



EMPLOYMENT TRIBUNALS

Claimant: Mrs I Grainger
Respondent: AV Capital (UK) Ltd
Heard at: Lincoln
On: Monday 17 September 2018
Before: Employment Judge Blackwell (sitting alone)

Representation

Claimant: In person
Respondent: Mr V Bal, Director

JUDGMENT

The Claimant's claim for a redundancy payment succeeds. The Respondent is ordered to pay to the Claimant the net sum by way of redundancy payment of £8,308.

REASONS

1. Mrs Grainger gave evidence and represented herself. Mr Vickram Bal (a Director) represented the Respondent.

Issues and the law

2. Mrs Grainger brings one claim for a redundancy payment. The only issue as between the parties is whether Mrs Grainger is bound by an agreement, the intention of which was to settle Mrs Grainger's claim for a redundancy payment. Regrettably, neither party has a copy of the document which Mrs Grainger signed but I am satisfied I have had sufficient evidence to identify the nature and contents of the documents.

3. The following facts are agreed:

3.1 Mrs Grainger was born on 17 August 1953 and worked continuously at the Acorn Care Home from 19 December 1988 to 8 January 2018 and her gross weekly wage at the time of her dismissal was £256.

3.2 The Acorn Care Home ran into financial difficulty because it did not have enough residents.

3.3 On 4 December 2017, representatives of the owners informed the employees that the Home would close on 8 January 2018. There followed one to one meetings between the employees and the Respondent.

3.4 It is agreed that Mrs Grainger was handed an agreement in the form which Mr Bal handed up to me and which I have marked VB1. Mr Bal advised Mrs Grainger to get legal advice and asked her to give the Respondent her decision within 30 days.

3.5 There followed a discussion about the amount that Mr Grainger would be offered in exchange for signing the agreement and eventually agreement was reached at £1,250.

3.6 Mrs Grainger then signed the agreement in VB1 form and returned it to the Respondent. She did not in fact receive the £1,250 until 10 September 2018.

3.7 In the meantime, the Respondent have taken the agreement signed by Mrs Grainger to their lawyers who, according to Mr Bal, indicated the agreement need be "witnessed". I suspect that their advice went beyond that. However, Mr Bal sent to Mrs Grainger on 14 March the document IG1, which she duly signed and returned.

4. The relevant law is to be found in section 203 of the Employment Rights Act 1996. The general rule, as set out in subsection (1) is that any agreement which seeks to preclude a person from bringing any proceedings under this Act (ie the 1996 Act) and that includes redundancy payment, is void.

5. There are exceptions and the document VB1 looks like an agreement which is called a settlement agreement and which is dealt with in subsection (1)(f) and in subsection (3) of section 203.

6. On the evidence I have heard, it is clear that Mrs Grainger did not obtain independent legal advice and thus there is no certificate on the agreement signed by Mrs Grainger to that effect and which identifies the adviser. Thus, the agreement is deficient and since it does not satisfy the Act, it is therefore void. Therefore, it follows that the Respondent cannot rely on it.

7. Mrs Grainger is therefore entitled to a redundancy payment calculated as follows:

Date of birth: 17 August 1953

Weekly wage: £236

Thus, in her employment of 29 continuous years, Mrs Grainger had 6 years below the age of 41 and 23 years above it. Thus, the calculation is:

6 x 1 x £236 = £1,416.

23 x 1.5 x £236 = £8,142

Grand total: £9,558

8. However, it is common ground that Mrs Grainger has received £1,250 on account. She is therefore entitled to a net payment of £8,308.

Employment Judge Blackwell
Date: 13 November 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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