOYMENT TRIBUNAL [NAME OF TRIBUNAL]

BETWEEN:

[EMPLOYEE]

Claimant

-and-

[COMPANY] LTD

Respondent

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PARTICULARS OF CLAIM

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Introduction

1. [Employee] was employed as a [Job Title]. [Company] is a [Type of Company].
2. [Employee] hereby brings the following claims:-
3. Automatically unfair dismissal by reason of ‘whistleblowing’, or making a protected disclosure, contrary to s.103A Employment Right Act 1996
4. Wrongful dismissal; and
5. Non-existent written statement of employment particulars contrary to the Employment Act 2002.

Background

1. [Company] ostensibly dismissed [Employee] for failing his probation, but at no point was [Employee] ever informed via any formal supervision session that he was failing to perform to required standards. In fact quite the contrary – [Employee] was taken out for lunch by [Company CEO] on several occasions during his tenure, and was informed that he was doing a good job and that his role was secure within the organisation. These conversations took place as recently as the 28th November  [Year date], where in her presence a [Director] of [Company], reiterated this point.

Written statement of employment particulars

2. At no point during his tenure was [Employee] offered a formal Job Description. In fact his role was broadened twice during his tenure to have involvement with services that he was not originally supposed to have operational responsibility for. He was informed by [Company CEO] that this was happening due to his high skill base and ability to make an impact on these services, some of which were failing.

3. There is email evidence dating back as far as February [Year date] (before [Employee] commenced his post) that a detailed job description would be offered by [Company CEO]. This was never issued. [Employee] also requested to be issued with both a contract of employment and job description by email in August [Year date]. Despite an email response from [Company CEO] stating that these would be issued, this did not take place.

4. [Employee] raised this issue at the end of probation meeting with [Company] on 02 December [Year date] [Employee] once again questioned how performance could be measure in the absence of a job description. [Company CEO] looked visibly embarrassed at this line of questioning, stating that [HR Manager] had been tasked to do this. The [Company Chairman] appeared shocked during this conversation. He did not know of the significant operational failure in not providing [Employee] with the necessary structure and guidance to perform his duties.

5. On 8th February [Year date], the following 2 emails were sent by [Company CEO], outlining relevant matters:

*From: [Company CEO]*

*Subject: FW: REVISED JOB OFFER – strictly private and confidential*

*To: [xxxx@xx.com]*

*Date: Tuesday, 8 February, [Year date], 18:05*

*Dear [Employee]*

as discussed I am going to offer additional incentives to the overall package as follows:

Car allowance of 5K per annum

Pension of 6% after the probationary period.

Achievable bonus of up to £30k per annum based on achieving

90% occupancy at each service managed this will be £15k for [Place] and £15k for [Place].

I will be drawing up with you a detailed job description for this new role.

You will be reporting to me as Chief Executive.

I do not want to pay a 20% recruitment fee on the additional salary and benefits as you will appreciate.

Kind regards

*[Company CEO]*

*From: [Company CEO]*

*Subject: RE: REVISED JOB OFFER – strictly private and confidential*

*To: [xxxxx@xx.com]*

*Date: Tuesday, 8 February, [Year date], 21:34*

*Hi [Employee]*

*My email constitutes a formal job offer and has been authorised by [Company Chairman] and [Company Owner] . As you have this in writing albeit via email it is A Contract and therefore legally binding upon [Employee].*

The offer is dependent upon a clear CRB and references. You will receive a letter from [HR Manager] and a contract of employment as per normal practice.

The issue about confidentiality relates to your fellow [Company Directors] who will be impacted by the new role and reporting line but this is for me to resolve as you work your notice. Your new role has been created by me as a result of a restructure which is necessary for the business going forward.

*The [HR manager] is [Name] who you have met.*

*I will start the ball rolling tomorrow in terms of formal correspondence. [HR Manager] will clarify the company mileage allowance – however you will be able to claim up to 45p per mile on tax – I assume you already do this as the company mileage allowance will be below this figure.*

Kind regards

*[Company CEO]*

Wrongful dismissal

1. [Company] states that [Employee] was dismissed during his probation period, and therefore was only paid one month’s notice pay rather than the three months to which he would have been entitled had he passed his probation. But the probationary period was only 6 months, and [Employee] was dismissed in the 7th month of his employment, therefore he was not dismissed during his probationary period.

Unfair dismissal

1. On 2nd December [Year date], [Employee] became aware of a meeting taking place at [Location]. He had not been invited to this meeting but became aware of it due to the fact that he was on site that day. The meeting involved most of the other senior managers.
2. After the meeting had finished, [Employee] sought clarity as to what the meeting had been about. He was informed that it had been a meeting to plan the admission of a profoundly deaf patient from [Place]. [Employee] was surprised that this meeting had taken place in his absence, as from a regulatory perspective he was defined as the ‘Nominated Individual’ for the establishment and was therefore responsible for the ensuring that the patients admitted to the service can be appropriately cared for.
3. [Employee] had already stated during September  and December [Year date] to [ CEO], [Director of Marketing] and [Director of Nursing] his significant concerns with admitting this individual to the hospital in question as there are no staff that are competent in the use of British Sign Language, whilst the placement that the individual is currently in is a specialist deaf person’s service. There was also a significant history within this hospital (a hearing person’s service) of having previously managed the care of a deaf person poorly due to inadequate resources. This view was also shared by [Employee 2], who was tasked with conducting the assessment visit for the patient in question.

[Employee] was actively excluded from this meeting due to the fact that he would raise significant professional objections to [Hospital name] admitting this patient despite being inadequately prepared to do so. He was being treated unfavourably by reason of his protected disclosure.

* 1. Following a senior management meeting held at [Hospital name] Head Office in [Place], on or around 11th July [Year date] [Employee] was party to a conversation with [Chairman]. This conversation centred on a [Company 2 Commissioner] who divulged during this conversation that he was planning to offer some kind of payment to [Employee] in exchange for him referring a cohort of patients to [Names of] hospitals.
  2. [Employee] was shocked at the revelation and made a protected disclosure to [ CEO] on the same day. She confirmed to [Employee] that this was indeed [Hospital 2 Commissioner's] intention, and she had no intention of trying to stop him.
  3. [Employee] was dismissed from [Company]  on 2nd December [Year date] due to the fact that he would not endorse both poor practice in relation to patient care and questionable conduct in relation to [Company 2 Commissioner].

AND [EMPLOYEE] CLAIMS:

[1] Damages for unfair dismissal

[2] Damages for wrongful dismissal

[3] Damages for victimisation caused by whistleblowing

[4] Damages for lack of employment particulars

[5] Any other remedy as the court thinks fit

[Employee]

[Date]

**CASE NO: xxx**

**IN THE EMPLOYMENT TRIBUNAL [NAME OF TRIBUNAL]**

**BETWEEN:**

**[YOUR NAME]**

**Claimant**

**-and-**

**[NAME OF COMPANY] LTD**

**Respondent**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**PARTICULARS OF CLAIM**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**UNFAIR DISMISSAL, BREACH OF CONTRACT & UNLAWFUL DEDUCTION OF WAGES**

1. The Claimant was employed by the Respondent from 26 March 2014 as a recruitment consultant and was the highest biller in his team, which was the [**Place**] team. The Respondent is a public limited company and IT recruitment specialist, established in 1974, with offices in [**Places**]. The Respondent states on its website that it is ‘in the Big 5 of IT recruiters year after year’, with an exclusive contract for the ‘largest IT project in Europe’.
2. On 14 May 2015, without any prior warning or notification, the Claimant was asked to attend a meeting by [**Name**], his line manager. [**Name**] and also the Claimant’s team leader [**Name**] were present at that meeting, but no one from HR was present. The Claimant was not given an opportunity to bring a colleague.
3. At the meeting, the Claimant was told by [**Name**] that he would probably be summarily dismissed for contravention of the Respondent’s email policy, because he had used the company email inappropriately, by flirting with a client. He was told to go for a walk on his own and return in 15 minutes when a decision would have been made.
4. When he returned to the office, the Claimant was asked to go into a meeting room, where [Name] and [**Name**] were waiting. [**Name**] told him “I’m sorry we’re letting you go”. The Claimant was then taken to his desk and told to take his bag and personal belongings only, and that the Respondent would post his other things to him later. Those things included documentation such as his contract of employment, but nothing was ever sent to him by the Respondent.The Claimant was not given the chance to appeal the decision. [**Name**] was demoted shortly after this meeting.
5. Following the summary dismissal, the Respondent withheld payments which were due and owing to the Claimantas commission on placements to which he was contractually entitled.The structure of contractual commissions in relation to the Claimant’s work is contained within a letter from [**Name**] of the Respondent to the Claimant dated 07 March 2014.
6. This commission related to the placement of approximately 7 permanent candidates; and the total amount due is around £28,000.00, although the Claimant is prepared to limit his claim under this heading to £25,000. The commissions are set out below, but these are from memory as the Claimant has no written record. The Respondent should supply details of these and other commissions owing.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **CANDIDATE** | **CLIENT EMPLOYER** | **APPROXIMATE**  **START DATE** | **SALARY**  **OF**  **CANDIDATE**  **(£)** | **APPROXIMATE**  **COMMISSION EARNED FOR RESPONDENT (£)** | **APPROXIMATE**  **COMMISSION OWED TO CLAIMANT (£)** |
| [**Name**] | ? | May ‘15 | 65,000 | 7,000 | 2,000 |
| [**Name**] | ? | May ‘15 | ? | 12,000 | 4,000 |
| [**Name**] | ? | May ‘15 | 65,000 | 7,000 | 2,000 |
| [**Name**] | ? | May ‘15 | 65,000 | 7,000 | 2,000 |
| [**Name**] | ? | May ‘15 | 65,000 | 7,000 | 2,000 |
| ? | American Express | May ‘15 | ? | 12,000 | 4,000 |
| [**Name**] | ? | May ‘15 | 200,000 | 35,000 | 12,000 |
|  | ? | May ‘15 | ? | **TOTAL** | 28,000 |

1. At the time when the Claimant was dismissed, there were 2 major roles available with clients at the salary level of around £200,000. The Claimant brought those rolesin to the Respondent, and he would have completed the transactions, and thus earned even more commission, had he not been dismissed.
2. The Claimant was one of the highest earners in his branch and he had earned commissions of around £28,000.00 which were still outstanding at the time of his dismissal. The Respondent wanted to dismiss him partly in order that it could retain the money which it owed him in commissions.
3. Also on 14 May 2015, a number of employees were consulted regarding possible redundancies, and during the weeks following the Claimant’s termination of employment, a large number of other employees were made redundant. The Respondent’s [**Place**] office was not performing well overall, and the Respondent embarked on a cost cutting exercise, which involved reducing numbers of employees, including the Claimant.
4. The Claimant was procedurally unfairly dismissed: there was no, or no proper, investigation regarding the alleged misconduct especially taking into account the vast size and resources of the Respondent; and the Respondent failed to follow the access code or any proper disciplinary procedures.
5. The dismissal fell outside the band of reasonable responses to the alleged misconduct, especially when compared with the Respondent’s treatment of other employees. The Respondent allowed a large amount of inappropriate email usage by other employees to go completely unpunished.
6. The dismissal was unfair as the real reason for the dismissal was not misconduct at all or any other statutory reason, but instead it was for economic reasons and for discriminatory reasons, which are set out below.
7. In relation to the compensatory award, the Claimant mitigated his loss immediately by starting a new job 2 working days after being dismissed. He managed to do this on the basis of his excellent performance and good reputation in the market. His new job, however, is paid significantly less that his old job. On average, he was taking home around £4,000 per month during his employment with the Respondent. At his new job, he takes home around £1,700. The Claimant therefore claims that difference between these two incomes. The Claimant also believes that he may be owed holiday pay.

**Wrongful dismissal**

1. The Claimant was wrongfully dismissed. Without prejudice to the contention that he was unfairly dismissed, he should have been given notice; but in fact he was only paid up to and including a half day’s pay on 14 May 2015, the date of the dismissal. The Claimant therefore claims an award in respect of notice pay and commissions which he would have earned.

**Race discrimination & harassment**

1. The Claimant claims damages for both direct and indirect discrimination in respect of race, ethnic origin and religion. The Claimant is of Arabic descent and his religion is Islam. The Claimant claims that part of the reason for his summary dismissal on 14 May 2015 was his race and his religion. He also claims that other employees who were not Arabic or Muslim would not have been treated so harshly for alleged misconduct. There were no Arabic managers at the Respondent.
2. The Claimant also claims damages for harassment under s.3A of the RRA in respect of race, ethnic origin and religion. [**Name**] made jokes about Arabs and Muslims on a daily basis, saying that they were stupid and lazy. [**Name**] would swear at the Claimant in Arabic, calling him ‘*kara*’ which means ‘*shit*’. The Claimant had to sit next to [**Name**] daily as he was the Claimant’s team leader.
3. Around April or May 2015, [**Name**] said ‘My kids were up all night playing Playstation killing Arabs.’ This was during a team talk concerning targets attended by the Claimant’s team, the UK contracts team and the international team. The context was that he was trying to explain why he was not thinking straight because he was tired. [**Name**] later went and apologized to the Claimant and to [**Name**] specifically, because they were Arabs.
4. [**Name**] kept pushing the Claimant to increase billing so that they could go on a trip to the UAE and meet the Claimant’s clients face to face. In around November 2008, they flew from [**Place**] to [**Place**]. At [**Place**], the Claimant was mistaken for a terrorist suspect called [**Name**] by the security services. He was stopped at gunpoint and questioned by a team of Special Forces agents. A large crowd of people had gathered to watch this spectacle and it was extremely embarrassing for the Claimant. After they realized that he was not the suspect, they let him go. He walked away from the scene of the incident, and was promptly stopped and questioned again. He was released again. By this stage he was severely traumatized. When he saw [**Name**], he explained what had happened and [**Name**] laughed in his face and told him that he looked like a terrorist anyway.
5. On the above trip, the Claimant was stopped by security in [**Place**] airport and [**Place**] airport as well. On these occasions, [**Name**] took photos of the Claimant with his mobile. When they returned to [**Place**], [**Name**] uploaded these photos onto the office system and displayed them to 40 or 50 people at a company meeting on the large projector screen. He started making fun of the Claimant in front of everyone and he encouraged the whole company to start laughing at the Claimant.
6. [**Name**] was a personal friend and ex colleague of [**Name**] and the pair play rugby together. [**Name**] joined the Respondent in around May or June 2014. After the above meeting, whereby [**Name**] presentation had humiliated the Claimant in front of the whole company, [**Name**] thought it was acceptable to abuse the Claimant too. [**Name**] began to call the Claimant ‘karaz’ which means ‘shit’ in Arabic. He would often make disparaging remarks about the Arabic people in general, saying that they were very slow; they work backwards; they don’t know what they are doing; they say everything is ‘inshallah’ (which means if ‘God wills it’); and they need a kick up the backside. The above remarks were made in front of the Claimant’s whole team and up to a few times per week. [**Name**] would also frequently make disparaging remarks about Arabs.

AND THE CLAIMANT CLAIMS:

[1] Damages for unfair dismissal

[2] Damages for dismissal due to race discrimination

[3] Damages for injury to feelings caused by race discrimination

[4] Damages for breach of contract

[4] Damages for unlawful deduction of wages.

**[your name]**

**[Date]**