EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001357/2025

Final Hearing heard at Aberdeen remotely by Cloud Video Platform on 13 October 2025

Employment Judge A Kemp

Mr A Smith	**Claimant** **In person**
Highland Fuels Ltd	**Respondent** **Represented by:** **Ms J Finlay,** **HR Manager**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. **The respondent made unlawful deductions from the wages of the claimant under section 13 of the Employment Rights Act 1996.**

2. **The claimant is awarded the sum of TWO THOUSAND FIVE HUNDRED AND NINE POUNDS EIGHTY PENCE (£2,509.80) payable by the respondent subject to any necessary statutory deductions. In the event of such deductions being made the respondent shall provide details of the same to the claimant in writing at the time of doing so and evidence of payment of those sums to His Majesty's Revenue and Customs.**

REASONS

Introduction

1. This was a Final Hearing into a claim for unauthorised deductions from wages under Part II of the Employment Rights Act 1996. The respondent admits that the deduction was made but contends that it was not unauthorised. The Tribunal made case management orders on 24 July 2025. The hearing took place remotely by order subsequently made.

2. The claimant is a party litigant, and the respondent represented by one of its employees Ms Finlay. Neither had experience of Tribunal proceedings in such a capacity, and prior to the hearing of evidence I explained how the process would be undertaken, about the giving of evidence in chief, cross examination, and re-examination, about referring to documents in evidence as without that those in the Bundle would not be considered, and as to making submissions. I also addressed with the parties the issues in the case.

Issues

3. The first issue is whether or not the claimant suffered unauthorised deductions from wages under section 13 of the Employment Rights Act 1996. The second is, if so, what sums should be awarded.

Evidence

4. The parties had provided documents by email. No single Inventory or Bundle was provided but the clerk made that up on 10 October 2025 and sent that to the parties that day.

5. The claimant gave evidence himself, and the respondent called Ms Finlay as its only witness. I asked questions of both to elicit the facts under Rule 41.

Facts

6. The claimant is Mr Alan George Smith.

7. The respondent is Highland Fuels Ltd.

8. The claimant commenced employment with the respondent on 13 January 2025.

9. The contract of employment provided to the claimant included the following term:

> "9 Deductions
> The Company reserves the right to require you to repay to the Company by deduction from your pay:
> ……..
> - Any damages, expenses or any other monies paid or payable by the Company to any third party for any act or omission by you, for which the Company may be deemed vicariously liable on your behalf……"

10. At interview and when starting employment the claimant explained to the respondent that he did not have all the qualifications required to be an HGV driver of fuel. The respondent made arrangements for him to undergo the necessary training at a third party provider, which led to a CPC and ADR qualifications. They involved flights from Shetland to Inverness and Edinburgh, and hotel accommodation during the course.

11. On 26 February 2025 the claimant attended two interviews with other companies, one his previous employer and the other a prospective new employer. On the day he did so he was off work from the respondent, stating that he was still recovering from an operation he had had a few days earlier.

12. On 10 March 2025 the claimant was working for the respondent at a client named Petersons. He used the passcode of another employee to obtain fuel. He did not have either authority to do so, nor approval to take fuel himself. The respondent commenced an investigation.

13. The claimant was successful and after receiving an offer of employment tendered his resignation by email on 18 March 2025. He gave one month's notice due to expire on 18 April 2025.

14. On 26 March 2025 the claimant was summarily dismissed by the respondent. He was handed a letter dated 25 March 2025 that set out the reasons for that dismissal, and referred to the terms of clause 9 of his said contract. It also stated that

> "We have paid out the following expenses on your behalf regarding accommodation and specific driver qualifications as well as sustaining damage to a vehicle caused by you (which we have not charged you for):
>
> - Initial CPC £313.33 (Ex VAT)
> - Flights £551.77 January
> - Hotel accommodation Leapark £440
> - ADR £600
> - Flights to Inverness £500.45
> - Hotel Accommodation Royal Highland £104.25

> In total this amount to £2,509.80, ….. Your final salary payment will be made on 26 March which will include 4 weeks notice…..”

15. The payment to the claimant made on 26 March 2025 was made under deduction of the total sum of £2,509.80.

16. The claimant commenced new employment on 28 March 2025 following said dismissal. Had he not been dismissed he would have worked the balance of the notice period. His new employment does not require the CPC or ADR qualifications.

17. The claimant commenced early conciliation on 3 April 2025. The Certificate was issued on 15 May 2025 and the present claim commenced on 29 May 2025.

Submissions

18. Both the claimant and respondent made brief submissions explaining why they considered that they should prevail, of which what follows is a very brief summary. The claimant argued that there was no term of the contract entitling the deductions to be made. The respondent argued that they were justified in making the deductions. What the claimant had done was gross misconduct but the notice period was paid. Both parties made reference to an issue over the national minimum wage.

The law

19. There is a right not to suffer unauthorised deductions from wages provided for in Part II of the Employment Rights Act 1996, initially in section 13. Its terms material for the purposes of this claim are as follows:

> **“***Deductions by employer*
> **13 Right not to suffer unauthorised deductions.**
> (1) An employer shall not make a deduction from wages of a worker employed by him unless—
> (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
> (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
> (2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—
> (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
> (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation

> to the worker the employer has notified to the worker in writing on such an occasion.
>
> (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……."

20. There are exceptions in section 14 which are not relevant for the purposes of this case. There is a right to make a claim at the Employment Tribunal provided for in section 23. The definition of wages is within section 27.

Discussion

21. I was entirely satisfied that both the claimant and Ms Finlay sought to give honest evidence. Where there was a dispute on fact the issue was of reliability, but on that I had no hesitation in accepting the evidence of the claimant. He was clear and candid in his evidence.

22. The respondent argued that it was justified in making the deductions, but that is not the issue before me. I require to assess the matter under section 13 of the 1996 Act, and in very simple terms can be summarised as whether the deduction was provided for within the contract issued to the claimant. It was not in dispute that the contract had been issued in the terms before the Tribunal. The fact of deduction was also not in dispute, nor was it in dispute that it was for the training costs, travel and accommodation of two courses required to be an HGV driver of fuel. The dispute central to the issue before me was whether the term the respondent had founded on was apt to authorise that deduction.

23. The clause of contract on which the respondent founded does not I consider entitle the deduction to be made. The attendance on courses required to undertake the role cannot in my view be an act or omission for the purpose of that clause, nor could it possibly fall within the definition of what might be the vicarious liability of the respondent. That latter ground alone is sufficient to lead to a finding of unauthorised deduction from wages. Vicarious liability arises where an employee commits some act or omission that is delictual in nature, such as not driving with appropriate care, causing loss to a third party for which the employer is liable.

24. That is very far removed from attendance at a training course and related expenses for that, and is not within the part of clause 9 (or any other part of that clause). If an employer wishes to make such a deduction for the costs incurred in training, the contract must provide for it. The contract issued to the claimant did not. On that basis the deduction did not fall within that which is authorised under section 13.

25. The respondent argued that it paid notice when the claimant had been guilty of gross misconduct. There was an argument put forward that by using the passcode of another driver without authority that the claimant was in material breach of contract entitling summary termination and withholding notice pay, but that is not what the respondent decided to do. Having decided to pay notice, it cannot now seek to reverse that as a defence to this claim. Had it not paid notice a claim for breach of contract would have been competent, and the onus of proof for that would fall on the respondent. They might or might not have discharged that onus, but that is not the issue before me. Having stated that notice was to be paid, and then made the deduction, the issue is the authorisation or otherwise of that deduction.

26. The respondent further argued that the claimant had been dishonest stating that he was unfit for work when also attending two interviews with prospective other employers. There is certainly an argument that doing so was dishonest, but that again is not directly the issue before me. It does not entitle the deduction to be made for training costs as the contract does not provide for it, and in any event, it could only properly cover any excess payment for sick pay that the claimant was not entitled to, not the training and other costs. From the letter of dismissal, it is stated that the claimant received one day of SSP and otherwise no pay for the absence. The claimant did not seek anything further in that regard, which did not form part of his claim, and the respondent did not deduct the SSP.

27. The respondent argued that the claimant knew all along that he was not going to stay with them, and that was a form of argument of fraudulent misrepresentation to induce contract, but firstly that is not a defence to the present claim, secondly the evidence was clear from the claimant that that was not the case, he sought new employment after an issue with another driver and realising that the overtime was less than he had understood it would be, and that had he not found alternative employment he would have stayed and thirdly the new employment does not require use of those qualifications. Even if that argument was legally competent, which it was not, it failed on the facts. Other points raised by the respondent are I consider similarly not relevant to the issues before me.

Conclusion

28. On the basis of the evidence before me, and my view of the construction of the contract in the context of section 13, I concluded that the respondent did make an unauthorised deduction from the claimant's wages, and there effectively being no dispute over the amount of that I have awarded him the amount of the deduction (which was shown on the payslip for his last pay from the respondent).

29. The total sum awarded is £2,509.80. The calculation is made gross, such that it is subject to appropriate statutory deductions, if any, provision for which is made in the Judgment.

30. For the avoidance of doubt, I was satisfied that the Claim was competently before the Tribunal and within its jurisdiction. It was also not necessary to consider any argument over the national minimum wage provisions.

Date sent to parties **17 October 2025**