

TAMSIN

Do your partners do the same kind of thing you do?

BENTON

Not so much. Youngsters all want to be business lawyers, if not businessmen themselves. Me, I'm just kind of an old-fashioned civil rights lawyer. Getting old myself...

TAMSIN

Oh, here comes the soft soap! When the lawyer across the table from me turns all self-deprecating, I know I have to watch my step!

[KIM enters as TAMSIN is talking.]

KIM

[With a note of asperity]

Always a good idea to watch your step around the lawyer across the table.

[Awkward pause, which KIM herself breaks, addressing BENTON]

I'm Kim Lemieux, Chair of the Department.

BENTON

Benton Wainwright, on behalf of Professor Litwin.

ROBERT

Hi to you too, Kim.

KIM

Of course, hi.

ROBERT

How's Sally?

KIM

Sal's fine. Thanks for asking. How's Dora?

ROBERT

Fine.

TAMSIN

Well, we're all here now. So why don't we get started?

BENTON

Sounds good.

TAMSIN

As you all know, I'm here on behalf of the University. About a month ago, Kim received a letter from you, Benton, complaining of various alleged aspects of the University's treatment of Robert, which you claimed violated Robert's tenure contract and constituted age discrimination. The letter designated itself as a notice of grievance. This conference, agreed to by Benton and myself, is for the purpose of seeing if we can resolve this grievance informally.

There is no record being made of this conference. And there is no mediator present. Nonetheless, I have a mediation-type agreement for us all to sign to the effect that no disclosures or admissions made in this conference can be brought into evidence later in any proceeding. Robert, your lawyer has agreed to this. I'll make copies and give one to everyone before we finish.

[She signs and passes around a form, which everyone will sign as the conversation continues.]

And the first thing that typically happens in conferences like this is that the party bringing the grievance tells everyone what aggrieves him and what he'd like to see done about it. Benton, how do you want to do this?

BENTON

Well, why don't I start, and then Robert can pick it up with details?

Professor Litwin - Robert - has been a tenured member of the faculty of this department and school for twenty years. Both before and after joining the faculty here, he has had a distinguished career as a researcher and teacher, with his name on over 100 peer-reviewed papers. He has been the principal researcher on over \$40 million in grant-funded research. He's been active on committee work, and he has carried a full teaching load until recently, when he taught to the full extent of the opportunities made available to him.

The University and Professor Litwin duly executed a contract at the time he was given tenure. It set forth a formula for his compensation, which may not be changed unless the parties agree. The tenure promise is itself of course about

more than what is in that letter. It is universally understood as a commitment by the University that it will continue to support Robert in all the normal activities of professorship: teaching, committee-work, and of course research and publication.

That commitment has not been honored. The University has employed bookkeeping - well, the polite word, I suppose, is bookkeeping gimmicks to make the formula yield a ridiculously low number on Robert's salary. And Robert has been moved out of the lab in which he has worked for years and into smaller space without justification or need. Some of his equipment -

[BENTON glances at his notes]

a cryostat and an electron microscope, I believe - has been moved out of his lab, also without notice or need. And his chair has flatly told him that she wants him to retire now. He has no desire to quit. And he is still ready, willing, and able to continue his career.

Now, Tamsin, I don't know what Kim understands of the law or doesn't, but you know, and you can tell Kim, that it's illegal to fire someone just because they're old. And you know that outrageous behavior by an employer that forces someone to quit is just the same as firing them in the eyes of the law.

And that's exactly what his chair is trying to do. She's violating the tenure contract with a view to forcing Robert to quit. And the reason seems to be that he's old.

ROBERT

And not even that old. I'm not seventy yet.

BENTON

Exactly. We're not Eskimos here. When members of the tribe get old, we don't force them out on ice floes to drift off to sea and drown when the floes melt.

KIM

Can I respond now?

TAMSIN

Well, I was going to give a sort of structured answer, going over Benton's points one-by-one -

KIM

No, let me. That Eskimo story you just told, Benton? I've heard that one before, and I'm a scientist too, you know, and I've looked into it. And the fact is that story is mostly bunk. First of all, no modern Inuit - that's the correct name for them - would do that. They live in houses in this 21st century of ours. Secondly, that business with the ice floes? Also bunk. How were they supposed to capture ice floes in the first place? Now I have heard that back in the day when they were old-fashioned hunter-gatherers, they sometimes abandoned their elders along the trail - and also their children, by the way. What they were doing was compelled by the extreme narrowness of their ecological niche. There just wasn't food enough to support the whole village; there was a consensus as to who needed to sacrifice themselves so the whole community could go on.

That was the truth of the matter. Nobody was selected out because of their age; you had to go when you weren't able to contribute adequately to the common pot - and by that I mean a literal common pot. If you couldn't help the community obtain food, then in times of privation, tough decisions had to be made.

ROBERT

So that's what you're thinking about me? I can't get food, so it's the ice floe for me?

KIM

There never were ice floes. I just said.

ROBERT

But you want me gone because I can't contribute enough? Is that what you're saying?

KIM

When was the last time you received a grant award, Robert?

ROBERT

It's been longer than any of us like. But you know that's not entirely under my control. I've been sending out the grant applications all the time. NIH just isn't funding them the way it used to.

KIM

Many of us in the department are still being awarded grants.

ROBERT

And everyone getting the grants is younger. The grant-makers discriminate against older investigators. Come on, Kim, I'm telling you something everyone knows.

KIM

Well, I don't know and I can't know what's inside the heads of any grant panel I'm not on - and NIH rules prohibit me from sitting on any panel considering applications from anyone on my own faculty. So no, I don't know what you say everyone knows.

ROBERT

Kim, everybody knows this. You know they worry that the investigators may retire or might lose their marbles or just die. And they're all fixated on developing new talent.

KIM

Well, I don't know that, but if I did?

ROBERT

What?

KIM

Would that be unreasonable? These are tax dollars, Robert. The people's money. It has to be spent wisely. Should we be taking a risk on someone - not necessarily you, but just any principal investigator who presents a greater-than-average risk of not being around by the end of the study?

And again, if the grant-makers were discriminating against you, even illegally, should that be this department's problem? You know, if it were up to me, I'd be giving you those grants - at least I think I would. There was that uncharacteristic error in that paper you published last year that would have a bearing, I guess. But it isn't up to me. I have to deal with the situation on the ground, whatever caused it. Say they're discriminating and don't give you the grants you deserve; I still have to meet budget. And let me tell you, that's not easy.

TAMSIN

This isn't about meeting budgets, though.

KIM

Well, it is, partly. I really don't want to reduce anyone's salary, but if I'm pressed, really pressed, then I'll do what I legally can.

TAMSIN

[Trying to recapture control of the discussion from her runaway client]

And we acknowledge we made an error in reducing his salary below base, which we will fix. But the rest of the reduction was perfectly legal. We add consideration for granted funds only when the professor is the principal investigator. Robert's grant-related work is on another professor's project.

BENTON

[Speaking at the same time as TAMSIN]

The contract doesn't say you can do that!

TAMSIN

[Speaking at the same time as BENTON]

If Professor Chakrabarty hadn't kindly invited Robert to assist him with his enzyme project, it wouldn't appear that Robert would have any need to spend any time in the lab at all. Which bring us to the matter of lab space and equipment. Those aren't Robert's lab space or Robert's equipment; they belong to the Univ -

KIM

[Interrupting]

What use do you have for lab space or equipment, Robert, when you don't have any grants?

BENTON

[Also trying to reassert control]

There won't be any grants without lab space or equipment. Unlike the clients here, I'm not a scientist, and even I know that. If you can't show NIH that you have the space to do your experiments and the equipment to do them with, you will not receive serious consideration.

KIM

We've always made it clear that if a grant does come through -

ROBERT

I almost heard you say "miraculously," Kim.

KIM

If a grant did come through, adequate space would be provided for whatever the study was, and the cryostat that was moved to another lab would be made available if necessary to the project.

ROBERT

Made available? Made available subject to someone else's schedule? That's not the way real science is done, Kim. That's utter bullshit!

[ROBERT and KIM glower at each other.]

BENTON

Robert!

TAMSIN

Well! No one can deny we've done a fine job of getting everyone's point of view on the table.

[To BENTON]

I think we need some time to caucus with our clients, don't you?

BENTON

It would probably be a good idea.

TAMSIN

We could probably set you up in one of the other conference rooms.

ROBERT

[A weak attempt to introduce some levity]

Do they have chairs like these?

BENTON

They may be lovely chairs, but maybe it would be better if Robert and I went back to my office. This discussion may take awhile, and I may have a call or two I have to make.

TAMSIN

Then when do you want to reconvene? Is two hours enough for you? That gives you time to get lunch as well, if you want to. Does that work for you, Kim?

KIM

Well, I'd rather just go straight through, but if we have to break, I can be available then.

BENTON

Actually, Kim, I have something else scheduled for this afternoon. How about we meet here tomorrow at ten a.m.?

TAMSIN

[After glancing at KIM, who nods]

All right. We'll see you then.

[BENTON and ROBERT busy themselves with getting up, picking up papers, and going, as KIM and TAMSIN watch in silence. BENTON speaks as he and ROBERT reach the door.]

BENTON

Till then.

TAMSIN

See you.

[The door closes. TAMSIN and KIM look at each other for a pregnant moment.]

KIM

So did I speak too much? Did I say anything that could damage our defense?

TAMSIN

Honestly, Kim, I don't know.

KIM

I feel sorry for him, I do. But he's past it.

TAMSIN

Not in the eyes of the law. He's tenured, and he's doing his job, and you cannot discriminate against him on the basis of age.

KIM

How about on the basis of he's getting no grants?

TAMSIN

He's turning in grant applications. I've reviewed the file. Is there anything below professional standards in the applications that I've missed?

KIM

Nope. They're adequate.

TAMSIN

I'm glad to hear it, because they wouldn't even be considered if the department chair didn't sign off on them, and you did. It would be awkward if you turned around and said they were lame.

KIM

No, they were adequate. But he's past it, I tell you.

TAMSIN

And what's your basis for saying that? I mean other than generalizations about the fading intellectual powers of older scholars?

KIM

Well, there was that stupid mistake in his paper last year I mentioned. Just computational, but it greatly diminished the significance of his findings. I have no idea how he made that error - or why it wasn't picked up in peer review. Anyway, he had to issue a correction.

TAMSIN

Has anyone else, anyone younger, for instance, ever made a stupid error in a published paper?

KIM

It's happened once or twice. But he's just not adding anything any more.

TAMSIN

Well, you've told me he's still doing his committee work?

KIM

Reluctantly.

TAMSIN

In my experience there aren't many professors who approach committee work any other way.

KIM

I grant you that.

TAMSIN

And the ones that love committee work get penalized by being made department chairs!

[KIM laughs.]

And he's still teaching, except that apparently you handed one of his courses over to another teacher. A younger teacher, right?

KIM

It was an introductory course. I just wanted to get some new blood in to keep the younger students interested.

TAMSIN

Well, uh, Kim, that's one expression you shouldn't be using.

KIM

New blood?

TAMSIN

Uh-huh. To the extent this is about old versus young, our case is probably a loser. I'm just laying that out for you.

KIM

Really? But that's crazy. Our bodies don't work unless old cells die and new ones replace them. Nature's way is to seek new genetic material for plant and animal populations. Why should it be illegal to -

Look, Tamsin, let me tell you what I'm seeing and what I'm dealing with here. I see these youngsters right out of Duke or Stanford or MIT, and they're so full of new ideas and excitement. And they need to get their feet on the first rung of the ladder. But to give them a place on that ladder I have to be able to afford them. I wasn't kidding when I talked about the budget before.

TAMSIN

You don't have to tell me about the University's budget. Believe me, the General Counsel's office is in a constant -

KIM

Tizzy?