Ankenævnet *for* Forsikring

Den 17. december 2018 blev i sag nr. 92434:

xxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Alpha Insurance A/S (under konkurs)
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren har forsikring ved ulykke, sygdom og arbejdsløshed. I klageskema af 12/6 2018 til nævnet har klageren bl.a. anført:

2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?

I WANT MY CLAIM SETTLED IN FULL, I WANT MY PREMIUMS REIMBURSED FROM THE END OF THE CLAIM WHICH IS CURRENT I DON'T OR WHEN I CEASED TO SIGN ON WITH THE JUS CENTRE ON SEPTEMBER 19TH 2017, TO BE REIMBURSED. - I HAVE BEEN PAYING THE PREMIUMS IN FULL UP TO THE CURRENT DATE.

I en supplerende redegørelse til klagen har klageren bl.a. anført:

> "I wish to lodge a complaint against Alpha group through whom I have accident, sickness and unemployment insurance purchased in the UK through Trent Services. I did lodge a complaint with the Financial Ombudsman in the UK but was advised I need to pursue my complaint with yourselves.
> I was working for [arbejdsgiver] from October 2012 until November 2016 when my role was made redundant. My salary on leaving was £… and my insured cover through Trent / Alpha is £2500 per month.

Trent refused to settle my claim and once I made a complaint to Alpha Group, the insurer got involved. Eventually after some time they agreed to pay my claim only for a short period from December 1st 2016 to January 17th 2017 when my state unemployment payment dropped from £73 to zero, but National Insurance payments continued to be made until September 17th 2017. I have been paying my full premium since I began my insurance with them in 2015 until today at £122 per month.

The main reason it seems for this non-payment is a role which is paid with my local Health Authority, called NHS … Clinical Commissioning Group. It is a contract of service not unemployment and is about 7 hours a week, usually 2-4 meetings a month. I am Chair of …, and a Lay Member / Non Executive.

I feel that this role should not prevent my claim but Alpha consider this employment, and that I am not unemployed as the State is not paying my Job Seekers Allowance at the full amount.

My desired outcome is that my claim is paid in full from December 1st 2016 to September 17th 2017 less the payment made to date of £4,583, so I believe I should be paid a further £19k. I also request that my insurance premiums from September 18th 2017 are refunded and my policy ended.

I have two other ASU policies one with [forsikringsselskab 1] which has made pro-rata payments of £1250 less my NHS remuneration. I have a active complaint with them through … .

The other policy is with [forsikringsselskab 2], which has paid in full and in a timely manner at approximately £850 a month since December 2016. It pays out for up to a 2 year period. They have made no deduction for the monies I receive under my contract of service from the NHS.

I have continually been seeking employment and am able to supply emails and applications that show nearly 1000 jobs that I have applied for over the last 18 months.

Alpha have also flagged up two Limited companies of which I am a sole director that are not trading- one I opened in 1994 the other in 1999. Except for the period September 1999 to April 2000 … and April 2009 to July 2013 … have not actively traded and I have been employed full time since September 1993 through to November 2016 except illness March 1996 to May 1996 and unemployment January 2009 to August 2009.

I was also diagnosed … in March 2017 and put on medication, which I am still on today. I took no time away from my job hunt and continued to seek employment.

I attach my contract for employment from [arbejdsgiver], my contract for service from … and a copy of my unemployment claim from the Job Centre with dates of signing on.

In summary

1) I was signing on until September 17th 2017, the date to which the Job Centre was paying National Insurance.
I then started a course, but have continued seeking full time employment since that date until now.

2) I receive no financial reward from my limited companies …
3) Whilst I was being treated and since being on medication I have continued to apply for jobs, attend for interviews and sign on. I could have requested a sick note for at least a two week period which I did not. I did not want to convert my claim from unemployment to sickness, though you would have possibly made payment for this claim.
4) The part time role of up to 7 hrs a week that pays £… a month after tax was a role I have been doing since end May 2015 and I am surprised and disappointed that it is due to this role that Alpha will not even make a part or pro-rata payment for the balance of my claim after my Job Seekers Allowance was cut to zero due to the payment I receive from the NHS as a lay member. It is a contract for service not employment, and end May 2018 I have to re-apply for the role against other candidates. If successful I may stay on a further 2 years. It is an appointment not employment. This has been renewed for a further 3 years.

As you can imagine first the declined settlement and then the partial settlement which only pays a part of the period of my unemployment has caused great upset and distress."

Selskabet har i brev af 13/6 2017 til nævnet bl.a. anført:

"[Klageren] has already raised his complaint with Alpha Insurance A/S in bankruptcy (Alpha)'s claims administrators in the U.K., Trent-Services (Administration) Ltd. (Trent) and with Alpha directly. [Klageren] has provided the Board with copies of the two letters sent to him by Alpha dated 11thAugust 2017 and 8th December 2017. We would now like to provide the Board with a further two letters sent to [klageren] by Trent dated 11th May 2017 and 30th May, which supplement the explanation of Alpha regarding the rejection of the claim.

[Klagerens] policy commenced on 25th November 2015. (See policy documents - Terms & Conditions and Transfer letter enclosing Schedule of lnsurance.)

With effect from 31st October 2017 [klageren] was made redundant from his job at [arbejdsgiver]. However, on behalf of Alpha, Trent declined [klagerens] claim with reference to the policy terms and conditions.

In your policy terms and condition on page 3, it says that:
"Unemployed/Unemployment:

Means **You** are out of work directly due to circumstances beyond Your control and You must be:-

a) receiving lncome Support, Job Seekers Allowance or You do not qualify for these benefits because You have been entitled to make reduced National lnsurance contributions in the past; ... "

Although, [klageren] initially submitted a letter from the Job Centre, dated 30th January 2017 explaining that he was awarded job seekers allowance from 30th November 2016 until 16th January 2017, he then provided a further letter from the Job Centre dated 31st January 2017 which stated that, due to the amount of his part-time earnings (as a board member at …), they could not pay Jobseeker's allowance to him with effect from 7th December 2016.

In the "Statement of Claim" section of the Complaints form sent by [klageren] to the Board, he writes: "CLAIM PART PAID AFTER COMPLAINT FROM 1/12/16 – 31/1/17, £4,583."

Although [klageren] did not fulfil all of the requirements for eligibility to receive benefit under his policy with Alpha, in an effort to reach a final compromise with regard to his complaint, two proposals were put to [klageren] in Alpha's letter of 11th August 2017. He was offered either a full return of all premiums paid with interest or payment for the period when he was in receipt of Job Seekers Allowance.

[Klageren] accepted payment of £4,583.15. This is for the period 8/12/16 - 2/2/17 - exactly the same 55 day period when he was actually in receipt of Job Seekers Allowance (see copy letter from Trent dated 1st November 2017). Despite accepting this payment, [klageren] has chosen to continue with his complaint.

On 30th May 2017 Trent wrote a letter to [klageren] explaining that, in order to be eligible for benefit from the insurance, he needed to be totally out of work.

On page 3 of the Policy Terms and Conditions the following is written:

"Unemployed/Unemployment:
…
d) entirely without work… "

[Klageren] has not been entirely without work at any time, as he receives a salary from …. Therefore, he has not been 'entirely without work' as defined in the policy and, consequently, he does not meet the policy terms and conditions for an acceptable claim.

The position of Alpha is therefore that [klageren] does not have an eligible claim.

For [klagerens] information, Alpha Insurance A/5 was put into liquidation on 8th May 2018. Further information on the bankruptcy and its consequences can be found on the company website: www.alphagroup.dk"

Klageren har i brev af 9/7 2018 til nævnet bl.a. anført:

"In addition I would like to add that I never regarded my … service as employment. My earnings from employment dropped from over £100k with bonus and benefits to zero.

Many individuals serve as part time soldiers or as councillors (on local government) which are also paid. I have been a paid part time soldier in the past- this is never considered one's employment but rather being a reservist. Society relies on individuals who give up their time to do additional community service some times paid sometimes with fee or salary.

Alpha are being particularly harsh in paying nothing for the majority of my claim which I held a policy in good faith, paying the full premium on time and without question.
Even the government reduced my state benefit £ for £, as I received more than £73 a week in fees for my contract of service with the … - a non-pensionable without holiday or sick pay.

If Alpha had done this I would have received over £1500 a month for the months that they have paid nothing."

Selskabet har i brev af 30/7 2018 til nævnet bl.a. anført:

> "In his e-mail, [klageren] states that he 'never regarded my … service as employment'. We must respectfully point out that, how [klageren] regarded his position with … is irrelevant for the purpose of his claim under his insurance policy with Alpha Insurance A/S in bankruptcy (Alpha).
>
> According to the policy terms and conditions (copy already supplied), in order to be eligible for Monthly Benefit, [klageren] needed to be continuously Unemployed. The term 'Unemployed' is defined in the policy…
> …
> [Klageren] did not receive income support or Job Seekers Allowance for any period other than that for which Alpha offered (and indeed did) make payment to him, being 8/12/16 - 2/2/17 and in fact he has not been 'entirely without Work' at any time.
>
> It is noted that [klageren] has asked the Board for his claim to be settled in full and he has also requested a return of premiums. Alpha has already explained the reason why [klageren] is not entitled to payment of his claim. As far as his request for a return of premium is concerned, we wish to point out that, in the interests of settling his complaint, [klageren] was offered a full return of premiums OR payment of his claim for the period when he received Job Seekers Allowance. [Klageren] chose the latter, thereby affirming the contract. [Klageren] has thus forfeited the right to any return of premium from Alpha.
>
> If [klageren] had requalified for Monthly Benefit due to unemployment at a later date, his claim would have been paid. Similarly, if he had found new employment, he would have enjoyed the full coverage for Accident, Sickness and Unemployment provided under the policy. Therefore, no refund of premium is due."

Til dette har klageren fremsendt brev af 16/8 2018, hvori det bl.a. er anført:

> "To clarify I am seeking full payment of my claim for the period that has not been paid and a refund of premiums only from September 17th 2017 to July 9th 2018 when I started new full time employment at a much reduced salary of £24,500. If Alpha wish to continue to insure me then I request that Trent accept my cover at a lower premium in the light of a much lower income. However until this complaint is resolved I may still not be insured for this new income whilst I am also serving as a Non Executive with ….
>
> To reiterate I feel Alpha are being particularly harsh in paying nothing for the majority of my claim (February to September) which I held a policy in good faith, paying the full premium on time and without question. The broker never highlighted that I may not be covered."

Hertil har selskabet i brev af 4/9 2018 til nævnet bl.a. anført:

> "In his e-mail, [klageren] states that he is requesting a refund of premiums from September 17th 2017 to July 9th 2018. The premium amount paid for that period is £1,114.90. We have however already explained why no refund of premium is due. [Klageren] could have chosen to cancel his

policy at any time, but he did not to do so, if he had met the eligibility requirements he would have been able to make a claim, and he is therefore not entitled to any return of premium now.

In addition, [klageren] writes, "If Alpha wish to continue to insure me ..."

It is important for [klageren] to know that this is not possible. Alpha Insurance A/S was placed in bankruptcy on 8th May 2018 and all policies were automatically terminated on 11th August 2018. [Klagerens] coverage has therefore now ceased and he will have to seek alternative insurance elsewhere."

Nævnet har fået forelagt bilag fra sagen. Et uddrag gengives i det følgende.

Af brev af 23/2 2018 fra jobcenteret til klageren fremgår bl.a.:

"Thank you for your request for information.

The details are as follows:-

You were awarded Jobseekers Allowance Contributory

Claim start date 07.12.2016

Claim termination date 30.01.2017

At a weekly rate of £73.10

Paid up to: 30.01.2017.

Any other information: Another JSA application was made 24.02.2017 to 11.09.2017 but this was nil entitlement due to part time earnings being more than he would have been entitled to on JSA"

Af forsikringsbetingelserne fremgår bl.a.:

"**2. WHAT THE WORDS MEAN**
Some of the words and phrases **We** use in this **Policy** have special meanings and appear in bold typeface…
…
Unemployed/Unemployment Means **You** are out of **Work** directly due to circumstances beyond **Your** control and **You** must be: -

- **a)** receiving Income Support, Job Seekers Allowance or You do not qualify for these benefits because **You** have been entitled to make reduced National Insurance contributions in the past;
- **b)** actively seeking **Work**;
- **c)** registered as available for **Work** at a Job Centre Plus or the Department of Health and Social Security in Northern Ireland;
- **d)** entirely without **Work**;
- **e)** not in receipt of wages in lieu of notice.

Alternatively if **You** stop **Work** to become a full time **Carer You** must be registered as a **Carer** and entitled to carer's allowance and not in receipt of any payment in lieu of notice.
…
Work or Working Means gainful **Permanent Employment**, **Contract Employment** or **Self Employment** within the United Kingdom for a minimum of 16 hours per week and paying the appropriate National Insurance contributions.
…
3. PAYMENT OF PREMIUMS
Premiums are payable by direct debit, monthly in advance by **You**. If **Your Premium** remains unpaid for 30 days after the due date Your cover under this **Policy** will cease.

If **You** are in receipt of **Monthly Benefits You** must continue to pay **Your** monthly **Premium** as it falls due in order to ensure continuous cover under this **Policy**.
…
4. PAYMENT OF CLAIMS
4.1 Accident Sickness and Hospitalisation
If **You** are **Working** and become unable to **Work** due to an **Accident, Sickness or Hospitalisation** during the **Period of Cover** for longer than the **Waiting Period**, **We** will pay to You…
…
4.2 Unemployment
If **You** are **Working** and become **Unemployed** or a **Carer** after the **Initial Exclusion Period** during the **Period of Cover** for longer than the **Waiting Period We** will pay to **You**…
…
8. CANCELLATION
You have a statutory right to cancel this **Policy** by giving written notice to the **Administrator** within 30 days of the **Policy Start Date**. In these circumstances **We** will refund all of any **Premium You** have paid provided **You** have not made a claim under this **Policy**.

Thereafter **You** may cancel **Your** cover under this Policy by writing to the **Administrator** and quoting **Your Policy** number. **Your** cover will cease on the date **We** receive **Your** request in writing. No refund of **Premium** will be made if **You** cancel **Your** cover under this **Policy** more than 30 days after the **Policy Start Date**."

Nævnet udtaler:

Klageren har forsikring ved arbejdsløshed. Han blev opsagt fra sit arbejde med udgangen af november 2016, og hans krav er, at selskabet betaler forsikringsydelser fra den 1/12 2016 til den 17/9 2017 med fradrag for allerede udbetalte ydelser. Han kræver endvidere tilbagebetaling af præmie fra den 17/9 2017, hvor han afmeldte sig jobcenteret, og til den 9/7 2018, hvor han igen fik arbejde.

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Selskabet har udbetalt ydelser fra den 8/12 2016 til den 2/2 2017, hvor klageren modtog arbejdsløshedsdagpenge, og har med henvisning til forsikringsbetingelserne afvist, at klageren er berettiget til forsikringsydelser ud over denne periode. Selskabet har afvist at tilbagebetale præmie med henvisning til, at klageren har valgt at fortsætte forsikringen, og at forsikringen ville have dækket, hvis han på et senere tidspunkt havde opfyldt forsikringsbetingelserne.

Klageren har fremlagt et brev af 23/2 2018 fra jobcenteret, hvoraf fremgår, at han har modtaget "Jobseekers Allowance Contributory" fra den 7/12 2016 til den 30/1 2017.

Efter en gennemgang af sagen kan nævnet ikke kritisere, at selskabet har afvist at udbetale yderligere forsikringsydelser og har afvist at tilbagebetale præmie. Nævnet har blandt andet lagt vægt på, at klageren ifølge brev af 23/2 2018 fra jobcenteret har modtaget arbejdsløshedsdagpenge i perioden 7/12 2016 – 30/1 2017, og at klageren ifølge forsikringsbetingelserne blandt andet skal modtage arbejdsløshedsdagpenge (Job Seekers Allowance) for at blive anset som arbejdsløs i forsikringens forstand. Nævnet har endvidere lagt vægt på, at klageren ifølge forsikringsbetingelserne også skal være tilmeldt et jobcenter som jobsøgende, og at klageren valgte at fortsætte forsikringen efter, at han frameldte sig jobcenteret den 17/9 2017, selv om han ikke var kommet i arbejde. Nævnet har også lagt vægt på, at forsikringen kan opsiges til enhver tid, og at der ikke foreligger oplysning om, at klageren meddelte selskabet, at han ikke længere var tilmeldt jobcenteret og fortsat arbejdsløs, og at selskabet derfor ikke har haft lejlighed til at oplyse ham om de forsikringsmæssige konsekvenser heraf.

b e s t e m m e s :

Klageren får ikke medhold.

Marianne Højgaard Pedersen
formand