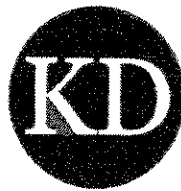


ATTORNEYS
AMEESH A. KHERANI, ESQUIRE

Of Counsel
DAVID H. DUNAWAY, ESQUIRE

PHONE
CLINTON/NORRIS: 865-777-0786
JACKSBORO: 423-562-7085
FACSIMILE: 865-622-8887



KHERANI | DUNAWAY
ATTORNEYS AT LAW
An Association Not a Partnership
WWW.KHERANILAW.COM

OFFICES
2685 ANDERSONVILLE HWY, STE 2
CLINTON, TENNESSEE 37716

116 CUMBERLAND LANE, STE 3
JACKSBORO, TENNESSEE 37757

PLEASE RESPOND TO:
CLINTON/NORRIS OFFICE

November 7, 2022

Via Email: jim@1450WLAF.com

James "Jim" Freeman
c/o WLAF 1450

Re: Jimmy Marlow v. City of LaFollette

Dear Jim:

Attached please find a lawsuit which my office has filed on behalf of Mr. Marlow against the City of LaFollette.

Sincerely yours,

A handwritten signature in cursive script that reads 'Ameesh A. Kherani/Esq'.

Ameesh A. Kherani, Esquire

AAK/mmb

Attachment

**IN THE CHANCERY COURT FOR CAMPBELL COUNTY, TENNESSEE
AT JACKSBORO**

JIMMY MARLOW,

Plaintiff

v.

CITY OF LAFOLLETTE,

Defendant

)
)
)
)
)
)
)
)
)
)

CIVIL ACTION NO. 7C171-2022
CV-206

CAMPBELL CHANCERY COU
7 NOV 2022 AM 10:30

COMPLAINT

Comes the Plaintiff and would show unto the Court the following:

1. The Plaintiff is and at all times mentioned herein was a citizen and resident of Campbell County, Tennessee. At all times mentioned herein, the Plaintiff worked in the Maintenance Department for the Defendant, City of LaFollette, hereinafter "City", and otherwise worked as a heavy equipment operator for the City, for approximately fifteen (15) years until he was wrongfully and pretextually terminated.

2. The Defendant, City of LaFollette, is and at all times mentioned herein was a governmental entity for which process may be served through its managing agent and City Mayor, Phillip L. Farmer, pursuant to Rule 4 of the *Tennessee Rules of Civil Procedure*.

3. This cause of action is being brought against the City to redress violations of the Plaintiff's civil and human rights. Further, this cause of action is being brought for the wrongful discharge of the Plaintiff, and is being brought against the City for recovery of economic injuries

as a result of the Plaintiff having been wrongfully discharged from his employment by the City on or about November 9, 2021.

4. This is a proceeding for the enforcement and protection of human rights and for the protection of employment of individuals under the laws of the State of Tennessee and for the policies and laws recited in the Tennessee Human Rights Act, and more specifically for the enforcement of the law and protection of human rights as reported in Tenn. Code Ann. §4-21-101 *et seq.* Moreover, this cause of action is also being filed for a breach of an implied and/or expressed contract of employment and intentional infliction of emotional distress occasioned by the City through its agents, servants and employees. This cause of action is also being filed as a Complaint for damages for breach of an employment relationship and is being brought as a claim for age discrimination and violation of the Plaintiff's due process rights afforded to the Plaintiff.

5. That the Plaintiff, Jimmy Marlow, at all times mentioned herein was a fifty-two (52) year old employee of the City. That the Plaintiff had been employed with the City for approximately fifteen (15) years. The Plaintiff worked in various capacities for the City, and at the time of his termination, the Plaintiff was a heavy equipment operator, until he was wrongfully, pretextually, arbitrarily and capriciously terminated and discharged from his employment on or about November 9, 2021.

6. That the Plaintiff had an expressed and/or implied contract of employment with the City that included the right not to be terminated from his employment without good cause, and the right not to be terminated from his employment without adequate notice of an opportunity to be heard, and the right to be dealt with fairly and in good faith by his employer, the City. Despite these facts, the Plaintiff was wrongfully terminated from his employment in violation of the due process rights afforded to the Plaintiff, as well as the Plaintiff was discriminated against based on age to preclude the Plaintiff from obtaining any of the benefits of his employment.

7. That the City terminated the Plaintiff from his employment at a time when the Plaintiff's ability to obtain new employment would otherwise be diminished because of his age.

8. That the acts and/or omissions complained of herein were committed in such a manner so as to constitute unfairness in the discharge of the City's ethic and legal responsibilities to the Plaintiff. That the Plaintiff had certain contractual, statutory vested rights, and the acts and/or omissions complained of herein constituted such conduct that was arbitrary and capricious.

9. The Plaintiff contends that he had an expressed and/or implied contract of employment with the City, and maintained a right not to have his employment terminated without good cause and without being afforded due process based upon the totality of the circumstances of his employment.

10. That the Plaintiff would show unto the Court that the City's personnel policy, and more specifically, its Mission Statement, underscores the necessity to treat all people equally, to wit:

Fairness in treating all people equally. Our laws and policies are based upon unprejudiced, impartial opinions and judgment that result in the treatment of all sides alike, justly and equitably. Fairness and objectivity are standards, which guide our decisions regarding citizen services and our employees. Fairness is fundamental.

The Plaintiff would show unto the Court that the City far from treated the Plaintiff fairly. In fact, the City failed to afford the Plaintiff his due process rights, and to otherwise perform a thorough investigation before terminating the Plaintiff's employment on or about November 9, 2021.

11. The Plaintiff would show unto the Court that the City initially issued a suspension against the Plaintiff for allegedly "leaving (without permission)", and that these actions of the City were in blatant violation of the City's personnel policy which, in pertinent part, provided as follows:

Whenever an employee's performance, attitude, work habits, or personal conduct fall below a desirable level, supervisor shall inform employees promptly and specifically of such lapses and shall give them **COUNSEL AND ASSISTANCE**. If appropriate and justified, **A REASONABLE PERIOD OF TIME FOR IMPROVEMENT MAY BE ALLOWED BEFORE INITIATING DISCIPLINARY ACTION**. In some instances, a specific incident in and of itself may justify severe initial disciplinary action; however, the action to be taken depends on the seriousness of the incident and patterns of past performance and conduct. The types of disciplinary actions are:

- (1). Oral reprimand,
- (2). Written reprimand,
- (3). Suspension, and
- (4). Dismissal.¹

The Plaintiff would show unto the Court that the Plaintiff had approximately fifteen (15) years of service which he rendered to the City and had not been reprimanded until the issuance of the suspension and subsequent termination on or about November 9, 2021. That Plaintiff would show unto the Court that the Plaintiff received excellent work review evaluations and considered his employment as public service to the City where the Plaintiff was born and raised, and where he raised his family. The Plaintiff would show unto the Court that the proceedings initiated by the City were in blatant violation of the policy of the City.

12. The Plaintiff would show unto the Court that the reason provided by the City for suspending the Plaintiff was that the Plaintiff allegedly "left without permission". The Plaintiff would show unto the Court that the reason for the Plaintiff's suspension and subsequent termination was pretextual inasmuch as the City fills out timesheets for its employees, including the Plaintiff. That the personnel responsible for completing the timesheets for the City and for the Plaintiff was on leave. As a result thereof, the City mandated that its employees fill out timesheets which the employees had never done inasmuch as this was done by the employees of the City and the Plaintiff certainly had not completed a timesheet in approximately fifteen (15) years that the Plaintiff worked for the City. The Plaintiff would show unto the Court that the City failed to

¹ See City of LaFollette personnel policy, p. 63-4, ¶G.

provide its employees any training on how to complete timesheets. In fact, the City's policy manual mandated that the City "shall give them counsel and assistance". The Plaintiff would show unto the Court that no counsel and/or assistance was provided to the Plaintiff in violation of the City's policy manual. The Plaintiff would further show unto the Court that the Plaintiff was never orally reprimanded or issued a written reprimand before the City allegedly suspended the Plaintiff and subsequently terminated the Plaintiff's in violation of the City's policy manual.

13. The Plaintiff would show unto the Court that the City failed to meet its burden to suspend and/or terminate the Plaintiff in that the City's policy manual for suspension requires:

The City Administrator, upon the recommendation of the Department Head/Manager may suspend an employee with or without pay. Pursuant to the appeals procedure, a written statement of the reason for suspension shall be submitted to the employee affected at least 24 hours prior to the effective date of suspension. This is providing that during the advance-notice period, the employee may be retained in active-duty status, placed on leave, or suspended with or without pay at the discretion of the City Administrator. Upon request, the employee will be granted a hearing before the City Administrator. An employee determined to be innocent of the charges shall be returned to duty with full pay for the suspension period. The term "innocent" herein shall be determined by the City Administrator, in his or her sole discretion, during the requested hearing conducted by the City Administrator. Further, the term "innocent" shall not include a ruling from a court of law, and such ruling shall not be wholly binding on the City Administrator in arriving at a final conclusion. All records associated with a suspension shall become a permanent part of the employee's personnel file. Under certain circumstances, an employee may be suspended without 24 hour notice, if such suspension is in the best interest of the City of LaFollette.²

Suffice it to say that not only were the proceedings initiated by the City unwarranted, uncorroborated, and unjustified, but were also in violation of the policy manual and failed to afford due process to the Plaintiff. The Plaintiff would further show unto the Court that the City held its council meeting on November 9, 2021, at which time, the council was to deliberate, investigate and make a determination as to the alleged wrongdoing of the Plaintiff. The Plaintiff would show

² City of LaFollette Personnel Policy, p. 64-5, ¶J.

unto the Court that in violation of the Plaintiff's due process rights, the council did not conduct any investigation. In fact, the Public Works Director, Casey Boshears, and the City Administrator, Stan Foust, who made allegations against the Plaintiff for his suspension and termination, were not questioned, nor did they offer any justification to the council. It is perplexing that a 15 year veteran employee of the City was terminated without providing his due process rights in violation of the City's policy manual. The Plaintiff would further show unto the Court that at the council meeting on November 9, 2021, then councilman, and now Mayor, Hon. Phillip Farmer, made a Motion not to terminate the Plaintiff, who was joined by the then Mayor, Hon. Mike Stanfield, not to terminate the Plaintiff's employment. The Plaintiff would further show unto the Court that the then Mayor of the City, Hon. Mike Stanfield, indicated that he would be vetoing the City's decision to terminate the Plaintiff. The Plaintiff would further show unto the Court that the then City Mayor, Hon. Mike Stanfield, was not provided with an opportunity to exercise his right to veto, in further violation of the right of the Plaintiff and due process.

14. The Plaintiff would further show unto the Court that the City, through its agents, servants and employees, has violated the following statutes which are fully incorporated herein by reference and will be read in their entirety at the trial of this cause, to-wit:

Tenn. Code Ann. §4-21-401	-	<u>Employer Practices</u>
Tenn. Code Ann. §39-16-402	-	<u>Official Misconduct</u>
Tenn. Code Ann. §50-6-114(a)	-	<u>No Contract or Agreement written or implied, or rule, regulation or other device shall in any manner operate to relieve any employer in whole or in part, of any obligations created by this Chapter, except herein provided.</u>

15. That the violation of the foregoing statutes and the negligent acts of the agents, servants and employees of the City were a direct and proximate cause of various damages sustained by the Plaintiff.

16. The Plaintiff further contends that the actions heretofore described were taken by the City to otherwise intimidate the Plaintiff and to retaliate against the Plaintiff, and that said actions were also taken maliciously to cause economic consequences to the Plaintiff and his standing in his community. In furtherance of a plan, scheme and device, the City, through its agents, servants and employees, sought to cause serious harm to the Plaintiff, and the City knew, or in the exercise of reasonable care, should have known that the Plaintiff had an expressed and/or otherwise implied contract with the City, wherein the Plaintiff is entitled to certain vested benefits he has secured as an employee, including, but not limited to, the prerequisites of his employment, including health insurance and retirement benefits, and that the Plaintiff had a property interest in his labor, which included the services that he had rendered to the City for a significant period of time, and that the Plaintiff had vested property rights which the City, through its agents, servants and employees, otherwise deprived the Plaintiff of his property rights without due process of law.

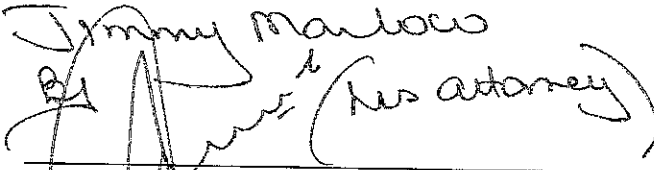
17. That the Plaintiff has sustained damages, including, but not limited to, humiliation and embarrassment, a loss of earnings, a loss of future earnings, a loss of employment benefits, including, but not limited to, sick days, retirement benefits and health insurance. The Plaintiff has also suffered the loss of his accrued compensation to which he was otherwise entitled for sick days and personal days. The Plaintiff has also incurred costs and expenses incidental to the filing of this action, including, but not limited to, attorney fees.

WHEREFORE, the Plaintiff demands:

1. That proper process issue and be served upon the City, and that the City be required to answer this Complaint within the time required by law, but not under oath, its oath being waived.
2. That the Court declare that the conduct engaged in by the City was in violation of the Plaintiff's rights.

3. That the Plaintiff be restored to his employment with the City. Alternatively, in the event that it is impractical to restore the Plaintiff to his employment, that the Plaintiff be awarded such compensatory damages as the Court deems proper under the law and evidence, not to exceed Three Hundred Fifty Thousand Dollars. (\$350,000.00).
4. That the Plaintiff be awarded punitive damages against the City in the sum not to exceed Two Hundred Thousand Dollars (\$200,000.00).
5. That a Jury of Twelve (12) be empaneled to determine the issues of this cause.
6. That the Plaintiff recover his costs and attorney fees.
7. That the Plaintiff be declared to retain all salary, fringe benefits, credits, and other employment benefits to which the Plaintiff was otherwise entitled based upon his employment relationship with the City.
8. That the Plaintiff be granted such further and general relief to which he may be entitled under the law and evidence.

JIMMY MARLOW

BY:  (his attorney)

Ameesh A. Kherani, BPR #030218
Kherani / Dunaway, PLLC
Attorney for Plaintiff
2685 Andersonville Highway, Suite 2
Clinton, Tennessee 37716
Telephone: 865-777-0786
Facsimile: 865-622-8887
Email: AKherani@KheraniLaw.com

COST BOND

We acknowledge ourselves as surety for all costs, taxes and damages in this case in accordance with T.C.A. §20-12-120.

JIMMY MARLOW

Jimmy Marlow
Be *(his attorney)*

Principal
309 E. Hemlock
LaFollette, TN 37766

Surety
Kherani | Dunaway, PLLC
Attorney for Plaintiff
2685 Andersonville Highway, Suite 2
Clinton, Tennessee 37716
Telephone: 865-777-0786
Facsimile: 865-622-8887
Email: AKherani@KheraniLaw.com