



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss Clare Keeble

v

Kiddiecare Nurseries Limited

Heard at: Watford

On: 16th July 2018

Before: Employment Judge Bedeau

Appearances

For the Claimant: In Person

For the Respondent: Ms Linda Adeyemi-Hastrup, Director

JUDGMENT

1. It is declared that there had been an unauthorised deduction from the claimant's wages and the respondent is ordered to pay her the sum of £2,468.22 and shall deduct from that figure national insurance contributions and income tax.

REASONS

1. By a claim form presented to this tribunal on the 30 October 2017, the claimant made the single claim of unauthorised deductions from wages. She asserted that she was entitled to be paid her salary during the period of her suspension from the 26 April 2017 to the 15 June 2017. In the response presented to the tribunal on 4 December 2017, the respondent averred that the claimant was not entitled to the payment as she had not been suspended but was the subject of enquiries into her fitness to work. The case was listed for a final hearing today.

The evidence

2. I heard evidence from the claimant. On behalf of the respondent oral evidence was given by Ms Deborah Gorman, Operations Manager. In addition to the oral evidence the claimant produced a bundle of documents comprising, in essence, of email correspondence and extracts from the respondent's disciplinary policy and procedure in the employee handbook, as a copy of her contract of employment. The respondent produced a much smaller bundle of documents.

3. During the course of the hearing further documents were produced; two medical notes from the claimant's general practitioner, Doctor M Akin-Taylor dated 23 May 2017 but signed 7 June 2017 and an earlier one dated 17 May 2017. The claimant also produced evidence that she had presented a formal grievance dated the 21 August 2017.
4. I have also before me a document dated 26 April 2017, from Ms Gorman to the claimant about her immediate suspension from work and Ms Gorman's outcome letter sent to the claimant on 6 July 2017. The respondent produced particulars of employment and a copy of an email dated 16 July 2018 attached to the statement of employment particulars.
5. Having considered all of the evidence, I made the following material findings of fact.

Findings of Fact

6. The respondent has a number of nurseries providing nursery care to children under the age of five years. Once such establishment is in Hayes where, at all material times up to 19 June 2017, the claimant worked.
7. She commenced employment with the respondent on the 29 January 2013, as, she stated, a Deputy Manager. It became apparent on the 26 April 2018, that she was wearing a tag indicative of having been involved in criminal court proceedings. The tag was visible and could be seen by the parents of the children and staff where she worked. She was called to a meeting with Ms Cheryl Martin and Ms Deborah Gorman, Operations Managers. They asked her whether or not she had made full and frank disclosure of her convictions which may affect her Disclosure and Barring Service check. She told them that she had been convicted of three offences; one of assaulting a Police Officer; the other of racially aggravated harassment; and of driving while under the influence of alcohol.
8. It was clear that these were serious matters which should have been disclosed and the claimant was at risk of her employment being terminated following an investigation. At that point, I am satisfied that the claimant became upset. She referred to her mental state at the time when these offences were committed. She told me that the offences were on one occasion though the convictions were in December of 2016, February 2017 and March of 2017. I am also satisfied that the Operations Managers present were also concerned about the claimant's mental state during the meeting. She was handed a letter dated the 26 April 2017, by Ms Gorman, entitled 'Immediate Suspension from Work'. It reads as follows:

“As you are aware your immediate suspension from work yesterday was as a result of a serious breach on your part of our policies and procedures with a direct impact on safeguarding issues.

We now need to consult with external agencies in relation to the implication what has come to our attention. In the meantime, do not hesitate to contact myself or Cheryl if you need to talk or have any concerns whatsoever. We are available to support you through what must be a difficult situation.”

9. The issue of the claimant's her fitness to work was important having regard to the position she occupied and taking into account mental conditions. The specific nature of those conditions was not disclosed to me during the course of the hearing. After the meeting the claimant's mother attended the workplace to take the claimant home as she was in a distressed state.
10. On the same day the claimant wrote an email to the Operation Managers setting out, in detail, her convictions and outcomes. She was emailed following day, 27 April 2017, by Ms Gorman who stated that the respondent was currently enquiring of outside agencies to complete the investigation process as quickly as possible. It was unclear what was the nature of those enquiries.
11. On the 28 April the respondent's Head Office was asked by the claimant to clarify whether she would be paid during her suspension. The response came from Ms Gorman on the 4 May who acknowledged that it was a difficult time for the claimant but stated that the respondent was working with outside agencies and was waiting for a response. The agencies would be contacted the following day for updates. She was hopeful that the agencies "may have some news" to enable the respondent to conclude the investigation as quickly as possible and for the claimant be informed of the outcome.
12. What is of significance in this reply is the absence of any dispute to the matters stated by the claimant in her 28 April email, namely that she was on suspension and wanted to know whether she would be paid.
13. The claimant wrote on the 5 May stating that she had received her April 2017 payslip and noted that there was a reduction in her monthly pay. She stated that she was expecting a payment of £1,186.05 but instead received a payment of £982.55. She further stated that she was unaware of a sick day's absence of £63.65. The response was from Ms Gorman on 8 May, who wrote the following:

"I will look into your wages for you. I hope you ate [are] well. I have now got all the information back from outside agencies, so I will send you out a letter in the next couple of days inviting you in to conclude the investigation."
14. There was a further email from Ms Gorman later that day stating that she had looked into the claimant's wages and talked to the accountant who would update her wages and pay any outstanding payments. She apologised to the claimant for any inconvenience caused.
15. The following day, 9 May, Ms Gorman emailed the claimant with reference to her mental health and stated that they would be inviting her to a meeting and asked that she obtain a certificate from her doctor stating whether she was fit and able to carry out her normal duties of a Deputy Manager in charge of young children and vulnerable adults.

16. The claimant told me that upon receipt of that email, she approached her doctor who forwarded a letter dated the 17 May 2017. In it, amongst other things, Dr M Akin-Taylor wrote:

“I have no doubt in my mind that she has learnt her lesson and she is back to possibly her level best based on my interactions with her over the past few weeks.

I see no reason why she cannot get back to gainful employment and work with young children and vulnerable adults, hence this letter to support her.

I hope she is given favourable consideration with regards her getting back to work.”

17. The letter did not fully satisfy the concerns raised by Ms Gorman and a further request was made by her for a letter from the claimant’s doctor. On the 23 May, Ms Gorman wrote to the claimant inviting her to a meeting to discuss the investigation and asked that she bring with her relevant documents. A formal letter was sent to the claimant dated the 25 May 2017, by Ms Gorman informing her that the meeting would be held on the 6 June 2017 at 10 am with Ms Adeyemi-Hastrup, Director, and Ms Gorman. The respondent’s concerns being: safeguarding; dishonesty; failure to disclose DBS information; and bringing Kiddiecare Nurseries into disrepute.

18. At that meeting the claimant was informed that there was no conclusion to the investigation. The claimant told me that she was concerned about the length of time it was taking to conclude the investigation and the fact that she had not been paid her salary. She said she raised these issues but was told that it depended on the outcome of the investigation.

19. On the 7 June 2017, Dr Akin-Taylor signed a letter which was the respondent’s letter to him asking that he reply by circling one of the possible answers to a question asked. It stated the following:-

“Thank you for your letter dated 17 May regarding Clare Keeble, D.O.B. 25/9/1995. We understand that she truly regrets her actions, but our aim is to ensure that she is mentally fit and well to continue with her managerial role within the nursery after disclosing her mental health in April 2017.

Can you please circle the appropriate box, sign, date and stamp in the spaces below?”

20. In answer to the above question, the doctor agreed that:

“It is of my opinion that Clare Keeble is fit and well to be in charge of young children and vulnerable adults.”

21. The claimant emailed Ms Gorman on the 13 June by sending an account of her recollection of the discussion on the 6 June and again raised her concerns with regard to the length of time the investigation was taking to reach a conclusion and asked for a copy of her contract of employment.

She told me that a copy was not sent but she had managed to obtain a copy of her contract of employment from another source.

22. It was agreed that the claimant would return to work to a different workplace with changes to her duties. She returned to a different site on the 19 June 2017.
23. In Ms Adeyemi-Hastrup's outcome letter sent to the claimant, it is believed, on the 6 July 2017, she stated that the respondent had taken into account the claimant's length of service when considering the potential effect of her conduct on the respondent and whether it caused irreparable damage to its reputation. The respondent also took into account her length of service, her previous mental health disclosure and that it was willing to support her throughout a difficult period in her life. The decision was not to terminate her employment on the grounds of gross misconduct but as she was medically fit to return to work, it was taken to allow her to return to work. In the fourth paragraph, Ms Adeyemi-Hastrup wrote:

“With regards to your suspension without pay, kindly note that we could not have employed you to work with the children and their parents with an electronic criminal tag on your ankle. This would have impacted seriously on the level of trust parents have with the care of their children and would have undoubtedly brought the company into disrepute, which in turn would have had a serious impact on business.”

24. If that letter was sent in July it was sent after it was agreed that the claimant should return to work but to a different place and had been working since 19 June 2017 at a different site.
25. In the respondent's disciplinary policy and procedure there is a section in relation to suspension from work. It states the following:

“The Nursery will endeavour to keep any suspension as brief as possible. Any period of suspension will be on full pay. However, should you fail to cooperate at any time with the investigatory process, for example by failing to attend any meeting, without good reason then the Nursery reserves the right to treat this as unauthorised absence and this may result in pay being withheld until such time as you attend any rearranged meeting.”

26. These are my material findings of facts.

Submissions

27. I have considered the submissions Ms Adeyemi-Hastrup as well as by the claimant. I do not intend to repeat their submissions herein having regard to rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

The law

- 28. I have taken into account section 13 Employment Rights Act 1996 on a worker's right not to suffer unauthorised deductions from wages unless agreed to in writing or authorised in the worker's contract.

Conclusion

- 29. I am satisfied that the claimant was suspended from her employment with the respondent. The suspension was for two reasons, firstly, that the respondent realised that her conduct in not disclosing her convictions, was serious and had to be investigated. Secondly, it had to consider whether, having regard to her mental state, she was fit and able to return to work at some point in the future and wanted evidence either way.
- 30. I was satisfied that the claimant was told on 26 April 2017, that she was suspended. She was given the letter referring to the suspension signed by Ms Gorman. Ms Gorman did not dispute that it was her signature. There was no evidence before me that the letter produced by the claimant is a forgery. I accept that some of the wording in it does not make sense as it referred to 'suspension from work yesterday' when the claimant was, in fact, suspended from work on the 26 April 2017. That in my view is a minor error on the part of the respondent.
- 31. In the fourth paragraph of the outcome letter by Ms Adeyemi-Hastrup, she referred to the claimant's suspension. Contractually or having regard to the respondent's policy and procedure, someone who is suspended and it does not distinguish between whether the allegations amount to gross misconduct or not, is entitled to be paid during the period of suspension. There was nothing in the claimant's behaviour that entitled the respondent to depart from its practice. The decision to deny her pay was arbitrary. In my view the evidence points to the claimant being on suspension and is, therefore, entitled to be paid her full pay. The claimant's unauthorised deduction from wages claim is well-founded.
- 32. It was agreed between the parties that the gross sum owed to the claimant is £2,468.22. Accordingly, the respondent is ordered to pay the sum of £2,468.22 from which it must deduct any income tax as well as national insurance contributions.

Employment Judge Bedeau
12 September 2018
Date:
14 September 2018
Sent to the parties on:
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For the Tribunal Office