

David Earnshaw V Bradford Council

Case Number 1810307/2010

Document written by David Earnshaw

Below the claimant will set out the basis for submitting an unfair dismissal claim against Bradford council. The claimant will also address issues raised by the respondents (ET 3)

1) The basis for submitting an ET1 form against Bradford Council is a result of their reluctance to deal with issues in a timely manner, and is reflected in the claimants' letter appealing dismissal dated 17th October 2010⁽¹⁾ The letter draws attention to an unresolved employee grievance lodged against managements wrongful repudiation ⁽²⁾⁽³⁾⁽⁴⁾ dated 30th November 2009 and managements effort after 10 months to frustrate a satisfactory conclusion to that complaint by denying the claimant the right to appeal. The claimant can only surmise this process was simply calculated to protect the integrity of management against criticism.

2) With the exception of Mr Manley, all witness statements indicate an equally serious act of gross misconduct by that witness. However to the best of my knowledge there has been no detailed examination by management of misconduct suggesting witnesses benefited from their cooperation.

3) The claimants Letter of Appeal⁽¹⁾ also questions the respondents justification for summary dismissal as detailed in Mr Longcake dismissal letter date 4th October 2010 the claimant goes on to put forward that such justification doesn't stand up to scrutiny given the available evidence Mr Longcake relied upon when making his judgement.

4) The above documents also refer to management's inconsistency when dealing with comparable situations. These inconsistencies were highlighted during the claimants Appeal hearing 10 January 2011 by mention of previous disciplinary matters, and specifically one incident involving Mr Michael Calderwood. Mr Calderwood situation was comparable ⁽⁵⁾ to that of the claimant insofar as Mr Calderwood was employed in the same department, and was also subject to a police and workplace investigation regarding assault. It should however be noted that although Mr Calderwood accepted culpability management did not regard his admission of assault as being of a sufficiently serious nature to warrant his suspension from duty or dismissal from his employ. The claimant would therefore question the soundness of the Appeal panel reasoning of what message if any a lesser sentence would have been conveyed to the wider workforce.

5) The claimants grievance letters ⁽²⁾⁽³⁾ also make complaint of an insufficient investigation before disciplinary proceeding had been instigated. Here I note no weight whatsoever was given to the claimant's explanation or his plea of self-defence. However it should be noted that there were no further investigatory enquiry after the claimant's fact finding interview which may be indicative of a management seeking to dismiss rather than bring together all the relevant facts.

6) The claimant will also argue that the respondent not only failed to fairly implement section 7 of their own disciplinary procedures⁽⁶⁾ but also had a total disregard for the ACAS Code of practise 1 (April 2009) disciplinary and grievance procedure specifically section 44 of said document⁽⁷⁾

7) **Detriment** raised by the respondent (5.3 ET3)

The Terms and Reference⁽⁸⁾ letter written by Mr C Goodall dated 29th July 2009 particularly Item 4 of said letter - was to establish if the claimant had breached any other policy or procedures with regards to his role of trade union representative. Here I note the use of the phrase 'any other' thereby implying a preconceived observation of wrongdoing. Nevertheless the claimant will argue that the above instruction is equivalent to management investigating a female employee for breaching other procedures simply because she is a woman etc. This instruction however gives a hint of management's way of thinking, their evaluation of the claimant, and their own relationship with a recognised trade union prior to a workplace investigation

8) **Suspension** (5.4 ET3)

The claimant from the outset on 29th July 2009 has questioned the reasonableness of the management decision to implement a one sided and protracted suspension against him. The claimant continues today to search for justification as to why he was treated differently to that of other Bradford Council Employees. Evidence would suggest the decision to suspend only the claimant was taken on the afternoon 28th July 2009 and before a written formal complaint was submitted on the afternoon of the 29th July 2009. The claimant is therefore unsure as to what evidence management used to justify suspension. As a result the claimant can only surmise this obvious bias rush to judgement strikes at the mutual trust of their relationship, and that mutual trust had broken down unknown to the claimant by their actions on that date 28th July 2009.

Additionally the respondent has readily admitted (5.4 ET3) that management took a decision to suspend the claimant until the conclusion of any Disciplinary Hearing. Nevertheless this judgment was never communicated to the claimant as reason for his suspension nor was the claimant given the opportunity to make any written representation in his own defence as sanctioned under section 7 of the respondents own disciplinary procedure⁽⁶⁾ This the claimant would argue indicates a management that had a total disregard for the claimant or for the implied terms of his employment contract insofar that an employer has a duty to provide proper information to their employees.

The claimant would also add that contrary to the respondent belief that even though the claimant received full pay during his 14 month suspension it was management own disinclination which unduly protracted the length of the claimants suspension, and in so doing causing a break down in the mutual trust of their relationship long before any disciplinary action was taken, and by implication indicating any disciplinary action could be seen as being a forgone conclusion.

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Claimants Summation

On 28th July 2009 management took a one-sided decision to suspend the claimant from his employment with Bradford council.

However evidence would also suggest the decision to suspend was taken prior to any formal written complaint being made against the claimant even though informal meetings between management and other employees were evident⁽⁸⁾ It is for these reasons the claimant assumed collusion insofar as management, and witnesses had opportunity to covertly communicate.

Evidence would also suggest management also applied undue influence upon Mr Tom Hooper to make formal complaint to the Police ⁽⁹⁾ and taken together with Mr Goodall letter ⁽⁸⁾ suggesting Mr Whyte liaises with the police along with the content of Mr Welford email ⁽¹⁰⁾ and his letter ⁽¹¹⁾ the facts would contradict the respondents explanation of simply trying to 'placate a victim' as a convenient denial of participation in this matter. It should be noted there isn't any reference regarding this issue in any witness statement prior to the claimant's dismissal.

However the above particulars would suggest management did influenced Mr Hooper, but the respondent then failed to take action when the claimant brought the above piece of information to their attention suggesting collusion and wrongful repudiation. ⁽²⁾⁽³⁾ Truth is the Claimant has never denied a workplace incidence occurred during the 28th July 2009 but argues management's unseemly rush to judgement on the 28th July 2009 was designed to leave the claimant in an impossible position, which it did, and therefore at a disadvantage.

In contrast management reacted swiftly against the claimant by seeking suspension based on informal discussions. It is also without doubt the investigating officer acted upon all suggestion made by Hooper and Rushton in their statements insofar that unconnected individual were also interviewed regarding these allegations leading management to unashamedly use those interviews to ask leading questions of one individual while referencing a previous statement from another individual even though there is a 'Strictly Private & Confidential' heading on every statement. As if this evidence manipulation wasn't enough the investigating officer then proceeded to omitted those statements from the disciplinary pack thereby restricting access to those statements and in so doing having a direct impact on the claimants ability to defend his position or defend himself against the assumption of guilt made within those statements.

It is also without doubt that the investigating officer dismissed out of hand any alternative to the proposition put forward by Hooper and Rushton who were allowed to continue working together and therefore allowed to discuss their statements over a 14 month period between themselves and management.

My own written statement dated 5/8/2009(12) was given no consideration at my disciplinary Hearing.

Dated 6th March 2011.

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- (1) Notification of appeal against dismissal
- (2) Notification of Grievance November 2009
- (3) Notification of Grievance & cover letter April 2010
- (4) Appeal against grievance outcome 1st October 2010
- (5) Post office v fennel [1981] IRLR 221 CA -
- (6) Bradford Council Disciplinary Procedure
- (7) <http://www.acas.org.uk/index.aspx?articleid=1461>
- (8) The Terms and Reference dated 29th July 2009
- (9) West Yorkshire police Log
- (10) Mr Welford Email
- (11) Mr Welford Letter
- (12) David Earnshaw written statement dated August 2009

References