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EMPLOYMENT TRIBUNALS

Claimant: Mrs M A Dunn

Respondents: (1) Dial-a-Carer Ltd (in liquidation)
(2) Secretary of State for Business, Energy & Industrial Strategy

Heard at: East London Hearing Centre

On: 2 March 2018

Before: Employment Judge Ferguson

Representation

Claimant: In person

First Respondent: None

Second Respondent: None

JUDGMENT

It is the judgment of the Tribunal that:

- 1. The name of the First Respondent is amended to Dial-a-Carer Ltd.**
- 2. The Claimant is not entitled to a redundancy payment.**
- 3. The Secretary of State ought to make a payment to the Claimant in respect of notice pay in the sum of £797.52.**

REASONS

- 1.** Pursuant to Rule 48 of the Employment Tribunal Rules I ordered that the preliminary hearing listed today should be treated as a final hearing. The Claimant consented to this. Given that the First Respondent is insolvent and the Second Respondent said in his ET3 that he did not intend to attend the hearing and had “no further useful information to provide”, I was satisfied that neither party would be materially prejudiced by the change.
- 2.** By an ET1 presented on 21 December 2017 the Claimant brought the following complaints under the Employment Rights Act 1996 (“ERA”):

- a. A reference under s.163 of a question as to her right to a redundancy payment.
 - b. Failure of the Second Respondent to make a payment under s.182 in respect of notice pay (s.188).
 - c. Failure of the Second Respondent to make a payment under s.182 in respect of holiday pay (s.188).
3. The proceedings were originally brought only against "Dialacarergroup", but given the nature of the claim the Tribunal sent the ET1 to the Secretary of State, who was then added as a Respondent as his request.
 4. At today's hearing the Claimant confirmed that her employer was Dial-a-Carer Ltd, which was the proper respondent to her claims. I therefore amended the name of the First Respondent to Dial-a-Carer Ltd.
 5. By an ET3 submitted on 26 February 2018 the Second Respondent defended the claims, arguing among other things that the Claimant had not complied with the applicable time limits.
 6. The Claimant confirmed the following details of her employment during the hearing.
 7. She commenced employment with the First Respondent as a carer on 1 August 2009. She was signed off sick from 31 July 2013 and never returned to work. She received statutory sick pay until it ran out in or around July 2014. After that date she continued to provide sick notes to her manager every three months. She would do this either in person or by sending them in the post. If providing them in person she would sometimes have a conversation with her manager. During 2016 she continued to provide sick notes by post, but they were all returned by Royal Mail. She does not remember attending the office in person during this time.
 8. She has been in receipt of Employment Support Allowance since she stopped receiving statutory sick pay.
 9. She received a P60 in April 2016.
 10. In April 2017 she attended the office to hand in a sick note. Her manager was not there and some other employees told her that Dial-a-Carer Ltd had gone into liquidation. She left the sick note with one of them. A couple of weeks later she rang the office to ask about a possible phased return to work and was told that she had not "TUPE'd" over to the new company. The Claimant believes that the new company is called Dial-a-Carer Group Ltd.
 11. In October 2017 she telephoned HMRC to ask if national insurance contributions were still being made and they told her that her employment with the First Respondent had ended on 1 November 2015. The Claimant

says she was stunned at this because she had never received a P45 and had never been told that her employment had ended.

12. According to the Second Respondent's ET3, the First Respondent is insolvent, having entered into Creditors Voluntary Liquidation on 16 February 2017.
13. The Claimant made a claim to the Second Respondent for a redundancy payment, notice pay and holiday pay on 23 October 2017. The claim was refused on 19 December 2017.
14. The best evidence as to the date on which the Claimant's employment terminated is the information provided to her by HMRC, i.e. 1 November 2015. The receipt of a P60 in April 2016 is not inconsistent with that because the P60 would have been for the financial year 2015-16. The Claimant had been off sick since July 2013 and had not been receiving any pay since July 2014. Although she may have had some contact with her manager after that date, she did not have any contact after 1 November 2015 and the sick notes sent in 2016 were returned in the post. The absence of a P45 or notice of dismissal is not sufficient to find that the employment relationship continued beyond 1 November 2015. None of the essential ingredients of an employment relationship was present, so I find that the effective date of termination ("EDT") was 1 November 2015.
15. The effect of that finding is that the Claimant does not have any right to a redundancy payment because she did not take any of the steps set out in s.164(1) ERA within 6 months of the EDT, nor any of the steps in s.164(2) within a further six months. I therefore determine the reference under s.163 ERA by declaring that the Claimant is not entitled to a redundancy payment.
16. As for the notice pay claim, I accept that the Claimant was entitled to six weeks' statutory notice pay on termination of her employment and did not receive it. She is therefore entitled to a payment out of the National Insurance Fund in accordance with sections 182 and 184(1)(b) ERA. Her claim under s.188 was brought within three months of the Second Respondent deciding not to make the payment and is therefore in time. I note the Second Respondent's submissions to the effect that the Claimant must give credit for any income received during her notice period and for income tax that would have been payable. She did not receive any income, other than Employment Support Allowance, which she was receiving prior to the EDT in any event so there is nothing to deduct on that basis. I calculated the amount to be paid by reference to the net monthly income figure given in the ET1 (£576). That gave a weekly sum of £132.92. Six weeks' pay at that rate is £797.52.
17. The entitlement to holiday pay under s.182 ERA only applies to holiday accrued in the 12 months prior to the employer becoming insolvent (s.184(1)(c)). As the Claimant was not employed during this period, she cannot have any entitlement to such a payment.

Employment Judge Ferguson

2 March 2018