



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr J Hunt**

-v-

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

## OPEN PRELIMINARY HEARING

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

On: **12 November 2018**

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

### Appearances

For the Claimant:

**in person**

For the Respondent:

**Mr P Keith (Counsel)**

## JUDGMENT

1. The claimant did not have qualifying service to bring a claim of unfair dismissal. The tribunal does not have jurisdiction to hear that claim and it is dismissed.
2. The claimant's application to amend his claim is refused, the claimant having failed to provide the detail of the amendment previously stated to be required.
3. The respondent's application for strike out was not pursued.
4. It is declared that the respondent has failed to compensate the claimant in relation to the claimant's entitlement to holiday leave that had accrued as at the termination of the claimant's employment pursuant to the Working Time Regulations 1998 (SI 1998/1833). The respondent is ordered to pay **£1,767.48** (gross) to the claimant in respect of the accrued leave entitlement.
5. It is declared that the respondent has made an unlawful deduction from the claimant's wages pursuant to Part II of the Employment Rights Act 1996. The respondent is ordered to pay £1,426.90 (gross) to the claimant in respect of the unlawful deduction.
6. The claimant's breach of contract claim having not been pursued is dismissed on withdrawal.
7. The two remaining complaints are a complaint of disability discrimination pursuant to s. 15 Equality Act 2010 and a s. 38 Employment Act 2002 award. Despite the parties seeking a make a determination on the s.38 complaint I consider that it would be in appropriate to consider the justice and equity of the circumstances as I am required to do pursuant to s.38 without having first considered the s. 15 Equality Act complaint.

## DEPOSIT ORDER

8. The claimant's sole disability discrimination complaint has little reasonable prospects of success. The claimant is ordered to pay a deposit of £20.00 as a condition of continuing to advance that allegations **by 4:00 pm on 3 December 2018**.
9. In the event the claimant fails to pay the deposit by the date and time specified the specific allegations or arguments to which the deposit order relates are hereby struck out without further order.
10. The claimant indicated he may not wish to pursue his disability discrimination complaint. I reminded him that he is able to withdraw that complaint if he so wishes but



he should go away and think about that. The claimant and respondent have both previously intimated seeking costs or preparation time orders. The respondent has indicated it will be writing to the claimant in that regard. If the claimant is to withdraw the disability discrimination complaint, he is to indicate what (if anything) has been agreed in relation to costs/preparation time orders being pursued.

## REASONS - DEPOSIT

- 1 The test for a deposit application is set out in rule 37 of the Employment Tribunals Rules of Procedure 2013 (the Rules/rule as the case may be):-

*“(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*

*(2) The Tribunal shall make reasonable enquiries into the paying party’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.*

*(3) The Tribunal’s reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.*

*(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.”*

- 2 For deposit applications the Tribunal does not have to assume that the facts may be established (as it would for strike out) and only make a finding that there is little reasonable prospect of success if the case is likely to be unsustainable in law; *“If that had been the draughtsman’s intention, the rule would surely have been differently formulated so as to render the intention clear”*. Thus, the Tribunal is entitled to consider in the context of the deposit issue legal and in the case of the latter whether the facts as asserted appeared to be credible or not <sup>1</sup>.

- 3 Thus, the test for a deposit order, little reasonable prospect of success, is *“plainly not as rigorous as the test that the claim has no reasonable prospect of success”* (the test for strike out) and *“a tribunal has a greater leeway when considering whether or not to order a deposit than when considering a strike out”*. Notwithstanding that when considering whether to make a deposit order the Tribunal *“... must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response”*<sup>2</sup>.

- 4 When assessing the amount of the deposit order one of the factors to be considered is that it should *“[42] ... make a claimant stop and think carefully before proceeding with an evidently weak case and only do so if, notwithstanding the Employment Tribunal’s assessment of its prospects, there is good reason to believe that the case may, nonetheless succeed.”*<sup>3</sup> Whilst that is so a deposit order must not be imposed at so high a level that the Claimant could not practically comply with it that it would impede the claimant’s access to justice; if so that would not be a proportionate and effective



means of signalling to the Claimant the low prospects of success and warning about costs<sup>4</sup>.

- 5 The Claimant did not provide a schedule of his income, outgoings, assets and liabilities but told me he was in receipt of benefits and orally gave details of financial problems he states he faces. I reminded the parties of the principles I relay above. The claimant offered, and respondent agreed to accept a deposit of £20 if I was minded to exercise my discretion and to do so within 2 weeks.

#### My Conclusions

- 6 I have to consider if any specific allegation or argument has little reasonable prospects of success and thus if my discretion in r. 37(1) is engaged, if so I have to consider whether to take into account the Claimant's means when deciding to exercise that discretion and if so with regards to the amount.
- 7 Whilst the tribunal does not make findings at a deposit hearing, such hearings, as here, normally proceed by way of the tribunal hearing arguments only, the Tribunal is entitled (as I state above) to consider if the facts as asserted appear to be credible or not<sup>5</sup>.
- 8 Despite making a number of complaints in both his November grievance and in the subsequent detail he gave [300-301] Mr Hunt made no mention of this complaint. The only brief reference is a brief mention in the claim form.
- 9 Further as to the respondent's reason for the treatment in those other documents (the November grievance and [300-301]) the claimant repeatedly stated the reason he believed he was treated in the way he was, was as a punishment for his comments on social media. Again, it was only in his claim form that he refers briefly to this complaint.
- 10 Those matters cast doubt on the claimant's perception of his treatment at the time and the reason for it. The initial burden lies upon him to bring forward facts that he was treated unfavourably because of something arising from his disability and only if he does so does it fall to the respondent to show the reason for his treatment.
- 11 Whilst disability and the amendment of his status are not in dispute in my judgment he will face a difficult task to do so in the light of those matters. Accordingly, in my judgment the s.15 Equality Act something arising from complaint has little reasonable prospects of success and r.37(1) is engaged.
- 12 That being so I have considered whether to exercise my discretion and award a deposit. I have considered the claimants means, I accept he is in tight straits financially but in the light of my rationale above a deposit should be ordered to make him stop and think but that should not prevent him pursuing the claim. Accordingly, I will set the deposit at £20 and as no time for payment is set by r.37 order that to be paid in 3 weeks and not the two offered by the claimant to allow time for that to be done.

Employment Judge Perry

21 November 2018



Note. Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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<sup>1</sup> [Van Rensberg](#) at [23]. Whilst that view was doubted in [Sharma v New College Nottingham](#) UKEAT/0287/11 in [Spring v First Capital East Ltd](#) UKEAT/0567/11 Supperstone J noted [Van Rensberg](#) was not referred to in Sharma and that Sharma provided no support for the submission that the test in a strike-out claim is the same as that in an application for an order for a deposit and followed [Van Rensberg](#). The revised wording in the 2013 Rules suggests that the draftsman made a conscious decision to adopt the view of Elias P and Supperstone J by referring to both allegation (fact) or argument (law).

<sup>2</sup> All [Van Rensberg v Kingston upon Thames](#) UKEAT/0095/07 per Elias P at [27] albeit on the 2004 Rules

<sup>3</sup> Lady Smith in [Simpson v Strathclyde Police](#) [2012] UKEAT/0030/11

<sup>4</sup> [Hemdan v Ishmail](#) [2016] UKEAT/0021/16, [2017] ICR 486 per Simler P

<sup>5</sup> [Van Rensberg](#) at [23]. Whilst that view was doubted in [Sharma v New College Nottingham](#) UKEAT/0287/11 in [Spring v First Capital East Ltd](#) UKEAT/0567/11 Supperstone J noted [Van Rensberg](#) was not referred to in Sharma and that Sharma provided no support for the submission that the test in a strike-out claim is the same as that in an application for an order for a deposit and followed [Van Rensberg](#). The revised wording in the 2013 Rules suggests that the draftsman made a conscious decision to adopt the view of Elias P and Supperstone J by referring to both allegation (fact) or argument (law).



**PRELIMINARY HEARING**  
**NOTE ACCOMPANYING DEPOSIT ORDER**  
**Employment Tribunals Rules of Procedure 2013**

1. The Tribunal has made an order (a “deposit order”) requiring a party to pay a deposit as a condition of being permitted to continue to advance the allegation(s) or argument(s) specified in the order.
2. If that party persists in advancing that/those allegation(s) or argument(s), a Tribunal may make an award of costs or preparation time against that party. That party could then lose their deposit.

**What happens if you do not pay the deposit?**

3. If the deposit is not paid the allegation(s) or argument(s) to which the order relates will be struck out on the date specified in the order.

**When to pay the deposit?**

4. The party against whom the deposit order has been made must pay the deposit by the date specified in the order.
5. If the deposit is not paid within that time, the allegation(s) or argument(s) to which the order relates will be struck out.

**What happens to the deposit?**

6. If the Tribunal later decides the specific allegation(s) or argument(s) against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably, unless the contrary is shown, and the deposit shall be paid to the other party (or, if there is more than one, to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit, the deposit will go towards the payment of that order. Otherwise, the deposit will be refunded.

**How to pay the deposit?**

7. Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash.
8. Payment should be accompanied by the tear-off slip below or should identify the Case Number and the name of the party paying the deposit.
9. Payment must be made to the address on the tear-off slip below.



10. An acknowledgment of payment will not be issued, unless requested.

**Enquiries**

11. Enquiries relating to the case should be made to the Tribunal office dealing with the case.

12. Enquiries relating to the deposit should be referred to the address on the tear-off slip below or by telephone on 0117 916 5015. The PHR Administration Team will only discuss the deposit with the party that has been ordered to pay the deposit. If you are not the party that has been ordered to pay the deposit you will need to contact the Tribunal office dealing with the case.

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**DEPOSIT ORDER**

**To: HMCTS Finance Support Centre  
Law Library  
Small Street  
Bristol  
BS1 1DA**

Case Number \_\_\_\_\_

Name of party \_\_\_\_\_

I enclose a cheque/postal order (*delete as appropriate*) for £\_\_\_\_\_

**Please write the Case Number on the back of the cheque or postal order**