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Den 14. marts 2011 blev i sag nr. 78.343:

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mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren har forsikring med dækning ved bl.a. ufrivillig arbejdsløshed (Mortgage Payment Protection Insurance) i Alpha Insurance A/S. Han klager ved sin advokat over, at selskabet har afvist at yde dækning ved ufrivillig arbejdsløshed i hele perioden fra februar til september 2009. Endvidere er han utilfreds med, at selskabet ikke vil dække honoraret til hans advokat.

Selskabet har i anledning af klagerens arbejdsløshed ydet dækning i perioden 7/2 til 18/3 2009. Ifølge selskabet skyldes dette en fejl. Selskabet har dog undladt at kræve beløbet tilbagebetalt. Selskabet har afvist at yde fortsat dækning efter den 18/3 2009. Afvisningen heraf har selskabet begrundet med, at klageren har fået kendskab til sin forestående arbejdsløshed i karenstiden. Subsidiært har selskabet gjort gældende, at der ikke er tale om ufrivillig arbejdsløshed.

Af klageskemaet, som nævnet har modtaget den 19/8 2010, fremgår:

> "1. Statement of claim, a brief outline of the case. …
> The policy was taken out in September 2008 at that time I was employed by D. In or around November 2008 notice was given that the L. branch of D. was to close but employees were given the option to move to the S. branch. I opted for the transfer and commenced working in

the S. in January 2009. I was not made redundant and re-employed but rather simply moved from one depot to another. It became apparent early on that the move to S. not convenient and in February 2009 I was not convenient and in February 2009 I was formally made redundant. I made a claim on my policy and was paid the first months installment which was the last installment as the insurance company refused to honour the policy thereafter.

2. What specifically is it you want the insurance company to do? …
I wish the insurance company to honour the policy which I took out in good faith and have met the terms of med policy. Honour the policy payments from February 2009 - September 2009 and any fees that the solicitor will have after all this is over."

Selskabet har i brev af 4/9 2010 til nævnet redegjort for sagen og sin afgørelse således:

"[Klager] purchased an insurance policy covering accident, sickness and unemployment starting on 5 September 2008 (Attachment 1.). This policy contained an initial exclusion period for unemployment of 90 days (page 3). Page 4 of the policy states that, 'The cover excludes: … Unemployment occurring within the first 90 days of the policy where cover is to protect an existing mortgage or loan' and page 9. explains, 'No benefit will be payable to You if …You are notified of or made aware by any means, within the Initial Exclusion Period, of anything which might lead to Your Unemployment not withstanding that no specific reference has been made to Your personal situation and that Your Unemployment may not take place until alter the Initial Exclusion Period'.

[Klager] submitted a claim for redundancy from 6 February 2009 and on the PR50 form (Attachment 2.) he indicated that the date of his notice of termination was 12 January 2009. Since 12 January 2009 is outside the initial exclusion period of the insurance policy, on the basis of the information supplied, Alpha Insurance A/S claims representative P. wrote to [klager] on 14th April 2009 (Attachment 3.) confirming his claim had been accepted and enclosing a payment relating to the period 7 February 2009 - 18 March 2009.

However, in the days between 14 April and 1 May 2009, it came to the attention of Alpha Insurance A/S claims representatives that the closure of the Service Centre in L. where [klager] was employed when he purchased his insurance policy had actually been advertised in the press already on 7 November 2008. In our view [klagers] claim is therefore invalid, since he was made aware of his impending unemployment during the insurance policy's 90 day Initial Exclusion Period.

[Klager] was informed of this by letter on 1 May 2009 (Attachment …). As a gesture of goodwill we did not ask him to repay the sum paid to him incorrectly in April, but it was made clear to [klager] that no further payments would be made and why.

[Klager] challenged this decision and further letters were sent to him or his solicitors on 20 May 2009, 12 June 2009 and 7 September 2009, confirming Alpha Insurance A/S' position and advising of the complaints procedures available. (Attachments …). With the final letter from September, a copy letter received from D. was enclosed, confirming that the public announcement with regard to the closure of the L. branch of D. was made on 7 November 2008.

[Klager] opted to instruct solicitors, B. to deal with the complaints aspect on his behalf and they have written several letters (Attachments …) arguing that:

A. [Klager] was not served with his redundancy notice until 12 January 2009 which is outside the Initial Exclusion Period of the policy.

B. That according to [klager], D. did not make the announcement of the closure until early December 2008.
C. That [klager] did not read the Derry Journal newspaper and was therefore not made aware of the proposed closure in November 2008.
D. That [klager] was not initially made redundant, but simply relocated to the S. office.

Alpha Insurance A/S replies to these points as follows:

A. The date of receipt of the actual redundancy notice is not relevant because [klager] was made aware by other means, within the Initial Exclusion Period, of the circumstances leading to his eventual unemployment.
B. We have supplied a copy of the D. letter confirming the announcement of the closure was made on 7 November 2008 (Attachment …) and in the letter from D. to [klager] dated 15 December 2008 (Attachment …), it is made clear that there have been extensive meetings and discussions between D. and [klager] prior to that date regarding the closure of the L. depot.
C. We have already demonstrated that even if [klager] did not read that particular newspaper, he was made aware of the proposed closure by other means. Moreover, the closure of the L. depot must have been the subject of general discussion amongst [klagers] colleagues and D. customers following the public announcement from D.
D. [Klager] did receive a letter from D. dated 15 December 2008 referring to his transfer to S. to commence on 12 January 2009, but that letter also clearly states that 'the company will leave your redundancy package in place for a period of three months in the event you feel things have not worked out for you'.

The availability of a redundancy package to [klager] and the fact that he took this up within the three month period referred to shows that [klager] was in fact made redundant and that redundancy (and the 'redundancy package') related back to his employment in L.

This is borne out by the first Complaint form completed by [klager] (Attachment ...) where he indicates that 'there was not a position within the S. branch for me. Furthermore they knew that there was going to be further closures nationwide …'.

In the second Complaints form addressed to Ankenævnet for Forsikring [klager] writes. 'It became apparent early on that the move to S. was not convenient and in February 2009 I was not convenient and in February 2009 I was formally made redundant'.

It is clear from this comment that[klager] himself did not find the move to S. convenient. This, as well as the comment of his solicitors in their letter to the F. of 3 November 2009 (Attachment …) that '[klager] took his redundancy from D. in January', leads us to assume that [klager] actually chose to accept the open offer of a redundancy package instead of continuing to work for D. in S.

If this is indeed the case, it is appropriate for us to point out that there is in fact a second relevant exclusion contained on Page 8. of the insurance policy. This states, 'No benefit will be payable to You if: … You accept voluntary redundancy, resign or retire'. Therefore, if [klager] actually decided to accept voluntary redundancy, he is not entitled to any payment under his policy, regardless of what he was aware of during the Initial Exclusion Period.

In summary, [klagers] claim for unemployment benefit from February - September 2009 plus the legal fees he has incurred for the appointment of a solicitor is rejected by Alpha Insurance A/S, for all of the reasons previously stated and elaborated upon above."

Nævnet har fået forelagt de bilag, som parterne har fremlagt.

Af forsikringsbetingelserne fremgår bl.a.:

"**Initial Exclusion Period:** …
Unemployment 90 days

Waiting Period: …
Unemployment 30 days

…
The cover excludes:

In common with similar protection policies, cover does not extend to the following:
…
- Unemployment occurring within the first 90 days of the policy where cover is to protect an existing mortgage or loan

…
PAYMENT OF CLAIMS
…
2. Unemployment Benefit
If **You** are **Working** and become **Unemployed** after the **Initial Exclusion Period** during the **Period of Cover** for longer than the **Waiting Period We** will pay to **You** one **Monthly Benefit** on the first day that **You** remain continuously **Unemployed** following the **Waiting Period**.
…
Unemployment cover under this **Policy** will vary in accordance with **Your** employment status:
…
(iii) Self Employment
…
No benefit will be payable to **You** if:
…
You are notified of or made aware by any means, within the **Initial Exclusion Period**, of anything which might lead to **Your Unemployment** not withstanding that no specific reference has been made to **Your** personal situation and that **Your Unemployment** may not take place until after the Initial **Exclusion Period**.
…
You accept voluntary redundancy, resign or retire;"

Nævnet udtaler:
Efter sin gennemgang af sagen finder nævnet, at klagerens arbejdsløshed ikke kan karakteriseres som ufrivillig i forsikringsbetingelsernes forstand. Allerede derfor kan nævnet ikke pålægge selskabet at yde forsikringsdækning i anledning af klagerens arbejdsløshed. Nævnet kan følgelig heller ikke pålægge selskabet at dække advokathonoraret.

Herefter

b e s t e m m e s :

Klager får ikke medhold.

J. Hermann