



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001824/2024

Held in Glasgow on 8, 9 and 10 September 2025

Employment Judge E Mannion

Mr M McGarty

**Claimant
Represented by:
Mr R Quigley -
Lay Representative**

Markon Limited

**Respondent
Represented by:
Mr K Gibson -
Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The Employment Tribunal finds that there has been no deduction to the claimant's wages and so his claim is dismissed.
2. The Employment Tribunal finds that there has been no breach of the claimant's contract and so his claim is dismissed.

REASONS

1. The claimant lodged a claim for, amongst other things, unlawful deduction of wages in respect of unpaid overtime on 4 November 2024. This is resisted by the respondent. At a preliminary hearing on 3 March 2025, the claim was amended to include breach of contract as the claimant's employment came to an end since the date on which the ET1 form was received.
2. At the preliminary hearing on 3 March 2025, it was confirmed that only the breach of contract claim and unlawful deduction from wages claims were continuing.
3. In advance of the hearing, the parties prepared a Joint List of Issues and a Joint List of Admissions which are at pgs 37A, 37B, 37C and 37D.
4. A joint bundle of documents was prepared and lodged for the hearing. Two additional folders were provided which comprised timesheets from the

respondent. Copies of these timesheets and high resolution photographs of these timesheets were confirmed to be included in the joint bundle of documents. It was explained that to ensure that the parties, witnesses and Tribunal had clarity on what document was being referred to, only the joint bundle would be used and if there was an issue with a document in the joint bundle which could be resolved with reference to the two additional folders, an application could be made at that time.

5. At the outset of the hearing, I went through the process of the hearing, who would speak first, the types of questions to ask in examination in chief (open questions, who what when where how) and the difference in cross examination, the requirement to put the case to the witnesses and challenge evidence where it is not agreed. I also explained that while the bundle of documents has been prepared, I do not read this in full but instead consider documents that the parties bring into evidence through the witnesses.
6. I heard from the following witnesses in the following order:
 - a. The claimant
 - b. Mr David Steel (respondent witness)
 - c. Mr Eric Stott (respondent witness)
 - d. Mr Scott Darling (respondent witness)

Submissions

7. Both parties made submissions at the conclusion of the evidence. For brevity, these are not included in detail here but for the avoidance of doubt, these submissions were carefully considered when coming to the decision below.

Observations on the evidence

8. The credibility of witnesses and documentation was at the core of this matter. Both sides put forward the position that documentation submitted and relied upon by the other side was false and/or fraudulently created. The claimant's position was that the timesheets relied upon by the respondents were not the original timesheets he completed and submitted. The respondent's position was that the notebook relied upon by the claimant was created at some point between March and May 2025.
9. I will deal with notebook first as it goes to the heart of the claimant's case under both heads of claim. The claimant maintained in evidence that the notebook [pg 823-836] was a contemporaneous document where he filled in his total weekly hours of overtime worked. He stated that he started this 'on

day dot' and that the pages in the bundle ran chronologically. The notebook dates from November 2020 to January 2025.

10. The claimant's grievance which he raised in May 2024 concerned amongst other things altered timesheets and underpaid overtime. During the grievance process it was suggested that he keep a diary of his hours [pg 85] and he indicated that he didn't think he would have to do so. [Pg 96] At no point either at the first grievance meeting, appeal or final appeal when discussing the underpayment of overtime and alteration of his timesheets did he inform the respondent that he had a contemporaneous note of the weekly amount of overtime worked. Nor did he ever quantify the amount of overtime which was unpaid during the grievance process, despite having a contemporaneous note of the hours of overtime worked each week. His argument in this regard was that the focus of the grievance was not the overtime payments and that his health was of primary importance. After lodging his ET1, he was asked to specify his claim and advised on 28 January 2025 [pg 30A] that he was unable to furnish "precise proof of the exact amounts due" because overtime was requested by phone call or verbally or arose on the day but that he was making a conservative estimate of 20 hours per week. When asked by the respondent on the 31 January 2025 to identify a particular week or weeks where he was paid less than his authorised overtime, he responded that "it is impossible for me to specify the weeks in question". [pg 32]
11. When asked in cross examination about why his notebook was not mentioned before May 2025, he answered that the notebook was lost for a period, that it went missing when cleaning the house in the Christmas or New Year period at the end of 2024/start of 2025 and it was not until he received the timesheets from the respondent in March that he thought to look for it. This was despite the notebook having entries for December 2024 and January 2025. [pg 836]
12. Taking into account the above, I accept the respondent's submission find that the notebook was not a contemporaneous document created by the claimant in or around November 2020. If it were, the claimant would have responded differently to Mr Thumwood during the grievance hearing and would have been able to specify his claim for overtime both during the grievance and at the point of raising the tribunal claim on 4 November 2025. Further, he would have been in a position of specifying his claim in January when asked to do so by the Tribunal and the respondent. He would not have needed the respondent's time sheets as, based on his evidence, his notebook contained the details of the overtime worked each week from November 2020. These figures could have been compared with the hours of overtime paid as per his payslip. The argument that only the timesheets would have identified the underpayments is factually incorrect – the notebook and the payslips, which were both in the claimant's possession, would have this information. The

claimant's reliance on this notebook impacts on his credibility and I find that he was not a credible witness.

13. The respondent in defending the claim provided weekly timesheets for the relevant period which ran from November 2020 to 31 January 2025. The claimant's position was that the timesheets in the bundle and the high resolution photographs of same, also in the bundle, were not the original timesheets he submitted each week. This was his position even when brought to timesheets that appeared to bear his signature and handwriting. He agreed that the signature and handwriting on timesheets looked like his but maintained that they were not the original timesheet. He did not explain how the respondent could have manipulated his handwriting or signatures to append them to new timesheets. When asked for clarification on what he meant by not original timesheets, he confirmed that he believed these timesheets were falsely created by the respondent to defend this claim.
14. The claimant's position was based on the fact at the first grievance hearing on 14 May and in his report, Mr Thumwood noted that he was unable to review previous timesheets as these were destroyed. As such, in his view, any timesheets reviewed or produced either during the grievance process or for the tribunal hearing could not be the original timesheets but instead were a falsely or fraudulently created timesheet.
15. The respondent provided context for Mr Thurwood's statement on timesheet destruction which went largely unchallenged, Mr Darling gave evidence that the timesheets should have been destroyed as per the respondent's GDPR policy once submitted to payroll but Eric Stott had not done so and instead stored them in folders in his filing cabinet. This allowed Mr Darling to review them at the appeal stage. Mr Steel gave similar evidence, referring to the same position re GDPR and confirmed that after the final grievance appeal meeting on 11 September, he reviewed the original timesheets stored in Eric Stott's filing cabinet so that he could come back to the claimant on the points raised. The evidence from these two witnesses as outlined above was not challenged. This position was therefore accepted. Based on this accepted evidence, I find that the respondent's timesheets were not falsely or fraudulently created and so can be relied upon.

Findings of fact

16. I made the following findings of fact after considering the evidence on the balance of probability.
17. The claimant was employed by the respondent from 8 July 2019 until his employment came to an end on 31 January 2025. He was employed initially as a supervisor but from 2 November 2020, his role changed to signs

installation foreman. He worked in the signs division of the respondent organization. His role entailed setting up and overseeing traffic management where roadworks are taking place. The respondent's primary place of work is at 6 Dunnswood Road, Wardpark South, Cumbernauld, G67 3EN. The claimant was required to work from the above address or at times out on site across Scotland.

18. The claimant was provided with a contract of employment [pgs 39 -49] signed 3 February 2021 which set out his hourly rate of £13.00. This increased over time and at the point of termination, was £15.40 per hour.
19. The contract made a provision for overtime at pg 41 which provided "*you may be required to work overtime or additional hours when authorized or necessitated by the needs of the business.*" Where hours were worked in excess of 40 hours per week, those hours would attract overtime payments paid at time and a half. The clause also stated "*Overtime should be claimed by completing the appropriate timesheet and submitting it to your Manager for authorization.*" The Manager referred to in this clause was Divisional Manager, Eric Stott.
20. Ordinarily, overtime was pre-planned and built into the costs of a particular job. Employees were told in advance of their hours including authorized overtime.
21. On other occasions, it became apparent while working the job that additional hours were needed to complete it. Overtime would then be authorized by Eric Stott before it was worked.
22. In terms of the hierarchy, the claimant reported to a Supervisor who in turn reported to the Divisional Manager. The role of the Supervisor was undertaken by different individuals over the relevant period. At the time the claimant moved into the role of foreman in November 2020, the claimant's Supervisor was Jamie Stott and he remained Supervisor until in or around May 2023. Grant Kennedy undertook the Supervisor role from May 2023 until April 2024 when Tony McCormack took up the role.
23. The claimant was paid weekly. This pay comprised his basic pay and any overtime undertaken. It was paid into his bank account every Thursday and ran a week in arrears. The claimant was provided with an itemized payslip each Thursday setting out the amount of basic hours and overtime hours paid for that week.
24. The claimant was required to complete a timesheet every day and submit this at the end of week to Eric Stott. This was a paper timesheet which he completed by hand. The timesheet has columns for the date, start time, break, finish time, job number, job description, as well as the number of hours worked

at the basic rate of pay or overtime rate. At the top of the timesheet the employee filled in his name, department, job title and the week ending date. At the bottom was space for the employee signature and manager signature and a total of the basic and overtime hours worked that week. The timesheet needed to be handed in, in person at the yard in Cumbernauld.

25. Eric Stott was required to authorize all timesheets for the signs division and pass them to payroll by 10am on Monday morning to allow payroll to process them for payment on Thursday.
26. It was common across the business that employees would not complete their timesheets daily and would not have them completed and handed in by Friday. More often than not, timesheets were handed to management on Monday morning. This was also the case with the claimant. It was often a rush on Monday morning to get the employees to complete and submit their timesheets and then authorize these in advance of the 10am deadline.
27. When authorizing timesheets Eric Stott would often complete the job number or description so that the respondent could invoice the correct client. Often employees would forget to take out their break from the total hours claimed or put in a shorter break than what was required for the length of the day. He checked the claimant's hours against the other workers in the team of three or four and would ask the supervisor about the hours planned for the job and what took place. Where the hours claimed did not align with the work undertaken, Eric Stott would update the timesheet either by scoring out what was written or applying Tipx and then inputting the correct details. He did not inform the claimant that he was doing this. The respondent did not require manager's to speak to employees about these alterations or get their agreement for same.
28. At times managers would also check the hours worked against the trackers placed in the work vehicle driven by the employees.
29. Where employees were not physically able to hand in a timesheet to the yard because of annual leave or working at an external site, their supervisor would complete timesheet for them and provide this to Eric Stott. In those circumstances, the timesheet would not include the employee's signature and this may be left blank or signed by the supervisor. Jamie Stott often did this for the claimant.
30. On other occasions the claimant would complete this himself and send a photograph of the timesheet to Eric Stott.
31. The focus of the respondent was to ensure that the employees were paid their basic wage and overtime each week. If they made an error in the overtime payment or if they reduced the number of overtime hours claimed by the

employee in the timesheet, it was not unusual for an employee to phone their manager on the Friday morning and ask for their pay to be amended. As the pay slips itemized the basic and overtime hours paid, it was relatively easy for an employee to notice if the hours paid for did not match the timesheet they completed on the Monday of that week. The manager would then look at this and if there was further monies due this was paid in the following week's payment. The managers' phones could be 'red-hot' on a Friday morning with questions from employees about their pay.

32. The claimant raised a query with Eric Stott about his pay in this way on approximately two occasions over the course of his five year employment and with payroll another four times, bringing the total number of queries to six.
33. On two specific occasions, the respondent raised a query with the claimant over the number of hours claimed on his timesheet versus the hours of work they believed had taken place. On both occasions, the claimant agreed that the hours on his timesheet be amended to reflect the hours actually worked.
34. The claimant raised a grievance on or around 6 May 2024 about a number of issues. One of the issues raised was headed 'Loss of Earnings' and stated *"There has been a number of occasions where my submitted timesheet has been altered. I am aware that this is possible but all changes should be discussed and agreed with myself before these changes can be submitted."* The grievance went on to say he believed these adjustments have resulted in a lack of overtime paid to him. No specifics about the amount of pay he believed was due was included in this grievance.
35. A grievance meeting took place on 14 May 2024 between the claimant and Michael Thumwood, Fleet Manager. At this meeting Mr Thumwood informed the claimant that it was not possible to review historical timesheets as these are destroyed once sent to payroll. He advised the claimant to keep a diary of the hours worked. The claimant confirmed to Mr Thumwood at that date that he was not already doing so. [pg 85]
36. Mr Thumwood completed a grievance report and sent this to the claimant by letter dated 30 May 2024. The aspect of the grievance which dealt with the timesheets was not upheld. Mr Thumwood's findings were that alterations were not made to timesheets on a regular basis. Where this was done without consultation, this was an isolated incident and would not continue.
37. The claimant appealed the grievance outcome and a grievance appeal hearing took place on 4 July, chaired by Scott Darling, Director. As part of this appeal, Mr Darling reviewed the claimant's original timesheets. This was possible because although it is the respondent policy to destroy timesheets for GDPR purposes once passed to payroll, Eric Stott had retained a copy of

all timesheets. These were located in a filing cabinet in his office. An outcome letter upholding Mr Thumwood's findings was sent on 25 July 2024. In this letter, Mr Darling invited the claimant to review these timesheets. [pg 157-158]

38. The respondent grievance policy has a second right of appeal. The claimant exercised this right. A final appeal hearing took place on 11 September 2024 chaired by David Steel, Group Managing Director.
39. During this hearing, the claimant informed Mr Steel it was possible timesheets were altered over the five years of employment and that he has raised queries about his pay slip ten or fifteen times in those five years.
40. Mr Steel undertook a review of the entirety of the claimant's timesheets which were held in Eric Stott's filing cabinet. He identified two occasions where there was a possible underpayment of overtime – one and a half hours in the week of 26 April 2021 and a further one and a half hours in the week of 28 June 2021. Payment was made to the claimant of £69.39 calculated at the basic rate of pay at end of 2024 rather than the operable rate in 2021. No further underpayments or errors were identified. No specifics were provided by the claimant.
41. The claimant did not inform the respondent at any point of the grievance process that he had a contemporaneous note of his weekly overtime in the form of a notebook.
42. The respondent paid the claimant for all authorized overtime. The spreadsheet [pg 8181 – 822] submitted by the claimant to underpin his claim does not accurately represent hours worked over and above the amount of authorized and paid overtime.

Relevant law and decision

43. Section 13 of the Employment Rights Act 1996 states that
 - (1) *An employer shall not make a deduction from wages of a worker employed by him unless –*
 - (a) *The deduction is required or authorized to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
 - (b) *The worker has previously signed in writing his agreement or consent to making of the deduction.*

And

- (3) *Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages*

properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

44. The claimant's case is that on a weekly basis he was underpaid for the amount of overtime actually worked. He disputed that the timesheets relied upon by the respondent were accurate and provided a detailed spreadsheet setting out, week by week, the total overtime he states was worked, the amount of overtime paid by the respondent and the resulting shortfall of overtime. While some general evidence was led on the type of work undertaken which would fall into overtime or the situations where overtime requirements would arise in the midst of a job, I was not provided with any specific evidence of work undertaken on any specific week which went unpaid. For example, on his last week of employment finishing on 31 January 2025, the claimant asserted as per his spreadsheet that he worked four hours of overtime but was only paid for one. I heard no evidence about how this overtime came about, whether it was pre-authorised or arose in the course of the job, or what work was undertaken in the additional three hours claimed for. This was the same for each week of claimed unpaid overtime.
45. There was no evidence before me that the claimant worked the hours of overtime claimed in the detailed spreadsheet.
46. The only evidence before me which spoke to the hours of overtime which were unpaid was the claimant's notebook, photographs of which were included at pages 823-836. As outlined above, I found that the notebook was not a contemporaneous document and so the claimant's reliance on this as evidence of his claim
47. Even if I accept the spreadsheet without evidence that the overtime hours claimed were in fact worked, and leave aside the concerns about the reliability of the notebook, in order to make a successful claim under Section 13(3), it is not enough that the claimant has undertaken the hours claimed. He also needs to show that wages were properly payable by the employer for those hours and so non-payment of these amounted to a deduction from wages. The phrase 'properly payable' was considered by the Court of Appeal in **New Century Cleaning Co v Church 2000 IRLR 27, CA** where they found that in order for a payment to fall within the definition of wages properly payable, there must be some legal entitlement to the sum in question. A contractual entitlement would amount to a legal entitlement.
48. The claimant's contract sets out his terms of employment and at pg 41 it states that he may be required to work overtime 'when authorised'. This clause sets out the process for claiming overtime whereby the claimant would

complete a timesheet and submit this for authorisation. It was put to the claimant that overtime had to be authorized for it to be payable and he agreed. The contractual position is therefore that the respondent will pay for the overtime hours authorized by them.

49. The timesheet is not a contractual document. It is an administrative document to inform payroll of the hours of work, the rates of pay to allow the payroll department process employee wages and inform them of the projects or jobs which can be credited or invoiced for those wage payments. The timesheet requires the signature of a manager and in signing the timesheet, the manager authorizes payment of the hours contained in that timesheet. Completing this does not in and of itself mean that hours claimed are properly payable. It is only when authorized and signed by the manager that the hours become properly payable. This position was put to the claimant, that the mere completion of a timesheet is not enough for overtime to be paid; it has to be authorized. This position was accepted by the claimant.
50. I found that the respondent paid the claimant all overtime properly authorized. Any additional hours the claimant sought to claim was not authorized and so was not properly payable.
51. For the reasons set out above, the claimant's claim for unlawful deduction of wages does not succeed.

Breach of contract

52. The claimant also alleged that the respondent breached the implied term of trust and confidence when they amended his timesheets without his consultation or approval.
53. The respondent accepted that as a matter of fact this occurred when the claimant submitted a timesheet where the hours claimed did not match the work undertaken. Amendments included adding in the contract number or job description or changing the claimant's start and finish time or the number of hours of overtime claimed. It was accepted that save for two occasions, one relating to an job in Beuley and another where the claimant claimed from 5.30am because the warning light for AdBlue had come on in the van, the respondent did not consult the claimant before making these amendments. It was not a requirement for management to check with employees before making amendments to timesheets. Ms Darling would do so as a matter of course and believes it is best practice to do so, but there was no mandate for managers to do so. Mr E Stott did not do so.
54. It is accepted at law that there is an implied term in each employment contract of trust and confidence. As per **Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL** this implied

term means that both parties will not, without reasonable and proper cause, conduct themselves in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between them. A breach will only occur therefore if there was no reasonable or proper cause for the conduct in question. The burden is on the employee in the first instance to prove an absence of reasonable and proper cause as per **RDF Media Group plc and anor v Clements 2008 IRLR 207, QBD**.

55. The claimant ran an ambitious argument that the timesheets provided were false or fraudulently created but also contained amendments which were not agreed with him in advance. As above, I found that the timesheets provided were the original timesheets.
56. I found that there was reasonable and proper cause for the respondent to amend the claimant's timesheets. It was necessary to include job descriptions or contract numbers for internal invoicing and finance purposes. It was also necessary and reasonable to amend start and finish times and total hours of work/overtime to ensure that the claimant was paid according to the actual amount of work done. I did not accept the claimant's evidence that he would never overclaim for hours worked given my concerns about his credibility based on the notebook. I accepted the respondent position that it was not uncommon for employees to claim more hours than those worked, either due to errors in their arithmetic or to see what they could get away with. This is built into the system of authorization of the timesheets by management.
57. I then considered whether there was reasonable and proper cause for making said amendments without consultation or agreement. I accepted the respondent's unchallenged evidence that the focus of the respondent each week is to ensure that staff are paid, that Mondays are busy with employees handing in timesheets at the last minute, managers authorizing these and passing to payroll by 10am. I also accepted the respondent's unchallenged evidence that they provided itemized pay slips to employees on a Thursday with their pay and were open to any and all queries on their pay, which often happened on a Friday morning. If there was an error made by the respondent, they would rectify it in the following weeks' pay. Mr Darling gave evidence that employees would raise a query if their pay was short by half an hour and the respondent had no difficulty with this. I found that against this background and in the absence of a mandate for managers to discuss and agree amendments with employees, the respondent had a reasonable and proper cause to do so.
58. I concluded therefore that there was no breach of the implied term of trust and confidence as there was reasonable and proper cause for the respondent's actions.

59. Even if I am wrong on this, the remedy for breach of contract is damages. The claimant's position was that in amending the timesheets without his agreement, he was not paid for the full amount of overtime worked. This is based on the hours of overtime in his notebook. Having found that the notebook was not a contemporaneous document, I found that the claimant was in fact paid for all hours actually worked and so there is financial loss of damage stemming from this alleged breach.
60. For the reasons set out above, the claimant's breach of contract claim does not succeed.

Date sent to parties

03 October 2025