Case no: 6015375/2025

EMPLOYMENT TRIBUNALS

Claimant: **Andrew Duffus**

Respondent: **Ingenious Power Engineering**

Heard at: **Reading (by CVP)** **On: 20 March 2026**

Before: **Employment Judge Reindorf KC**

Representation:

Claimant: Mr Michael Reay (lay representative)
Respondent: Mr Thomas Wheddon (counsel)

RESERVED JUDGMENT

(1) The claim for unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996 succeeds.

(2) The Respondent must forthwith pay to the Claimant the sum of £1,378.75.

FULL WRITTEN REASONS

Introduction

1. The Claimant was employed by the Respondent as a Grab Driver and Project Support from 15 March 2024 until his resignation took effect on 10 March 2025. By ET1 dated 29 April 2025 he complained of unauthorised deductions from wages in the sum of £1,378.75. In its ET3 the Respondent admitted that it had made the deduction from the Claimant's wages, but argued that the deduction had been made in accordance with the Claimant's contract of employment in order to recover some of the cost of repairing a vehicle which the Claimant had negligently damaged.

2. The case came before me for Final Hearing. The parties produced an agreed bundle of 101 pages. The Claimant produced a supplementary bundle of 14 pages. The Claimant gave evidence on his own behalf, and called Connor Duffus (his son and also an employee of the Respondent). He produced witness statements for Rebecca Duffus (his wife) and for Gary Biggs, but neither was called to give oral evidence. The Respondent called Carley Robinson (Chief Administrative Officer and Director). All witnesses produced written witness statements.

Findings of fact

3. The Claimant was employed under the terms of a contract of employment dated 15 March 2024. Clause 8 of the Claimant's contract of employment stated:

   The Company reserves the right to require you to repay to the Company by deduction from your pay:

   • *any fines, penalties or losses sustained during the course of your employment and which were caused through your conduct, carelessness, negligence, recklessness or through your breach of the Company's rules or any dishonesty on your part…*

   You authorise the Company to make any such deductions without reservation from any and all monies owing to you by the Company.

4. The Claimant was an experienced HGV driver and had held an HGV license since 2012. Before January 2025 he had had no disciplinary record with the Respondent.

5. The Claimant's job involved driving an HGV known as a "grab lorry". This is a construction lorry with a hydraulic crane and a clamshell bucket. Its primary use is to load and unload loose aggregates.

6. By WhatsApp message on 19 January 2025 Ms Robinson instructed the

Claimant to attend a site in Battersea the following day to collect a cable drum and take it back to the Respondent's yard in Kent. She instructed him to take Connor Duffus with him to assist. A cable drum is a wooden wheel with cable spooled onto it. It is a large, heavy and awkwardly-shaped item which cannot be lifted by a single person. The cable drum in question had been brought to the Battersea site on a trailer which was specifically adapted to carry it. In her WhatsApp message, Ms Robinson told the Claimant that the trailer driver, Kieran Devereaux, would drive the empty trailer back to the Respondent's yard after the Claimant had put the cable drum onto his grab lorry. In evidence, Ms Robinson was unable to recall why Mr Devereaux could not bring the cable drum back along with the trailer.

7. The Respondent did not provide the Claimant with a lifting plan for the cable drum operation. A lifting plan is a requirement of the Lifting Operations and Lifting Equipment Regulations 1998 ("LOLER"). It must be put together by a competent person, and supervised and carried out safely. It must mitigate risks by addressing equipment, personnel, and environmental factors. In evidence, Ms Robinson said that she did not consider putting together a lifting plan because no "query" had been raised by any of the operatives about that particular job. However, when asked what the usual procedure for lifting plans was, she did not say that one would only be done if a query was raised by an operative. She said that a Health and Safety person or a Project Manager would "look at outsourcing" a lifting plan. She was unable to give a satisfactory answer about why this had not been done. She said that she had not addressed her mind to the possibility of a lifting plan.

8. The Claimant and Connor Duffus attended the site on the morning of 20 January 2025. The cable drum was on the trailer. It was larger than the Claimant had expected. He had not previously lifted a cable drum of that size, and had not had any training in lifting cable drums with the grab lorry. In his witness statement, he said that he telephoned Ms Robinson at this point and told her that he was not comfortable transporting the cable drum, and that she told him that it was a priority. However, he withdrew that assertion in crossexamination and agreed that he had not telephoned Ms Robinson.

9. In addition to the Claimant and Connor Duffus, also present were Mr Devereaux and two other operatives: Charlie Cartwright and Jordan Gardner. None of the operatives was a qualified banksman. A banksman is a person who is trained in how to safely direct vehicles on building sites.

10. When the Claimant and the other operatives arrived at the scene there was a 20 tonne excavator which did not belong to the Respondent stationed near to the trailer. The excavator had wheel tracks which extruded from the sides of the vehicle. The Claimant's evidence was that the excavator's tracks were covered in mud. The driver of the excavator was initially present, and asked the Claimant if he would like the excavator moved out of his way. The Claimant declined. The excavator driver left the scene.

11. The Claimant said in evidence that the men worked together to remove the cable drum from the trailer so that he could lift it off the ground onto the grab lorry. The Claimant's evidence was that it would have been impossible to use

    the crane on the grab lorry to lift the cable drum directly off the trailer, because it was secured in place with a bar. There was no direct evidence from the Respondent to the contrary. I accept the Claimant's evidence on this point.

12. The Claimant said that once the cable drum had been taken off the trailer, Mr Devereaux moved the van with the trailer out of the way. Mr Devereaux then started trying to insert a sling through the centre of the cable drum to enable the Claimant to lift it with the crane. The other operatives were holding the cable drum to stop it from rolling away. In his later statement, Mr Devereaux said that he was not sure where Connor Duffus was at this point. Connor Duffus said that he was on the other side of the cable drum from Mr Devereaux and may not have been visible to him. Mr Devereaux also said in his statement that Mr Gardner was in the restroom at the time. This contradicted the Claimant's evidence that Mr Gardner was assisting with holding the cable drum. The Respondent did not produce Mr Devereaux, Mr Gardner or anyone else who had been present on site at the time of the incident to give evidence on this point (or any other point). I accept the Claimant's and Connor Duffus' evidence about who was present and what they were each doing.

13. The Claimant then attempted to use the crane on the grab lorry to lift the cable drum. However the grab lorry was too far away from the cable drum to be able to get sufficient leverage. The Claimant therefore began to manoeuvre the grab lorry nearer to the cable drum. The grab lorry was positioned with the excavator to its left. I accept the Claimant's evidence that he did not ask any of the other operatives to act as banksman because none of them was a trained banksman and because they were all holding on to the cable drum, which he said weighed a tonne and a half, to stop it rolling away. The Claimant's evidence was that the there was an atmosphere of some anxiety at this point. He gave unchallenged evidence that there had been an earlier incident when two operatives had injured their backs doing the same operation, so he was keen to get the lorry into place as quickly as possible. He felt that he and the other operatives had needlessly been put in a difficult and dangerous situation.

14. The Claimant checked his mirrors and moved the grab lorry forward about 12 inches. He misjudged the clearance between the two vehicles, and while he was trying to move the grab lorry into place it made contact with the wheel tracks of the excavator. The contact between the two vehicles caused a puncture to the diesel tank of the grab lorry. Diesel began to spill out of the punctured tank. The Claimant and others used a spill kit to try to clean up the leaking fuel. Railway sleepers were brought by other people who were on the site to lodge the cable drum in in place during the clean-up operation. Somebody (not the Claimant) called Ms Robinson and told her about the incident. She organised a recovery service to pick up the grab lorry and take it away for the diesel tank to be repaired. The towing charge was £850. The

Claimant was very upset by what had happened and went home. He contacted Ms Robinson later in the day and apologised.

15. In oral evidence the Claimant said that when he was moving the grab lorry towards the cable drum, in addition to checking his mirrors he had also checked the cameras that were fitted in the lorry. He said that the reason he had hit the excavator was that he was unable to see the tracks because they were muddy.

16. It was put to the Claimant in cross-examination that the excavator tracks were not muddy. Photographs taken on the same day on another part of the site were produced, from which no mud was apparent. These showed operatives digging a trench on a tarmac footpath. These photographs did not assist me in understanding the condition of the excavator's tracks on a different part of the site and on different terrain. The Respondent did not produce a witness who was able to give direct evidence about the condition of the excavator tracks. Nor did it produce any photographic evidence of the incident, which might have shown the condition of the tracks. Ms Robinson was asked in crossexamination why the camera footage from the grab lorry had not been produced. She said that it had not been checked at the time or retained because everybody agreed what had happened and so "there was no reason to interrogate the information". I did not find this evidence compelling, given that subsequently the Respondent conducted what it described as an "investigation" into the incident. In the absence of contradictory evidence, I find that the excavator tracks were obscured by mud to the extent that the Claimant's view of them was obscured.

17. Ms Robinson stated in her witness statement that the Respondent contacted its insurers "when the incident occurred". I take that to mean that they contacted the insurers on the same day of the incident, Monday 20 January 2025. Ms Robinson's evidence was that the insurance company advised her that because the incident had not involved a third party it would "constitute a claim against ourselves" and that for that reason it would be unusual to proceed with an insurance claim and would result in increased insurance premiums.

18. Ms Robinson's correspondence with the insurance company was not in the bundle. She could not explain this in oral evidence. She said that the insurers had not asked her whether the relevant health and safety paperwork had been in place for the cable drum operation. When asked why the insurers had framed it as a "claim against [itself]" by the Respondent rather than an ordinary insurance claim for accidental damage, she was not able to explain. She said that the insurers told her that the premiums would have gone up the following year either way. When asked whether she had led the insurers to believe that the incident was somebody's fault, she said that she had told them it was an accident and that they had then asked whether it could be negligence. She said "they basically said if it was a negligent act, they suggested it was going

against myself". She claimed that this conversation had taken place on around 30 or 31 January 2025.

19. On Tuesday 21 January 2025 the Claimant was taken to hospital with chest pains. He was diagnosed with pericarditis and was signed off work until 27 January 2025.

20. On 22 January 2025 a report about the incident was completed by Babatunde Odemuyiwa, the Respondent's Safety, Health, Environment and Quality Manager. This said that statements had been taken from the Claimant, Connor Duffus, Mr Devereaux, Mr Gardner and Ms Robinson (although no statement from Mr Gardner appears in the report contained in the bundle). The report was dated and signed by both Mr Odemuyiwa and Ms Robinson. It stated that:

    20.1. The Claimant had not seen the excavator's tracks when manoeuvring the grab lorry forwards.

    20.2. It was a "routine lifting operation" with "nothing unusual" about it.

    20.3. There was a risk assessment covering grab lorry operations. This was the "control mechanism" in use for the operation. It was not being followed because a banksman was not used.

    20.4. There was no issue with the layout of the site.

    20.5. The Claimant should have asked for the excavator to be moved.

    20.6. All reasonable lines of enquiry had been followed in the investigation.

21. By WhatsApp message on Thursday 23 January 2025 and materially identical letter on 24 January 2025 (NB the Claimant says he did not receive the letter), Ms Robinson informed the Claimant that:

    We are currently carrying out an investigation regarding the incident on Monday.

    You will appreciate due to the substantial costs involved, pending the outcome we may need to recover costs.

    This is not a matter our insurers will cover as it is classified as negligence.

    As per the terms of employment where damage is caused as a result of what the company believes to be negligence, we reserve the right to recover costs incurred.

22. Ms Robinson also said that the investigation would be carried out by Mr Odemuyiwa, who would write a report, and that on receipt of the report she would arrange a meeting with the Claimant with a view to "closing the matter". It is not clear to me why Ms Robinson made these statements when Mr Odemuyiwa's report had in fact been completed the previous day.

23. Furthermore I reject Ms Robinson's evidence described in paragraph 18 above that she spoke to the insurance company on 30 or 31 January 2025. She had clearly spoken to them by the time she sent the above WhatsApp message on 23 January. Her evidence about the date and content of her discussions with the insurance company was confused, unsatisfactory and unreliable. However, taking the WhatsApp message together with the evidence in her witness statement that she spoke to the insurance company "when the incident occurred", I conclude that the conversation with the insurers took place on 20 January 2025. I further conclude that this was when Ms Robinson decided not to make an insurance claim but to seek instead to claw some of the cost of the damage back from the Claimant. Notably, she took this decision before any investigation was undertaken.

24. The meeting referred to in Ms Robinson's WhatsApp message did not take place.

25. On 28 January 2025 the Respondent was sent an invoice for the repairs to the grab lorry in the sum of £3,967.69 plus VAT.

26. The Claimant returned to work on 28 January 2025. On 30 January 2025 he experienced chest pains again, whilst at work, and was taken to hospital by ambulance.

27. On 31 January 2025 Ms Robinson telephoned the Claimant. A transcript of the call appeared in the supplementary bundle. This was not formally agreed by the Respondent, though no objections were made to any specific part of it. According to the transcript:

    27.1. The Claimant and his wife (who was also on the call) said to Ms Robinson that they needed proof that the insurance company would not pay out because they deemed the incident to be negligence. Ms Robinson said "We're not putting it through the insurance company". When asked why not, she said "Because it's not actually. They're not going to see it as it's a third party problem". When the Claimant and his wife suggested that was a decision for the insurance company to make, Ms Robinson said "No, it's down to me. My premiums can go up".

    27.2. The Claimant said that he was going to go to ACAS and that the Respondent would be acting illegally if it deducted money from his wages. The Claimant became angry and upset.

    27.3. Ms Robinson repeatedly suggested a face to face meeting, to which the Claimant's wife agreed.

28. Later the same day Ms Robinson sent a letter to the Claimant by email. This stated that the investigation was now complete and the Respondent had decided that it would "absorb" 50% of the cost of the towing and repairs and would charge the Claimant for the remaining 50%. This amounted to £2,408.85 and would be deducted from his January and February paychecks at

£1,204.42 per month. This was described in Ms Robinson's witness statement as an "offer" of a "payment plan", though the letter does not describe it as in any way negotiable. The letter said that the reduction by 50% was being made "in recognition of your value as an employee".

29. The Claimant responded the same day, 31 January 2025, stating that he had not received any formal documentation or a formal invitation to a meeting. He went on to state that he did not accept that he had been negligent, that the incident was a driver accident and he did not accept any deductions from his wages. He stated that he had spoken to ACAS and was demanding full payment of his wages, which were due that day.

30. The Respondent deducted £1,204.42 from the Claimant's January wages.

31. By letter dated 10 February 2025 the Claimant resigned from his job with effect from 10 March 2025. At this time he had been signed off sick until 17 February 2025 because of his heart condition. In his resignation letter he said that he did not accept the allegation of negligence, that he was aware that previous accidents and thefts of equipment had resulted in increases to insurance premiums and that "The muddy site made it difficult to see the tracks, and I was simply adjusting the lorry to lift the cable drum".

32. On 17 February 2025 the Claimant lodged a formal grievance about the deduction from his January wages. In his grievance letter he reiterated the points he had made about insurance premiums in his resignation letter and the reference to a "muddy site". He also said that he had not seen any documentary evidence regarding an investigation or the investigation report.

33. On 19 February 2025 the Claimant was signed off sick until 7 March 2025. On the same date he was invited to a grievance meeting on 24 February 2025.

34. The Claimant's February pay was not subjected to the full deduction of £1,204.42, because this would have taken his pay beneath the minimum wage given that he was receiving only Statutory Sick Pay at this time. The total deduction that was made from the Claimant's January and February pay was £1,378,75.

35. The Claimant's employment ended on 10 March 2025.

36. The Claimant's grievance hearing ultimately did not go ahead until 20 March 2025. It was chaired by Ms Robinson. During the meeting the Claimant suggested that an independent enquiry should be undertaken to establish whether or not he had been negligent.

37. Ms Robinson dismissed the Claimant's grievance by letter dated 3 April 2025. This letter suggested that the Claimant had "admitted liability" during the course of Mr Odemuyiwa's investigation. It also said that the Respondent had made an "informed decision in consideration of all the circumstances" not to claim on its insurance.

38. The Claimant appealed. Again in this letter he referred to the excavator tracks being camouflaged by mud. He denied having admitted liability. He made a number of complaints about the deductions from his wages and several process issues.

39. No appeal meeting was held, apparently because a date could not be agreed. On 9 June 2025 a letter was sent to the Claimant from Jason Johnson, the Respondent's Managing Director, dismissing the appeal.

Relevant legal principles

40. By section 13 of the Employment Rights Act 1996 ("ERA 1996") an employer must not make a deduction from the wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.

41. A deduction occurs when the total amount of wages paid on any occasion by the employer to the worker is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) (s.13(3) ERA 1996), save for occasions on which the shortfall is attributable to an error of computation (s.13(4) ERA 1996).

42. By s.23(1) ERA 1996 a worker may present a complaint to the Employment Tribunal that his employer has made a deduction from his wages in contravention of s.13 ERA. The time limit is 3 months beginning with the date of payment of the wages from which the deduction was made (s.23(2)(a) ERA 1996) with an extension for early conciliation, unless it was not reasonably practicable to present the claim in time and it was presented within such further period as the Tribunal considers reasonable.

43. If the complaint is about a series of deductions or payments, the three month time limit starts to run from the date of the last deduction or payment in the series (s.23(3) ERA 1996).

Conclusions

Issues

44. The fact that there were deductions from the Claimant's wages is agreed. Thus the key question in this case is whether the Respondent was entitled to make those deductions. The Respondent argues that it was entitled to do so under clause 8 of the Claimant's contract of employment in order to recover foreseeable losses sustained as a result of his negligence. I must therefore decide whether or not the Claimant was negligent in his duties and if so, whether he foreseeably caused the loss.

Credibility

45. In general, I preferred the Claimant's evidence of fact where it contradicted the Respondent's case. The Respondent did not call any witness to the incident of 20 January 2025, it did not produce camera footage and it did not call Mr Odemuyiwa to answer to the content of his investigation. Ms Robinson's evidence lacked credibility and reliability in certain respects. In particular, she was evasive on questions such as her interactions with the insurance company and the lack of a lifting plan. The Claimant's evidence lacked some coherence in places, such as his account of whether or not he had called Ms Robinson immediately after the incident on 20 January 2025. However his oral evidence was sufficiently consistent with the documentary and other evidence to establish his case on the balance of probabilities. I found him to be an honest witness.

The reason for the deduction

46. I have concluded at paragraph 23 above that Ms Robinson decided to make deductions from the Claimant's wages before she had any evidence as to whether or not he had been negligent. It follows that I do not accept that when the Respondent decided to make the deductions from the Claimant's wages it actually believed that he was guilty of negligence. In my judgment, the Respondent's priority was to avoid claiming on its insurance because of the inevitable rise in premiums that would ensue. Its reason for making the deductions from the Claimant's wages was to recover some of the loss it had sustained in circumstances where it was not willing to utilise its insurance policy to do so. That was not a reason falling within clause 8 of the Claimant's contract of employment. Accordingly, the Respondent was not entitled to make the deduction.

The Claimant's alleged negligence

47. In any event, I have also concluded that the Claimant was not guilty of negligence in relation to the incident on 20 January 2025.

48. The standard to be expected of the Claimant in carrying out his duties was that of a reasonably competent grab lorry driver. Loading a large cable drum did not fall within the usual duties of a grab lorry driver. The standard to be applied for the purposes of that task is therefore that of a reasonably competent grab lorry driver undertaking the task of loading a large cable drum.

49. First, the Respondent argues that the Claimant was negligent in not accepting the excavator driver's offer to move his vehicle out of the way before the lift was attempted. I do not accept that this was an error so grave as to amount to negligence. At that point the Claimant was of the view that he could manoeuvre the grab lorry alongside the excavator. In ordinary circumstances he would no doubt have been able to do so, but he did not anticipate how chaotic the situation would soon become. Given the lack of a lifting plan and the Claimant's

lack of experience, training, equipment and specialist assistance for the particular task of lifting the cable drum, it is hardly surprising that he did not assess the situation accurately at the outset. That sort of calculation is precisely what a lifting plan, training, equipment and expert assistance are designed to facilitate. The lack of a lifting plan and other mitigations were the Respondent's responsibility and not the Claimant's. The Claimant's decision not to accept the excavator driver's offer to move his vehicle did not amount to a failure to exercise the care and skill to be expected of a reasonably competent grab lorry driver undertaking the particular task of lifting the cable drum.

50. Second, the Respondent argues that the fact that loading the cable drum fell outside the Claimant's duties is irrelevant because the collision occurred whilst he was simply repositioning the lorry. It submits that the Claimant could have been expected to carry out that isolated part of the task to the standard of the reasonably competent grab lorry driver, without regard to the fact that he was undertaking a wider task that fell outside of his expertise.

51. I do not accept that argument in the particular circumstances of this case. The context within which the Claimant was repositioning the lorry was that he was undertaking an unfamiliar task, he had not been trained in how to do so, the Respondent had not provided a lifting plan (whether LOLER compliant or at all), he was not using the appropriate specialist equipment and no qualified banksman was provided to assist him. Furthermore the Claimant reasonably considered his colleagues to be at risk of injury whilst they were trying to prevent the cable drum from rolling away. The Claimant did not know that there were railway sleepers on site which could be used to lodge the cable drum in place while the lift was conducted at a more measured pace. A lifting plan might sensibly have included the idea of securing the cable drum on the ground whilst the grab lorry was positioned, but an untrained operative such as Claimant is not reasonably to be expected to have planned for this in advance.

52. Those circumstances combined meant that by the time the Claimant came to reposition the lorry he was trying to navigate an unfamiliar situation in chaotic and potentially dangerous conditions which were not of his making. In those circumstances he could reasonably be expected to be distracted, rushed and panicked in the execution of his duties. Even a reasonably competent grab lorry driver could be expected, in that high pressure context, to make a mistake. The mistake the Claimant made was failing to notice the mud-covered outer edges of the excavator tracks whilst trying to move the grab lorry into place to relieve his colleagues of the large, heavy and awkward cable drum. This was a mere error, and not by any means an error so obvious as to amount to negligence. It did not amount to a failure to exercise the care and skill to be expected of a grab lorry driver undertaking the task of lifting the cable drum.

53. I do not accept the Respondent's submission that it is not safe for me to consider the lack of a lifting plan or compliance with LOLER because these matters were not the subject of expert evidence and were not mentioned by

the Claimant until a month before trial (when Mr Reay began to represent him). That submission was premised almost entirely upon the fact that the incident took place not when the Claimant was lifting the drum but when he was repositioning the grab lorry. I have explained above why I do not consider it correct to isolate the tasks in this manner. Moreover, the Respondent's evidence was that it did not even address its mind to whether a lifting plan was required. It simply sent the Claimant to the site to carry out a job which it had not assessed in any way. Ms Robinson did not even know how big or how heavy the cable drum was. This scenario does not require me to consider questions of fine detail as to compliance with LOLER of the sort which expert evidence might have been expected to address.

Summary conclusions

54. I therefore conclude that:

    54.1. by accepting his contract of employment the Claimant had authorised deductions to made from his wages in the event of loss caused to the Respondent by his negligence; but

    54.2. the Respondent did not make deductions from the Claimant's wages for a reason falling withing clause 8 of the contract of employment; and

    54.3. in any event the loss caused to the Respondent was not a result of negligence on the Claimant's part; and

    54.4. therefore the Respondent was not entitled to deduct the sum of £1,378.75 from his wages.

55. Accordingly the claim succeeds.

Approved by

Employment Judge Reindorf KC

Date 21 April 2026

Sent to the parties on:

29 May 2026

For the Tribunal Office

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