



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Regina Akinleye

AM Care Home Limited

Heard at: East London Hearing Centre by Cloud Video Platform

On: 18 November 2021

Before: Employment Judge Anderson

Appearances

For the Claimant: Mr Ogunbiyi

For the Respondent: Mr Goldup

JUDGMENT

- 1. The claimant's employment with the respondent was terminated on 6 November 2020.**
- 2. The claimant's claim of unlawful deduction from wages is upheld.**
- 3. The respondent is ordered to pay the claimant the sum of £1489.30 within 28 days from 18 November 2021.**

REASONS

Claim

1. By way of a claim form presented on 2 February 2021 the claimant, Regina Akinleye, claims that she is owed wages for the period 27 September 2020 and continuing, which have not been paid. The respondent filed a response on 8 April 2020 resisting the claim and stating that the claimant was summarily dismissed for misconduct on 25 March 2019.

Issues

2. A list of issues was determined at a hearing on 7 June 2020 as follows:

- a. What was the date on which the Claimant's employment ended?
 - i. Was it 25 March 2019, 31 March 2019 or 1 June 2019 as the Respondent's evidence or documents suggest? The Claimant's case is that she was never sent a letter of dismissal by the Respondent on 25 March 2019 or at any later stage.
 - ii. Did it end by reason of the letter from the Respondent's accountants dated 14 October 2020 providing the Claimant with a copy of her P45 or the later letter dated 6 November 2020? This may turn on whether the Respondent's accountants had ostensible authority to communicate on behalf of the Respondent in taking an irrevocable step such as terminating the Claimant's employment.
 - iii. Was the Claimant still employed by the Respondent at the date when these proceedings were issued, as the Claimant contends, in circumstances where it does not appear that there was any direct communication from the Respondent terminating the Claimant's employment?
- b. To what date was the Claimant entitled to be paid her normal wages, notwithstanding her disciplinary suspension?
- c. Has the Claimant been paid the wages to which she was entitled up until this date?

The Hearing

3. I received an agreed bundle of 94 pages, a witness statement from the claimant and witness statements from two witnesses for the respondent, Ms Mansfield and Mr A Dharmalingam. All of the witnesses attended the hearing and gave evidence.

Findings of Fact

4. The claimant commenced employment with the respondent on 2 November 2016 as a support worker. The respondent is a care home.
5. On 27 February 2019 the claimant was advised in a letter of that date that she would be suspended on full pay while an investigation was carried out into alleged misconduct.
6. On 25 March 2019 the respondent's then sole director, Siva Dharmalingam, drafted a letter to the claimant advising her that she was summarily dismissed. Victoria Mansfield, the deputy manager of the home, countersigned the letter.
7. Ms Mansfield gave evidence that letters of this nature were usually sent by recorded delivery. The claimant said that she did not receive this letter. The respondent was unable to provide evidence of any delivery. Very sadly, Siva

Dharmalingam passed away in August 2019. Taking into account the fact that the claimant continued to be paid her net monthly wage until August 2020 I find on balance that the dismissal letter was not sent to the claimant in March 2019.

8. The claimant continued to receive payments into her bank account in the sum of £1132.22 each month on or around the day she would have expected to be paid. Those payments were referenced 'AM Care Home Pay'.
9. The claimant said that she called Siva Dharmalingam regularly during the period March 2019 until August 2020, asking when the investigation into her alleged misconduct would be concluded. The claimant said that she was assured in each phone call by Siva Dharmalingam that the investigation was continuing, and he gave reasons such as events going on in the care home, for example shift changes, which had delayed matters and as she continued to receive her pay she did not question this further. As these conversations took place only between the claimant and Siva Dharmalingam the evidence is unchallenged. Furthermore, the claimant continued to be paid on a monthly basis. I find that the claimant did contact Mr Dharmalingam on a number of occasions during this period and was told that the investigation was ongoing.
10. The claimant said in oral evidence that she spoke to Ms Mansfield on a number of occasions, requesting payslips. Ms Mansfield said that she spoke to the claimant on or around March 2019 and told the claimant that these would be posted to her and the only other time she spoke to her was in September 2020 when the claimant called to enquire about her payment. I note that the claimant did not refer to any of these conversations in her witness statement and I find that the claimant spoke to Ms Mansfield only twice after her suspension.
11. In August 2020 Siva Dharmalingam passed away and Angappan Dharmalingam took over running the care home with assistance from the respondent's solicitor and accountant while probate work was resolved.
12. In September 2020 the claimant did not receive a payment and contacted the respondent to query this. The claimant spoke to Angappan Dharmalingam, father of Siva Dharmalingam. She was advised of Siva Dharmalingam's death. Angappan Dharmalingam agreed to make the payment himself. I accept the evidence of Angappan Dharmalingam that he told the claimant he would make a payment while he looked into the matter.
13. On 14 October 2020 the respondent's accountant Barnard and Aston Ltd, wrote to the claimant enclosing a copy of her P45 showing a leaving date of 1 June 2019, and stating '*We can confirm that your last pay date was on 31 March 2019.*' The letter went on to say, '*It has come to our attention that Siva Dharmalingam continued to loan you money from April 2019 to August 2020, in the sum of 1132.22 per month totaling 19247.74. We look forward to hearing from you regarding your plans to repay this loan.*'

14. The claimant sought legal advice and her representative wrote to the accountants on 26 October 2020, querying the contents of their letter.
15. The accountant responded on 6 November 2020, reiterating that the claimant's employment ended on 31 March 2019 and that the money paid to her since then was personal money of Siva Dharmalingam, paid as a loan.
16. The claimant filed this claim on 2 February 2021.

Submissions

17. Mr Ogunbiyi for the claimant said that there had been no investigation or disciplinary process relating to the claimant's alleged misconduct and she had never been recalled for interview. He said there was no evidence that the dismissal letter of 25 March 2019 had been sent or that the claimant had received it. He said the respondent's accountant, who first produced the letter, had no evidence that it was sent and Angappan Dharmalingam had confirmed that he had had no dealings with the claimant. Mr Ogunbiyi also noted that Mr Dharmalingam confirmed that he gave no instructions to the accountants regarding the letters of 14 October 2020 and 6 November 2020. He noted that the claimant's evidence that she was constantly in touch with Siva Dharmalingam during the period March 2019 until August 2020 had not been challenged in any form and was consistent with the payments she received. He questioned why the letters from the accountant referred to the payments as loans.
18. Mr Ogunbiyi said that furthermore there was nothing after Siva Dharmalingam's death to show that the claimant's employment had been terminated. He said that the respondent could have taken steps to dismiss the claimant but there was no evidence today that it has taken any steps to do so. He said that for this reason the claimant's employment continues and wages should continue to be paid.
19. For the respondent, Mr Goldup said that the claimant was dismissed on 25 March 2019. He said that the dismissal letter was posted on that date and whilst the claimant denied receipt of the letter the tribunal should infer that it was received. Mr Goldup said that it was not credible that in 18 months the claimant would not seek clarity on what was happening in relation to the investigation or seek any advice.
20. Mr Goldup said that if the tribunal did not find that the claimant was dismissed on 25 March 2019 then she was dismissed not later than 15 October 2020 when she received a letter from the respondent's accountant enclosing her P45. He said that the claimant was focused on whether the accountant had authority in this case but the question for the tribunal was whether on a reasonable construction the letter gave notice to the claimant that she was no longer employed.

Decision with reasons

21. The tribunal must decide the date upon which the claimant's employment ended, or whether, as the claimant argues, the employment still subsists, before it can then go on to decide the claim for unpaid wages. S13 of the Employment Rights Act 1996 sets out an employee's right not to suffer unauthorised deductions from wages.
22. The respondent states firstly that employment ended on 25 March 2019. I reject that assertion as I have found that the dismissal letter was not sent to the claimant, and furthermore the claimant continued to be paid from March 2019 and up until August 2020. Even if it was the respondent's intention to dismiss the claimant on 25 March 2019 this was not clearly communicated to her and the actions of Siva Dharmalingam after that date were not consistent with a dismissal, so she could not reasonably have known that the respondent considered her to be dismissed.
23. The respondent's position is that if the claimant was not dismissed on 25 March 2019, she was dismissed either on or around 14 October 2020 or 6 November 2020 when she, or her representative, received letters from the respondent's accountant confirming that the respondent considered the claimant to have been dismissed in March 2019. The claimant's position is that the accountant acted without authority, there was no evidence to support any of the assertions made in the two letters, and the claimant said in oral evidence that she did not accept the letters as they did not reflect what had happened since March 2019. Angappan Dharmalingam, who became sole director of the respondent after Siva Dharmalingam's death, gave evidence that he did not instruct the accountants on these letters. No evidence was presented to the tribunal as to why the accountants believed that the payments made to the claimant after March 2019 and until August 2020, were personal loans from Siva Dharmalingam. As to why the P45 gave the leaving date 1 June 2019, Angappan Dharmalingam states that on contacting the accountants after the claimant's call in September 2020 he was told that Siva Dharmalingam had instructed them in June 2019, that the claimant no longer worked for the respondent, and they had then issued a P45.
24. In their response of 6 November 2020 to Mr Ogunbiyi's letter of 26 October 2020, the respondents' accountants confirm their status as accountants for the respondent, reiterate that her employment ended on 31 March 2019 and also that a P45 was issued to her. They also confirm for the second time that the money paid to the claimant after March 2019 was not through the company payroll. It is my view that on receipt of this second letter the claimant can have been in no doubt that the respondent considered her employment to have been terminated. Whilst she said in evidence that she did not accept the veracity of the P45, I do not find that there are any grounds upon which to doubt that it is genuine. Certainly, no evidence such as a P60 postdating the P45, has been presented.

25. The respondent queried the accountant's authority in terms of communicating the dismissal. Even though Angappan Dharmalingam told the tribunal that he did not give specific instructions in respect of these two letters, in relation to the dismissal the accountants are simply stating information that they were provided with by Siva Dharmalingam in June 2019. The evidence to corroborate those instructions is that the claimant was removed from the payroll from March 2019 and a P45 was produced with a leaving date of 1 June 2019. Any doubts the claimant had about her dismissal after receipt of the first letter cannot have remained upon receipt of the second letter. I find that the wording of the letter of 6 November 2020 is clear and unambiguous and there was no reason for the claimant to assume that the accountants were acting outside of their authority. I find that the respondent's dismissal of the claimant was communicated clearly to her on 6 November 2020, and that she is due payment of any outstanding wages up to and including that date.
26. The complaint of unpaid wages is therefore upheld, for the period 27 September 2020 to 6 November 2020.

**Employment Judge Anderson
Date: 18 November 2021**