EMPLOYMENT TRIBUNALS (SCOTLAND)
Case No: 8002783/2025
Held in Glasgow on 19 March 2026
Employment Judge M Robison

Mr G Marr	**Claimant** **In Person**
Mulheron Scaffolding Services Limited	**Respondent** **Represented by** **Ms C Young** **Office Manager**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the respondent was entitled to deduct the sum of £1,216 from the claimant's pay under a relevant provision of the claimant's contract and there was no unlawful deduction from wages and no breach of section 13 of the Employment Rights Act 1996. This claim is accordingly dismissed. The counterclaim succeeds only to that extent.

REASONS

1. The claimant lodged a claim in the Employment Tribunal on 13 November 2025 claiming arrears of pay, holiday pay and breach of contract.

2. The respondent entered a response resisting the claims and clearly included an employer's contract claim in respect of costs following damages caused to property by the claimant.

3. Unfortunately, the respondent's contract claim was not dealt with by Tribunal administration, and it was not formally served on the claimant as it ought to have been. The claimant was therefore not given the standard opportunity to make any formal response to the employer's counter claim.

4. At the outset of the hearing I raised this matter with the claimant. I confirmed that in order for the paperwork to be formally served on the claimant this hearing would require to be adjourned and parties would have to return to the Tribunal for a relisted hearing.

5. The claimant confirmed that he was aware that the respondent was making a counter claim (because it was clearly set out in their ET3) and he was expecting that matter to be dealt with today. He was therefore content to proceed without the papers having been formally served on him. Given that there was no prejudice to the claimant in such circumstances, I decided on the basis that he consented to proceed with the hearing.

6. As it happens, the claimant advised at the outset of the hearing that although he had ticked the box claiming "notice pay" he had done so in error. The issues for determination by the Tribunal related to arrears of pay and holiday pay, and the respondent's claims for damages following accidents said to be the fault of the claimant.

7. At the hearing, I heard evidence from the claimant. I also heard evidence from Ms Carolynn Young, who was the respondent's office manager and who represented the respondent to the best of her ability, having been put in difficult circumstances. Although implicated in proceedings, the respondent's director, Mr Mulheron, did not attend and did not give evidence, although I would have expected him to. I have therefore taken account of the fact in my deliberations that I did not hear evidence from him.

8. During the course of Ms Young's evidence she advised that the respondent relies in respect of their counter claim on the respondent's insurance policy which she said had an excess of £2,500 in respect of each and every claim. While there was no-one to contradict her evidence, she forwarded a copy of that policy after the hearing as invited which corroborated her oral evidence.

9. Both parties had lodged separate files of productions which I have taken into account in my deliberations.

Findings in fact

10. On the basis of the evidence heard and the documents subsequently lodged, the Tribunal finds the following facts admitted or proved.

11. The respondent is a scaffolding business which employs 15 – 20 people, mainly scaffolders but also labourers. The business is run primarily by the company director, Mr Micheal Mulheron.

12. The claimant is a qualified HGV driver and has been working as an HGV driver for over 40 years. He commenced employment with the respondent on 22 October 2024. His duties included taking scaffolding to various sites and lifting and downloading scaffolding using a truck with a "hiab" crane.

Contract of employment

13. The claimant signed a contract of employment on 22 October 2024.

14. Under the heading, “normal working hours” that contract stated, “Your hours of work will be 40 hours per week. Your qualifying days are Monday-Friday. There is a need for the employee to be flexible and these hours may be changed as required according to the employer’s needs….you are entitled to an uninterrupted break of 45 minutes (unpaid) when your daily working time is more than six hours. It should be a break in working time and should not be taken at the start, or at the end, of a working day. It can be taken as 45 minutes or 2 x 15 minutes and 1 x 30 minutes…”

15. Under “salary” it states, “as an hourly paid employee, your salary will be £640 per week (before NIC or Tax deductions) for weekdays. Your salary is payable weekly….”

16. Under “holiday entitlement”, it is stated that: “the holiday year is from 1- 31 December. Your holiday entitlement must be taken during this period. Payment will not be made for any unused holiday and these cannot be taken into the next holiday period. The full amount of your holiday entitlement is 28 days including bank holidays per year pro-rata per completed months employment….”

17. Under the heading “deduction clause” it is stated that “the employer is entitled to deduct/withhold from the employee’s pay the cost of repairing or replacing any property (company/third party) damaged through the employee’s neglect or fault”.

18. Under “pensions” it states that “when required, a contributory pension scheme to which you will be auto-enrolled into (subject to the conditions of the scheme) will apply”.

19. Under “notice period”, it is stated that “during the probationary period either party requires one week’s notice. Up to two years of continuous employment you will be given one week’s notice….the employer reserves the right to pay your basic salary in lieu of notice instead of requesting that you work your notice period….the employer reserves the right to dismiss you without notice in cases of serious breach of the terms of your employment, gross misconduct or gross negligence by you”.

Claimant’s hours and pay

20. The claimant’s standard hourly rate was £16 per hour. The claimant’s contract of employment stated that his standard working hours were 40 hours per week. That meant the claimant’s standard working hours were Monday to Friday 7 am to 3.30 pm, with a half hour unpaid for lunch. Although the contract stated 45 minutes was unpaid, in fact only half an hour was unpaid for lunch break.

21. Despite what was stated in the contract, the claimant believed that: his expected working hours were from 7 am to 4.30 pm each day; he was entitled to half an hour for lunch which was unpaid; while he was contracted to work from 7 am to 3.30 pm, he was entitled to be paid for another hour each day to 4.30 pm; he was entitled to be paid overtime after 3.30

pm; he would be paid overtime at one and a half times his rate of pay; he was paid for one and a half hours for working one hour from 3.30 pm to 4.30 pm, or for any time that he worked after 4.30 pm. This meant that his standard working hours were 47.5 hours including overtime hours at one and a half times his hourly rate making his basic pay £740 (that is 47.5 x £16).

22. Although there was no reference to this in his contract, the claimant operated on the basis of an arrangement which he had made with Mr Mulheron called "job and finish". This meant that he would work until the jobs he was assigned were finished, but that he would get paid not only for his contracted hours but for hours beyond that.

23. He normally worked Monday to Friday and although he could be asked to work Saturdays he had only worked three Saturdays while he was employed by the respondent. On very rare occasions he would start at 5 or 6 am but the norm was that he would start at 7 am and work until 4.30 pm; and that he could take his lunch break any time during the day. In any event, he was paid by the hour either single time or time and a half.

24. In terms of his duties he would be allocated work each day, which usually consisted of three deliveries and collections after which he would be expected to return to the yard. Each delivery would take around 3 hours, depending on its location. If there were no other jobs for him to do he would go home. If there were jobs for him to do, which would normally meant him working overtime, he would get a call from Mr Mulheron.

25. Normally he would be back at the yard by most days by 3.30 pm. If he was finished his work, he could leave earlier because of the "job and finish" arrangement.

26. He would however tend to "drag jobs out" so that he would be returning to the yard by 3.30 pm. He was conscious that if he returned too early that this arrangement regarding hours and pay may be re-negotiated.

27. The claimant would complete a weekly time sheet with his start and finish time and total hours worked. He would invariably write down that he had worked 8 hours at single time and 1.5 hours overtime for the period from 3.30 pm to 4.30 pm which meant that he got paid £24 for working that hour, even if he did not work it.

28. The claimant would hand these time sheets to Ms Young every Monday morning, and she would hand out blank sheets for the next week. She would check start and finish times and the arithmetic and pass them to Mr Mulheron.

Incidents/Accidents during employment

29. On 26 August 2025, an accident took place while the claimant was dropping off material at a property in Renfrew, when he struck a lamp post which fell on top of a parked vehicle. Although the claimant accepted he was at fault, he did not believe that it was 100% his

fault. The cost of repairing the lamppost (invoiced to the respondent from the local authority) was £1,940.45 and the cost of repair to the car was £3,000.

30. At the time, the claimant was advised by Mr Mulheron to "forget about it" and that he could work two Saturdays to pay it off. In response, the claimant said "fair enough", partly because he very rarely worked Saturdays.

31. On or around early September 2025, the claimant hit a bin shed in Edinburgh causing significant damage to front end of the truck (costing £2000 to repair including VAT).

32. The claimant informed Mr Mulheron by Whatsapp that "bad news had another bang in truck hit green bike shed as was pulling away from job keep all moneys owed to me to repair truck don't think any point in coming back sorry for what has happened will be switching my phone off as I am upset enough".

33. Mr Mulheron responded on Whatsapp as follows: "Gary you could have at least worked some notice you've left me in the shit mate and the damage could have been worked off with working 2 Saturdays a month. You should have called me mate that's not nice the way you're leaving I would have appreciated you at least working off the cost of the damage! So if you see this before the shift starts tomorrow come along and we can sort it as am too busy to go about looking for a driver the now".

34. The claimant responded: "Hi Mick I realise you are really pissed of with me but I can't leave you without a driver as you have always been good to me so if you need me to come in until you get another driver I will".

35. The claimant therefore returned to work. Mr Mulheron did not raise this incident again until after the claimant had left employment.

36. In or around early October 2025, there was another incident when the claimant allowed the hiab to roll back onto a third party vehicle while waiting at traffic lights. The claimant accepted that this was his fault. Body repairs were required to the vehicle at a cost of £2,000 including VAT.

37. Under their insurance policy, the respondent has an excess of £2,500 per claim.

Deduction of hours and termination of employment

38. During the week beginning 5 October 2025, Mr Mulheron had by then told Ms Young to keep an eye on the claimant's time sheets following concerns he had during September.

39. On Monday 6 October 2025, the claimant worked from 7 am to 5.30 pm. Based on the information on the tracker, the claimant had returned to the yard at 16.53 pm. Ms Young amended the claimant's time sheet to reflect his return by 5 pm.

40. On the Tuesday 7 October 2025 while the claimant was at Hamilton Services sleeping in his cab after getting fuel, Mr Mulheron telephoned him. The claimant admitted that he had been sleeping. When he returned to the yard Mr Mulheron asked him what he had been doing.

41. At the end of that week, the claimant completed his time sheet noting that he had worked from 7 am to 4.30 pm on 7 October 2025. Ms Young amended his time sheet, to state that he had only worked until 4 pm and noted that he had been "sleeping in wagon". The tracker showed that he was at Hamilton Services for 1 hour and 10 minutes. Ms Young had seen the claimant at the yard that evening when she had worked late that day and he had left before her and he put in a later finish time.

42. The claimant submitted a time sheet with the same hours 7 am to 4.30 pm for Wednesday 8 October 2025. The tracker for his journey that day records that the claimant was stopped for 1 hour and 40 minutes at Bothwell Services**.** At the request of Mr Mulheron, Ms Young amended the claimant's finish time to 2.30 pm (with an annotation "sleeping in wagon 3.30 pm").

43. On Thursday 9 October 2025, the claimant stated on his time sheet that he had worked until 4.30 pm. However, the tracker data shows that the claimant returned to the yard at 3 pm. Ms Young updated the claimant's time sheet to record that finish time.

44. On Friday 10 October 2025, the claimant worked from 7 am to 5.30 pm. Ms Young did not adjust his time sheet for that date.

45. Based on the time sheets submitted by Ms Young, the claimant was paid for 44.5 hours for that week. The claimant claimed for 48.5 hours. He states that he is therefore due to be paid £72.

46. The claimant went in to work as usual the next week. On Monday 13 October 2025, the claimant worked from 7 am until 4.30 pm which is 9.5 hours. On Tuesday, 14 October 2025, he worked from 7 am - 4.30 pm which is 9.5 hours and Wednesday 15 October 2025, 7 am to 1 pm which is a total of 25 hours for the week.

47. On Wednesday 15 October 2025 the claimant received his pay slip for the previous week and noted that he had been underpaid by 4.5 hours. He went to the office to ask why he had been underpaid. Ms Young said that they had cross checked with the tracker and he had been seen in the yard leaving earlier. He said that he was leaving. He wrote down his hours of work for that week and advised Ms Young that he was terminating his employment.

48. The claimant was paid for working 10.125 hours that week. The respondent withheld payment for the balance of hours because of the sums owed for the repairs. The claimant seeks payment for the balance of hours (14) paid at £16 per hour, which is a total of £224.

49. The claimant did not give any notice of the termination of his employment.

Holiday pay and pension

50. The claimant was entitled to 28 days holidays. By the date of the termination of his employment, he would have been entitled to 18 days holidays. The claimant had however taken 12 days holidays that year. Accordingly, on the termination of his employment he had 6 days of untaken holidays.

51. The claimant was entitled to £152 for each day as holiday pay. He therefore seeks payment of £912 for unpaid holiday pay.

52. The claimant received employer contributions into his pension scheme at 3%.

Relevant law

53. Section 13(1) states that an employer will not make a deduction from wages of a worker employed by him unless (a) a deduction is required or authorised to be made by virtue of a statutory provision or relevant provision of the workers contract; or (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

54. Section 13(3) states that "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…as a deduction made by the employer from the worker's wages on that occasion".

55. Section 14 sets out payments excluded from those provisions, and in particular s.14(4) states that s.13 does not apply to a deduction from a worker's wages relative to an arrangement to deduct and pay sums over to a third person, which includes pension contributions.

56. The law relating to holiday pay is contained in the Working Time Regulations 1998. Regulation 13 provides that a worker is entitled to four weeks' annual leave in each leave year. Regulation 13A provides that a worker is entitled to an additional 1.6 weeks' leave (that is 28 days in total).

57. A failure to pay holiday pay can be pursued as an unlawful deduction from wages in breach of section 13 of the Employment Rights Act 1996.

Tribunal deliberations and decision

Observations on the evidence

58. I accepted that the claimant was candid in the way that he gave his evidence, including being very honest about taking breaks and dragging out his day and the reasons for that. Further, the claimant also candidly admitting that the accidents which he was involved in were his fault (although he said that one was not wholly his fault).

59. However, I did not fully understand the claimant's position which seemed to me to be contradictory, specifically his evidence was that he worked a "job and finish "arrangement". This was not however stated in his contract, and he said that he would "drag out" his jobs so that he would be returning around 3.30 pm. He explained the contradiction by saying that he did not want to "rip the crap" out of the arrangement or make it too obvious, which I understood him to mean that he did not want to be seen to be taking too much advantage of his employer because otherwise his employer would get wise and realise that he was paying him for not working and would re-negotiate his terms.

60. Ms Young's position was that the claimant was not engaged on a "job and finish" arrangement. She said that the claimant could not have known that there were no other jobs for him at the end of the day unless he came back to the yard and was told that by Mr Mulheron. Only if Mr Mulheron said that there was no work would the claimant get away early. The claimant's position was that there was no need for him to go back to the yard to find that out, because Mr Mulheron would phone him to ask him to do overtime. I did not, however, hear evidence from Mr Mulheron and given the claimant said that the arrangement was made with him, there was no evidence to contradict the claimant's evidence except that of Ms Young.

61. In any event, the claimant said "job and finish" was standard practice. He said that it was a common working practice for drivers if quiet to take breaks. The claimant said that if the tracker data was checked it would show over the previous year that he always took breaks, but that it was not checked until the last week and he had never been pulled up for it before.

62. As noted above, there was no evidence from Mr Mulheron to contradict the claimant's evidence regarding how he was paid. While Ms Young had adjusted the claimant's time sheets in the penultimate week, as I understood it, that was at the behest of Mr Mulheron who self-evidently had the ultimate say.

Unlawful deductions from wages

63. In regard to unlawful deduction from wages the claimant is seeking payment of £72, which he calculates on the basis of being underpaid for 4.5 hours (including time and a half),

that is 4.5 x £16 at single time, which is £72. For the next week, he is claiming for 14 hours at £16 per hour which totals £232. Given the evidence I heard in this case, I accept that the claimant was not paid for those hours and that on the face of things he would be entitled to £304 in respect of those unpaid wages.

64. Ms Young accepted that the claimant's calculations in regard to holiday pay were accurate. Accordingly, on the face of things the claimant would be entitled to 6 x £152 which is £912.

65. The total therefore which the claimant would have been due, absent any other agreement discussed further below in respect of the counterclaim, would be £1,216.

66. The claimant sought an additional 5% which he claimed was paid into his pension scheme by his employer. In fact, based on the figures from the claimant's wage slips which he lodged, the employer's contribution was 3% which is to be expected considering that is standard under the auto-enrollment scheme.

67. Ms Young's position on the claimant's claim for pension was that the contributions to the claimant's pension would not be paid to the claimant but rather to the pension company.

68. I consider Ms Young's position to be correct. Section 13 of the ERA excludes pension where an arrangement has been made between the parties. Absent any alternative contractual provision, deductions for pension are not deductions which can be validly claimed as unlawful deductions from wages.

Counterclaim

69. In regard to the incident/accidents which formed the basis of the respondent's counterclaim, the claimant's position was that although he accepted that he was (mainly) responsible for these incidents, he believed that he could only be liable for what the respondent paid up to the insurance excess.

70. He argued that these were accidents which could not have been prevented and it could not be said he was reckless as the respondent suggested. Mr Mulheron accepted at the time that he should "forget about it" and that it was only after he left that they have made the claim against him. He was not asked to pay for these damages while he worked there. The claimant argued that if the respondent had considered his actions to be reckless, then he would have got sacked or at least got a formal warning.

71. Ms Young accepted in evidence that there was an arrangement after the second incident that the claimant would go back to work and that no deductions would be made. They did not make deductions because it was thought, when they were busy, that the claimant might leave when they needed him because he was the only hiab driver that they employed. They thought if they started making deductions that the claimant would leave.

72. Section 13 ERA allows an employer to deduct from wages where there is a relevant provisions of the employee's contract. The claimant's contract of employment states that the employer is entitled to deduct or withhold from an employee's pay the cost of repairing or replacing any property damaged as a result of their fault or negligence.

73. Although the claimant says these were accidents and he was not "reckless", he essentially accepts that the accidents and the resulting repair costs were his fault.

74. I do accept that the claimant should only be liable for any losses the respondent may have occurred as a result of his actions, and I noted that the respondent's insurance policy has an excess of £2,500 for each claim. On the face of things, the claimant would be liable only to pay damages up to that figure (for each of the accidents).

75. However, looking at the wording of the contract, it states that the employer is entitled to "deduct" or "withhold" from pay for cost of repairing any damage. It does not say that the claimant is otherwise liable to pay these costs. It seems to me that is clear. However, to the extent that there is any doubt, any such terms of a contract are interpreted against the writer of the contract, ie the respondent. That means that in the event of ambiguity, the interpretation which is more favourable to the claimant should be adopted.

76. I find therefore that, relying on the words of the contract of employment, the respondent is only entitled to deduct or withhold pay to pay for any damage caused by the claimant. The respondent has deducted pay totalling £1,216. I find that the respondent was entitled to do so by virtue of the agreement reached between the parties and as set out in the contract of employment. I find therefore that the counterclaim succeeds, but to that extent only.

Conclusion

77. The judgment of the Employment Tribunal is that the respondent was entitled to deduct the sum of £1,216 from the claimant's pay under a relevant provision of the claimant's contract and there was no unlawful deduction from wages and no breach of section 13 of the Employment Rights Act 1996. This claim is accordingly dismissed.

78. The counterclaim succeeds only to that extent.

Date sent to parties 27 April 2026