



THE EMPLOYMENT TRIBUNALS

Claimant: Mrs M Lamb

Respondent: Cordant People

Heard at: Newcastle Hearing Centre **On:** Tuesday 29th September 2020

Before: Employment Judge Martin

Members:

Representation:

Claimant: Mr Lamb (Claimant's Husband)

Respondent: Mr P Brill (Solicitor)

JUDGMENT

1. The correct name of the respondent is Cordant Recruitment Limited trading as Cordant People.
2. The claimant's claim for a redundancy payment is not well-founded and is hereby dismissed.
3. The claimant's complaint of unlawful deduction from wages is also not well-founded and is hereby dismissed.

REASONS

Introduction

1. The claimant gave evidence on her own behalf. Mr Thompson Commercial Manager gave evidence on behalf of the respondent. The following documents were before the tribunal and the parties:- mobile worker agreement dated 2015; a number of payslips March - April 2020; letter respondent to claimant 11th June 2020 and letter claimant to respondent 4th September 2020.

The law

2. The tribunal considered:-
3. Section 13 (3) of the Employment Rights Act 1996 “Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion, the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion”.
4. Section 135 (1) of the Employment Rights Act 1996 “An employer shall pay a redundancy payment to any employee of his if the employee--
 - (a) is dismissed by the employer by reason of redundancy.”

The issues

5. Was the claimant dismissed or is she still employed? If she was dismissed, was she dismissed by reason of redundancy? If so, is she entitled to a redundancy payment and in what amount?
6. Has an unlawful deduction from wages had been made from the claimant’s wages. In that regard the tribunal considered what sums were properly payable to her by way of wages and/or under any furlough scheme. If any wages are due and owing to her what amount is due and over what period?

Findings of fact

7. The respondent is a recruitment company, supplying staff including cleaners. The claimant was employed as a cleaner since 2014.
8. The claimant signed a mobile worker’s agreement in September 2015. This agreement provides that she has no permanent place of work. The agreement states that it constitutes a contract of employment. Clause 3.2 states “the company will endeavour to obtain and provide suitable assignments to the claimant but in any event promises to make available to her a minimum of 336 hours of work (the minimum hours)” in any year....there is no obligation on the company to provide minimum hours in any particular months or weeks, spread them evenly over the year, or to provide them at any particular months, location, or intervals. It is acknowledged that there may be periods in which no work is allocated to the employee.” A year is said to be calculated from the first day of employment. Clause 10.4 also provides for termination by both the company and the claimant.
9. The claimant was original employed by Prime Time Recruitment Limited. In 2015 that company transferred to Cordant People Limited. On 2nd March 2020 there was a further transfer to Cordant Recruitment Limited which trades as Cordant People.

10. The claimant worked at the respondent's Newcastle branch. She worked 10 hours a week.
11. The claimant worked on Friday 20th March 2020. Around this time the government ordered a national lockdown and issued guidance about managing the Coronavirus Pandemic. The guidance provided for shielding of certain groups of vulnerable people. A furlough scheme was also introduced for employers. Around this time the claimant telephoned the respondent and informed them that she would not be coming in as from 23rd March because of the government guidelines and her concerns about contracting COVID 19. She was concerned about taking public transport. The claimant is aged 65 and her husband was vulnerable; having a disability.
12. On 25th March 2020 the respondent's Newcastle branch closed. Permanent employees were made redundant.
13. There was no contact between the respondent and the claimant during March and into April 2020. The first contact was around April 2020, when the claimant inadvertently bumped into Mr Thompson of the respondent company. The respondent says that they were not able to contact the claimant because, after the Newcastle branch closed down, the office was moved to Durham and it was difficult to get into those offices. Mr Thompson said there was substantial difficulties in accessing documentation due to significant numbers of staff being on furlough at that time. As a result of all of this difficulties, the claimant was not informed that the Newcastle branch had closed nor was she offered any other assignments during this period.
14. In or around towards the end of April 2020, the respondent offered the claimant an assignment at Queen Elizabeth Hospital in Gateshead. This was for 20 hours a week. The claimant said that assignment was not suitable and declined it. At that time she asked about sick pay and furlough. The respondent decided that the claimant was not eligible for furlough due to her mobile work agreement.
15. On 11th June 2020 the respondent wrote to the claimant to confirm the closure of the Newcastle office branch and to make it clear that did not terminate the claimant's employment. They said they were continuing to look for further assignments for her.

Conclusions

16. The claimant's assignment was not terminated. At no stage was she given notice of termination. Indeed in the letter of 11th June 2020 the respondent specifically confirmed that the claimant remained employed.
17. The claimant's contract of employment did not provide for a place of work, so she could be requested to work on any assignment at any location. The closure of the Newcastle office did not mean that her position was redundant. As a mobile worker, she could be employed at different locations and on different assignments. Following the closure of the Newcastle office, she was, albeit belatedly, offered another assignment in Gateshead which she declined.

18. Therefore, although the Newcastle office closed and the claimant had been working there, this did not amount to a redundancy situation as far as the claimant was concerned because it was not her place of work. On the contrary, she could be asked to work at different locations on different assignments. No notice of termination of employment was given to the claimant nor did her employment terminate by reason of redundancy or otherwise. For that reason her claim for a redundant payment fails.
19. The claimant's contract of employment provides that she will be offered a minimum number of hours of work. At the time the Government announced the lockdown, the claimant was not offered alternative work when the Newcastle office closed. However, she was offered an assignment subsequently in Gateshead, in accordance with the requirement to provide her with the minimum number of hours under the mobile worker agreement..
20. The respondent was not obliged to pay the claimant. She did not go into the Newcastle office for the last couple of days until it closed although she was actually paid for those days. Further, the respondent was not obliged to offer her work immediately after the closure of the Newcastle, so long as they offered her a further assignment which complied with the terms of her mobile worker agreement and offered her with the minimum number of hours set out in that agreement. The offer of the assignment at Gateshead complied with that requirement in the mobile worker agreement.
21. Furthermore, the respondent was not obliged to furlough the claimant. She was employed on a minimum hour's contract over the period of a year. Under that agreement, she is only entitled to be offered a minimum hours, which she was offered. Therefore as she had no contractual right to pay over that period, she was not eligible for the Governments furlough scheme.
22. The claimant was paid up to the date her assignment at the Newcastle office ended. She was then offered another assignment which she declined. Therefore, she was not entitled to be paid anything during that subsequent period or thereafter. She had no contractual right to any wages during that period under the terms of her mobile worker agreement.
23. Accordingly the respondent has not made any deduction from the claimant's wages, nor is she entitled to any wages under the government furlough scheme.
24. For those reasons her claims are hereby dismissed.

EMPLOYMENT JUDGE MARTIN

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 16 October 2020**

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