



EMPLOYMENT TRIBUNALS

Claimant: Miss C Iveson

Respondent: Little Stars Nursery (UK) Limited

HELD AT: Leeds

ON: 29 March 2019

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Did not appear and was not represented

JUDGMENT

1. The correct title of the Respondent is Little Stars Nursery (UK) Limited.
2. The Judgment of the Tribunal is that the Claimant was unfairly dismissed and that the Claimant is also entitled to three weeks' notice pay.
3. It is ordered that the Respondent shall pay the Claimant in respect of unfair dismissal £2,504.92 and in respect of failure to pay notice pay £830.76.

REASONS

Introduction

1. In this case Miss Iveson was employed by Little Stars Nursery (UK) Limited as deputy manager at the Respondent's private children's nursery until her dismissal on 27 July 2018. The Claimant complains to this Tribunal that she was unfairly dismissed and that she was not paid her notice pay. She also claimed a redundancy payment, which is subsumed in the unfair dismissal compensation and holiday pay in respect of which she withdrew her claim during the course of the hearing.

Issues

2. The issues in this case relate to what was the reason for dismissal and whether the dismissal was fair, including whether fair procedures were followed by the Respondent in dismissing the Claimant and whether she received her notice entitlement.

Who is the Respondent?

3. When the Claimant originally filed her claim, she did so against a Margaret Rotherforth, who turns out to be a director and part owner of Little Stars Nursery (UK) Limited. Despite the fact that the Claimant issued against Ms Rotherforth, the early conciliation certificate described the prospective Respondent as Little Stars Nursery UK Ltd. A Judge looked at the file in early December 2018 and was of the view that the discrepancy in the description of respondent between Ms Rotherforth and Little Stars UK Ltd was in all likelihood a minor error. So, a claim form was not re-served on Little Stars (UK) Limited. The claim form was served on Margaret Rotherforth t/a Little Star Nursery UK Ltd. The Tribunal then heard from a company called Croner, purporting to act on the Respondent, stating that the correct Respondent was Little Star Nursery UK Ltd and asked for Ms Rotherforth's name to be removed from the record. That letter also informed the Tribunal that Little Star Nursery UK Ltd had ceased trading and would not therefore be providing a response. The issue is who is the correct Respondent? Company searches have been carried out on Little Stars Nursery (UK) Limited and that company is described as active. By the time of the hearing, in the absence of the Respondent, for the reasons stated above, the Respondent has not been re-served with the claim.
4. The Tribunal has had regard to Rule 91 of the Employment Tribunal Rules 2013, which allows the Tribunal to treat any document as delivered to a person notwithstanding any non-compliance with Rules 86 to 88, which deal with delivery to the parties, if Tribunal is satisfied that the document in question or its substance has in fact come to the attention of that person.
5. It is quite clear that the correspondence address of Little Stars Nursery (UK) Limited on the company search is the same address as that used by the Claimant on the claim form and also on the letter by which the Tribunal served the response on 7 December 2018. Furthermore, Croner's part in this matter was severely limited and actually invited the Tribunal in its letter of 3 January 2019 to regard Little Star Nursery UK Ltd, which is Little Star Nursery (UK) Limited as the correct Respondent. In the circumstances the Tribunal is satisfied that it can exercise its right under Rule 91 to the effect that the claim form has come to the notice of the

Respondent Little Stars Nursery (UK) Limited and that therefore it is appropriate to proceed without a response and/or an appearance by the Respondent, in so far as the Respondent would then have had any rights.

Facts relating to unfair dismissal

6. The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts proved on the balance of probabilities:
 - (1) The Claimant commenced employment on 28 February 2013 at the age of 21 and at the effective date of termination was 27 years of age.
 - (2) The effective date of termination was 27 July 2018.
 - (3) On or about 10 July 2018 the Claimant received a telephone call out of the blue from her manager. There was the possibility and it was probably more than a possibility that she was likely to be made redundant.
 - (4) The Claimant in fact did not find out the truth until she received a letter on or about 27 July 2018 terminating the Claimant's employment by reason of redundancy. In fact, the Claimant had not worked again following the telephone call.
 - (5) The Claimant does not know if the Respondent had a redundancy procedure but in any case, she was given neither warning nor consultation about what happened and furthermore to this day, subject to the receipt of two weeks' notice pay, never received any redundancy or other money from the Respondent.

Determination of the issues

7. After listening to the submissions by and on behalf of the Claimant the Tribunal finds that the reason for dismissal related to redundancy.
8. The Tribunal finds that the dismissal was unfair because of a failure to follow procedure and that the Claimant did not receive her full notice entitlement.
9. The Tribunal finds that the Claimant did not contribute to her dismissal.

Remedy

10. The Claimant elected for compensation.

The Recoupment Regulations apply (see Annexe explanation for their effect).

11. The Tribunal has awarded compensation for unfair dismissal as follows: -

- (1) Basic award – gross week's pay £288 x 6 years' service x 1 formula - £1728
- (2) Compensatory award – net average pay of £276.92 from 27 July 2018 to 4 August 2018 when the Claimant secured employment at a greater rate than there had been with the Respondent. Future loss – 1 week - £276.92.
- (3) Loss of statutory industrial rights - £500.
 - (i) Grand total £2,504.92.
 - (ii) Prescribed element £276.92.
 - (iii) Period of prescribed element 27 July 2018 to 29 March 2019.
 - (iv) Excess of (i) over (ii) £2,228.

12. Further the Claimant is entitled to six weeks' notice pay under her contract of employment but she is being compensated for one of those weeks and has she says been paid by the Respondent for two weeks and therefore she is entitled to three weeks at £276.92 per week – total - £830.76.

Employment Judge Shulman
Date: 3 April 2019

JUDGMENT SENT TO THE PARTIES ON