853/10

Den 18. oktober 2010 blev i sag nr. 77.426:

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xxx xxx
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mod

Alpha Insurance A/S
Amaliegade 12, st.
1256 København K

afgivet sålydende

u d t a l e l s e :

Forsikringstageren, der har arbejdsløshedsforsikring i Alpha Insurance A/S, klager over selskabets afvisning af at yde forsikringsdækning i forbindelse med klagerens arbejdsløshed.

I et dateret notat til selskabet har klageren om sagens omstændigheder bl.a. anført:

> "1) My period of unemployment commenced from the 9th July 2009. It is important to mention that this was only friendly confirmed w/e 9th August 2009 due to an un-going dispute regarding my SLA (Service Level Agreement).
>
> This dispute has now been registered with the Employment Tribunals (copy of Acknowledgement attached).
>
> 2) I was initially advised by letter on the 2nd July 09 (copy attached) that I could be mode redundant and considering, that boring my son, all other managers had been finished, the writing was clearly on the wall and Legion were just completing due process.
>
> 2a) At our meeting on the 6th July Legion confirmed that both my son and I were to be made redundant. In my case due to my SLA [Service Level Agreement] on offer was made in order to terminate my employment (see e-mail attached dated 7th July 2009).
>
> On the same day I received a response from … [arbejdsgiver] requesting a further meeting the following day in order to resdue the issues surrounding my SLA. At said meeting Legion decided to terminate my employment due to what they believed to be Breach of Contract which is completely untrue. This was clearly a zynical attempt to avoid paying me my

termination of employment entitlements after confirming I was to be made redundant (copy letter attached).

3)4) I was employed by FM Serviscare from September 2008 until the 27th May 2009 when the Security arm of the business transferred to the Legion Group and several people were made redundant."

Ved skrivelse af 28/1 2010 til nævnet har selskabet bl.a. anført:

"The insured [klager], referred to as … in much of the documentation, purchased a Mortgage Protection Payment Insurance (MPPI) policy with an inception date of 1st June 2008 (see copy policy, attachment …). The insurer referred to under Clause 2.3 was Bankers Insurance Company Limited. In 2009 this policy was transferred to Alpha Insurance A/S and we agreed to continue the cover under the same terms and conditions as the original policy (see letter from British Insurance to [klager] dated 28 April 2009, attachment …).

This MPPI policy is intended to assist the policyholder in circumstances where he becomes unable to make his mortgage payments due to incapacitation or involuntary unemployment. It is therefore a requirement under the policy that the insured is unemployed and does not receive any Payment in Lieu of Notice (Clause 4.30). In addition the insured is not entitled to receive unemployment benefits under the policy if he is to blame for his unemployment, see Clause 8.6 which refers to, 'misconduct which contributes or leads to your dismissal.'

In the present case [klager] was summarily dismissed from his employment with a company named … Group Plc for gross misconduct (see copy letter dated 9th July 2009, attachment …). This dismissal was due to an alleged fundamental breach of Clause 13. of [klagers] Service Level Agreement (see Employment Contract, attachment ...). This document shows that [klagers] contract was initially with a company named … Ltd. but on 20th May 2009 we are informed that the company was plated in administration by the company's funders and on 26th May 2009 the assets of … were sold to a company named … Cleaning who brokered the security contracts to … Group Plc. In effect, from 27th May 2009 was thus employed by … Group Plc. under the same terms and conditions as those in the Employment Contract with ...

Clause 13 of the Employment Contract states that: ...'during the Appointment the Employee shall not, except as a representative of the Employer or with the prior written approval of the Employer, whether paid or unpaid, be directly or indirectly engaged, concerned or have any financial interest in any Capacity in any other business, trade, profession or occupation (or the setting up of any business, trade, profession or occupation). [klager] was until 1st October 2009 registered at Companies House in the UK as a shareholder and Director of a new company named … Holdings Ltd., a potential trade competitor of … Group Plc. [Klager] apparently signed an application for termination of his appointment as Director and a stock transfer form relating to his shares in that company on 27th May 2009 (see attachment ...), but this was not actually sent to Companies house until much later and until October 2009 [klager] was therefore registered as being involved with ...

Following the termination of his employment by … Group Plc. [klager] submitted a claim to the Employment Tribunals, receipt of which was acknowledged on 12th August 2009 (see attachment ...). Full details of this Employment Tribunal claim have not been divulged to Alpha Insurance A/S' claims handlers in the UK, Adminicle Ltd., however [klager] has in an e-mail dated 19th October 2009 indicated that the claim is for nonpayment of his Service Level Agreement. (see attachment ...). [Klager] is therefore apparently disputing his dismissal from

his employment and is claiming compensation in lieu of notice. The merits of that claim are not for Alpha Insurance A/S to decide, we can only abide by the terms of our insurance policy, which clearly state that in cases of misconduct the insured is not entitled to receive unemployment benefits.

[Klager] has registered himself as being unemployed with the relevant UK authorities. [Klager] states the date of his unemployment to be 9 July 2009 i.e. the date of the dismissal letter. However, if [klager] is successful at the Employment Tribunals hearing and obtains compensation in lieu of notice, the commencement date of his unemployment will actually be the date any awarded period of notice expires. The relevant unemployment date under our insurance policy is therefore also dependent upon the outcome of the Tribunals hearing.

[Klager] submitted a claim under his MPPI policy to Adminicle Ltd. on 4th September 2009 (see attachment ...). This claim was dealt with swiftly, the initial letter from 11th September requested additional information. The letter dated 18th September indicated that the claim could not be properly assessed until the outcome of the Tribunal is decided and the letter dated 19th October re-iterated the position of Alpha as insurers (see attachments..., ... & ...).

Already on 5th October 2009 the Financial Ombudsman Service in the UK sent a letter to Adminicle Ltd. advising that [klager] had lodged a complaint about Adminicle's handling of this claim (see attachment ...). The complaint form attached to Ankenævn for Forsikring's letter of December is dated 10th October 2009. [Klager] has expressed his unhappiness with our handling of this claim and requested that we pay his claim under this insurance policy until the Tribunal hearing and has stated that he is willing to make repayment if he wins.

Alpha's position in this matter is as follows:

1. [Klagers] was summarily dismissed for gross misconduct and a fundamental breach of his Employment Contract and in such circumstances; under Clause 8.6 of the policy, no payment is due.

2. However, since [klager] has decided to make a claim to the Employment Tribunals, if the Tribunals decide that [klager] was unlawfully dismissed and he is accordingly exonerated and awarded compensation, then we as insurers are prepared to reconsider his claim, bearing in mind that he is not entitled to benefits for any period for which he receives payment in lieu of notice. The result of the Tribunal hearing is due in January or February 2010 and we will look forward to being informed of that result so that we can reconsider our position with regard to this claim.

3. [Klagers] suggestion that we make payment to him until the result of the Tribunal is received is not an acceptable situation. We as insurers are happy to pay valid claims, but are not willing to provide policyholders with a kind of bridging finance, for a claim that is currently not valid, speculating on the outcome of an Employment Tribunals hearing.

We firmly believe that this claim has been dealt with in a proper and professional manner."

I klagerens ansættelseskontrakt hedder det bl.a.:

"13. OUTSIDE INTERESTS

13.1 Subject to clause 13.2, during the Appointment the Employee shall not, except as a representative of the Employer or with the prior written approval of the Employer,

whether paid or unpaid, be directly or indirectly engaged, concerned or have any financial interest in any Capacity in any other business, trade, profession or occupation (or the setting up of any business, track, profession or occupation).

13.2 Notwithstanding clause 13.1, the Employee may hold an investment by way of shares or other securities of not more than 5% of the total issued share capital of any company (whether or not it is listed or dealt in on a recognised stock exchange) where such company does not carry on a business similar to or competitive with any business for the time being carried on by any Group Company.

13.3 The Employee agrees to disclose to the Employer any matters relating to his spouse or civil partner (or anyone living as such), children or patents which may, in the reasonable opinion of the Employer, be considered to interfere, conflict or compete with the proper performance of the obligations of the Employee under this agreement."

Af forsikringsbetingelserne fremgår bl.a.:

"4. Definitions
Wherever the following words appear in this document they will have the following meanings:
…
4.30. Unemployment, Unemployed • Being out of Work and registered as Unemployed with Your Local Job Centre Plus office or the Department of Health and Social Security in Northern Ireland. You must be available for and actively looking for Work and able to provide third party documentation as requested to support this each month. We will not consider You as Unemployed for any day You receive Payment in Lieu of Notice.
…
8. Unemployment Benefit Exclusions
You will not receive Unemployment benefits in the following circumstances:
…
8.6. Misconduct which contributes or leads to Your dismissal"

Nævnet udtaler:

Nævnet må på det foreliggende grundlag - hvor nævnet ikke kender udfaldet af den arbejdsretlige sag, klageren har anlagt mod sin tidligere arbejdsgiver - lægge til grund, at klageren i strid med sin ansættelsesaftale har haft ansættelse og interesser i et konkurrerende firma. Nævnet finder på denne baggrund ikke anledning til at kritisere, at sel-

skabet med henvisning til forsikringsbetingelsernes pkt. 8.6. har afvist at yde forsikringsdækning.

På denne baggrund finder nævnet ikke anledning til at kritisere selskabets afgørelse.

Marianne Højgaard Pedersen
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