



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr J Hunt**

-v-

**Premier Group Holdings (UK) Ltd trading as  
The Limes Country Lodge Hotel**

## FINAL MERITS HEARING

Heard at: **Centre City Tower, Birmingham**

On: **2 July 2019**

Before: **Employment Judge Perry** (sitting alone)

### Appearances

For the Claimant:

**in person**

For the Respondent:

**Mr P Keith (Counsel)**

## JUDGMENT

1. The respondent was in breach of its duty to the claimant pursuant to section 1(1) and/or 4(1) of the Employment Rights Act 1996. The respondent is ordered to pay an additional 2 weeks' pay in the sum of £978.00 to the claimant pursuant to Section 38 of the Employment Act 2002.

## REASONS

- (1) This claim has been the subject of two previous open preliminary hearings (with consequent case management orders made) the first on 28 September and 1 October 2018 and the second hearing on 12 November 2018.
- (2) At the conclusion of my decision on 12 November 2018 I identified that there were only two remaining complaints that remained namely a claim for disability discrimination, as to which I ordered a deposit to be paid, and an award pursuant to s.38 Employment Act 2002 arising from the respondent's failure to comply with its obligation to provide a statement of employment particulars.
- (3) Further to the dismissal on withdrawal of the claimant's disability discrimination complaints on 11 June 2019 the only remaining complaint is that pursuant to s.38.
- (4) In the days before this hearing I directed the tribunal staff to write to the parties to identify if that issue could be resolved. Unfortunately, it could not be.
- (5) At the outset today, the claimant raised a point concerning the deduction of monies to repay what the respondent argued was a "loan" and what the claimant believed was a "goodwill payment".
- (6) I indicated that the deductions from wages, holiday pay and breach of contract claims were determined within my earlier decisions and they have not been the subject of a reconsideration application or appeal. Nor did the claimant seek to put the tribunal on notice of that point in advance of today. My earlier decision is thus determinative of those matters.
- (7) Given my findings previously as to the absence of a written contract and/or employment particulars s. 38 provides that will it ordinarily result in an award of 2 weeks' pay unless the tribunal decides it is just and equitable to increase the award to 4 weeks' pay or



there are exceptional circumstances such that it is unjust and inequitable for an award to be made at all.

- (8) I determined at the last hearing the claimant's gross weekly pay was £589.16 per week. The respondent rightly points out that is subject to the s.227 Employment Rights Act 1996 cap, which in this case it is agreed is £489 per week.
- (9) I also determined previously that both parties' accounts as to the nature of the claimant's status were implausible and I made my determinations based on the other evidence before me.
- (10) The respondent accepts the claimant should be made an award of two weeks pay given the fault on both parts. The claimant does not. The principal reasons he argues are the distress and upset this has caused him, including the effect on his disability (although he provides no medical evidence to support that), that he feels aggrieved at the way he has been treated and that he has lost out financially.
- (11) The latter is at odds with my determinations as to the actuality and that he has been compensated on the basis of the contractual position that I found to be so. Further as he stated before me today had the terms not been agreeable to him at the outset he would not have accepted them, but that is just what he did. That being so and whilst that is not a requirement of me exercising my discretion in his favour I find he has not shown that he has suffered a loss or been put to some other detriment as a result of the failure to provide the employment particulars such that would engage my discretion.
- (12) Further and more significantly, I found both parties were at least in part culpable and implausible. Accordingly, those matters being so, I conclude it is not just and equitable to increase the award to four weeks pay but neither are the circumstances exceptional such that it would be unjust or inequitable for an award to be made at all. Accordingly, I award 2 weeks pay in the sum of £978.

Signed by: Employment Judge Perry  
Signed on: 02 July 2018