



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4103297/2025

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**Final Hearing held at Dundee remotely by Cloud Video Platform on
19 May 2026**

Employment Judge A Kemp

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Mr J Rennie

**Claimant
In person**

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R T McEwan Ltd

**Respondent
Represented by
Ms M Martin
Barrister
Instructed by
Ms D Devlin
Paralegal**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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

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2. The claimant is awarded the sum of ONE HUNDRED AND THIRTEEN POUNDS TWENTY SIX PENCE (£113.26) payable by the respondent to the claimant 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.

E.T. Z4 (WR)

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
5 denies that there were unauthorised deductions and asserts that all sums due were paid. The Tribunal had made case management orders on 16 March 2026. The hearing took place remotely.
2. The claimant is a party litigant, and the respondent was represented by
10 Ms Martin. Prior to the hearing of evidence I explained to the claimant 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, that all relevant documents should be provided and referred to at this hearing as doing so afterwards was allowed only in exceptional circumstances,
15 and as to the making of submissions.

Issues

3. There are I consider two issues to be determined. The first is whether or
20 not the claimant suffered unauthorised deductions from wages under section 13 of the Employment Rights Act 1996, having regard also to the terms of section 14. The second is, if so, what sums should be awarded to him for that.

Evidence

4. The parties had provided documents in a single Inventory or Bundle which
25 had been provided electronically to the claimant and Tribunal. He had difficulty accessing it on his mobile phone which he also used to attend the remote hearing, and helpfully the respondent arranged to send him a hard copy to his home address. After an adjournment for that to be attended to the hearing resumed, and concluded at around 4pm.
5. The claimant gave evidence himself, and the respondent called Ms Louise
30 Rennie its Finance Director as its only witness. I asked questions of both to elicit the facts under Rule 41.

Facts

6. The claimant is Mr James Rennie
7. The respondent is R T McEwan Ltd.
- 35 8. The claimant was employed by the respondent as an LGV driver from 30 January 2023. He worked Mondays to Fridays

9. The claimant was provided with a Statement of Main Terms of Employment, a Staff Handbook and a Deductions from Pay Agreement.
10. The claimant was paid on the basis of an hourly rate. Latterly the hourly rate for basic hours was £12.24. There was also an overtime rate. Originally it was paid for hours worked over 45 per week, but in 2024 that was reduced to 40 hours per week. Latterly the overtime rate was £14.47 per hour.
11. The Handbook provided that for staff such as the claimant “the pay week ends on Sunday at midnight. Salaries and wages are available each Friday and overtime and expenses payments are paid two weeks in arrears”.
12. In practice Ms Rennie, who was the Accounts and Payroll Manager when the claimant was first employed and later promoted to Finance Director, calculated what sums were payable. A Sage accounting system was used. Hours worked up to 45 per week initially, and latterly 40 being the hours before overtime was payable, known as basic hours, were paid on the Friday following the end of a week of work. Hours of overtime were paid on the Friday that fell one week after payment for basic hours. Where hours were not worked in one week, or were less than 40 for a week, a correction was made on the Friday following the end of that week, together with any additional sums for annual leave, sick pay or bereavement.
13. The hours worked were assessed from the tachograph card used by drivers. Drivers could claim for additional hours manually if they had not been fully recorded on the tachograph card.
14. In practice the respondent rounded up or down the hours worked and recorded to the nearest 0.25 of an hour.
15. Payments were made at £1 per week for boots, known as a boot allowance.
16. The entitlement to annual leave was to 28 days per annum and so stated in the Handbook. It was due on a *pro rata* basis for the first and last years of employment. The standard sum used for calculation for annual leave was 8 hours per day.
17. The respondent had an entitlement to bereavement leave, paid for the date of death of a relative and the date of the funeral at a standard 8 hours.
18. Statutory sick pay was paid for those on sick leave.
19. The agreement as to deductions stated, *inter alia*, that “If you are overpaid for any reason, the total amount of the overpayment will normally be deduction from your next payment but if this would cause hardship, arrangements may be made for the overpayment to be recovered over a longer period.”

20. The claimant received payslips produced by the respondent on a weekly basis. The first payment for overtime was made in the payslip dated 10 March 2023. It was made sporadically thereafter as and when due. The payslip referred to “overtime”, and provided the hours worked and it was paid at the overtime rate for those hours.
21. The claimant intimated his resignation with notice effective on 30 May 2025.
22. The claimant worked Monday to Thursday of the last week, being 26 0 29 May 2025, but did not work on 30 May 2025. He was treated as being absent without leave.
23. On the payslip dated 30 May 2025 he received 40 hours of basic pay, that being for the work carried out in the week commencing 19 May 2025, and overtime being for overtime worked in the week commencing 12 May 2025, boot allowance and a deduction of £50 for an advance of expenses paid to him when he commenced working for the respondent. He received payment as noted on that payslip, after statutory deductions, of £381.40.
24. The claimant received a further payslip and related payment dated 6 June 2025. It showed basic hours of 36.25. That comprised 35 hours of work carried out in the week commencing 26 May 2025 rounded down from 35.12, and 1.25 overtime hours in relation to the week commencing 19 May 2025. The overtime hours worked in the week commencing 19 May 2025 was 1.78 hours, which ought to have been rounded down to 1.75 hours using the respondent’s practice.
25. A deduction was made for holiday pay of 1.5 days. That was on the basis that in 2024 the claimant had taken and been paid for 30 days but had an entitlement to 28. He was due a further 0.5 days pro rata to date of termination, taking account of holidays taken and paid. The balance was therefore 1.5 days which had been overpaid, equivalent to 12 hours at basic pay.
26. A deduction was made for “overtime” of 19.5 hours. That deduction was made following a review by Ms Rennie, who considered from a spreadsheet that purported to show the total overtime entitlement over the period of employment to be 21.5 hours less than the total overtime that had been paid. That figure of 21.5 hours she reduced by 2 hours to account for 2 hours of worked time manually claimed by the claimant and due to him. The resulting figure of 19.5 hours she attributed to overtime paid over the period of employment, which she considered had not been due and was a sum that the respondent could recover by way of deduction.
27. The parties communicated about the deductions and payments made by email. Ms Rennie set out her calculations in an email to the claimant dated 6 June 2025

28. The claimant commenced early conciliation on 3 July 2025. The Certificate was issued on 14 August 2025.
29. On 14 August 2025 the respondent made a further payment to the claimant for 11.75 hours overtime, with the payslip of that date stating “shortfall”.
30. The Claim Form was presented on 6 September 2025.

Submissions

31. The claimant made a brief submission in relation to the recording of time. The respondent argued, in brief summary, that the overtime deduction fell within section 14. The purpose was the reimbursement of an overpayment. If that was not accepted, it was argued that the key document was at page 151. Assuming that the figures in it were correct, the overtime must have been overpaid. It was accepted that the respondent could not explain how there came to be the differences that there were, but that did not take away from the fact that there was a difference. The same matter arose in relation to the overtime figure of 1.25 against 1.75. The information in the core data was unlikely to be wrong. The clause in the deductions agreement permitted the deduction to be made, if that was relevant to the determination.

The law

32. 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.

5 (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
10 employer from the worker's wages on that occasion.....”

33. There are exceptions to section 13 provided for in section 14 It provides as follows:

“14 Excepted deductions

15 Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of

(a) an overpayment of wages.....”

34. 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.

20 35. The EAT considered the issue of overpayment of wages in ***Gill and others v Ford Motor Co Ltd [2004] IRLR 840*** in which the EAT reviewed the law in this area, and that of jurisdiction (there being two cases which had been combined, with that in relation to overpayment being Wong). It held that factual findings were required as to whether or not there had
25 been an overpayment.

Discussion

36. This is one of those cases which does not involve a substantial sum of money in the individual case but is far from straightforward to determine. It is also a matter that might impact on other employees. I did not wish
30 therefore to take an immediate decision late in the day of the hearing, but decided to consider matters and give this written Judgment.

37. I was entirely satisfied that both the claimant and Ms Rennie sought to give honest evidence. The claimant was not able to give much evidence beyond his concerns over not being paid for what he had worked, as he
35 understood it. Ms Rennie gave evidence of how she had calculated sums. She was not able to explain why it was that she thought that there had been an overpayment beyond one spreadsheet that showed an excess of payment for overtime hours over hours recorded. She had latterly paid some of the overtime, but was not able to explain why the figure was as it

was and thought firstly on reflection that it was a mistake to have done so, and secondly later in her evidence that it would have been better not to have made the deduction as to overtime. Her evidence was candid and I am sure that she was seeking to be of assistance to the Tribunal.

5 38. The first issue is whether there had been unauthorised deductions, and
within that there are a number of individual matters. The first is that the
claimant had been paid for work in the week commencing 19 May 2025.
He claimed that in effect it had been lost from having his wages paid two
10 weeks in arrears. Having considered the documentation raised with him in
cross examination and the evidence of Ms Rennie I am satisfied however
that, he was paid for that week. The practice, based on a contractual term,
was to pay basic wages where 40 or more hours per week had been
worked in any week, which was calculated from Monday to the following
15 Sunday, although the claimant worked Monday to Friday, on the Friday
of the following week. Overtime initially was for over 45 hours per week,
and latterly that was reduced to over 40 hours per week. Where overtime
hours were worked they were paid on the Friday one week after payment
of basic hours, therefore two weeks in arrears in effect. Where hours
worked were less than 40 matters were somewhat more complicated. For
20 the week after that the payment made was in relation to the previous week,
but in the week after that it would reflect the hours worked, and include
any further sums due such as for annual leave, bereavement leave or sick
pay.

25 39. The claimant did not seriously dispute the issue over holiday pay. He did
not appear to me to contest that he had taken and been paid for 2 extra
days in 2024. 1.5 days were therefore, the respondent claimed, overpaid
net when taking account of the 2025 pro rata entitlement. From the
evidence I heard I was satisfied that this sum had been properly deducted
30 from the pay due. For completeness I should state that the evidence was
that where holiday pay was calculated it was based on an 8 hour day. The
calculation did not appear to include overtime. The claimant worked
overtime from time to time, but did not argue that the payment for overtime
had not been taken into account when calculating the holiday pay either
in his Claim Form or in evidence before me. Whilst I had a concern that
35 the sum for holiday pay may not have been calculated correctly in light of
the terms of the Working Time Regulations 1998 and related case law that
was not the case before me, and I did not consider that I was able to
determine it because of that. In addition the evidence necessary to make
a decision on that, both as to the merits and remedy, was not addressed
40 during the hearing in that context.

40. The second matter is that in week commencing 12 May 2025 the claimant
worked 41.78 hours. That was paid as 40 hours basic on the following
week and 1.75 hours overtime was due to be carried forward to the
following week. But it was paid at 1.25 hours, and the 0.5 hours balance
45 was not explained other than that it arose from a spreadsheet carrying out

5 totalling. It was paid along with basic hours pay however, when it ought to have been paid at overtime rates, as Ms Rennie very properly accepted. The calculation was therefore in error in that regard, but Ms Rennie argued that the spreadsheet was correct on the 1.25 hours. I address that further below.

10 41. The third matter was of a deduction for what was described as overtime. It was initially of 21.5 hours but had then been reduced because there were 2 hours of claim time to be credited, leaving a balance of 19.5 hours as a deduction. Ms Rennie did so from a spreadsheet that totalled all overtime hours paid, and all overtime hours said to be due. The balance was said by her to mean that there had been an overpayment of overtime. It was founded as I understand the position on a spreadsheet at page 151-152, but that was not a document put to the claimant in cross examination.

15 42. The overtime that had been worked from time to time had originally been paid and referred to in payslips when the overtime was worked throughout the course of the employment. It appears to me to follow that the calculation of overtime was therefore made at the time, and was likely to have been made by Ms Rennie herself. She was not able to explain why there was any overpayment beyond the totals referred to and that that is what the spreadsheet showed. She could not say when an overpayment had been made, why or what the amount in each case was. The best she could do was raise the possibility that the tachograph card had recorded time spent asleep, but firstly that had not been raised in cross examination with the claimant, and secondly it was merely a possibility.

20 43. There was also and in my view significantly a conflict between another set of records Ms Rennie produced, concluding on page 102, which was discussed in detail during cross examination of the claimant and to a lesser extent in her own evidence. Disparities between them she was not able to explain.

25 44. If even one of the overtime payments had been cross referenced with tachograph or other records to show where the payslips recording overtime had been unreliable, or another explanation for how the alleged overpayment occurred, matters would have been different – provided of course that that had been raised in cross examination with the claimant. But none of that was done, and the cross examination was largely on the basis of one spreadsheet concluding with page 102, not at all the spreadsheet on pages 151. In my view that evidence base is not sufficient to lead me to find a fact that there had been overpayment in relation to overtime.

30 45. The reliability of this evidence is further undermined by firstly Ms Rennie's not fully explained difference in calculating the last set of overtime being the difference between 1.25 paid and 1.75 her records showed, even if that difference is only 0.5 hours, and secondly and more significantly by

her agreeing to pay a further amount for overtime on 14 August 2025, without being able to explain how that had been arrived at, and then arguing that it was in effect done in error.

5 46. It appears to me that the evidence of Ms Rennie as to alleged overtime overpayment is not reliable given these issues, but I accept that Ms Rennie was doing what she thought was right and these comments should be seen in that context.

10 47. Taking all of the evidence before me I consider that the calculations made by the respondent on overtime made at the time, confirmed by it in its payslips, and paid to the claimant in light of that, are more likely to be accurate than one spreadsheet which was not explained and is inconsistent with another document. I do not consider therefore that there had been overpayment of overtime. As a result of that, deduction for it was a breach of section 13.

15 48. In light of my findings above it is not necessary to construe the deductions agreement. If there was no overpayment for the matters above there is nothing that it can be relevant to whether under section 13 or otherwise.

20 49. I turn to remedy. The deduction shown on the payslip dated 6 June 2025 is for 19.5 hours. The overtime rate is £14.47 per hour. The respondent paid what it described as "shortfall" of 11.75 hours overtime, at overtime rates, latterly, and that leaves 7.75 hours due at that rate. £112.14 is the sum I consider due.

25 50. Also due is 0.5 hours overtime for the last set of overtime, as for the same reasons I consider that the spreadsheet on which the lower figure of 1.25 was less reliable, and that is payable at the differential between the overtime rate and the basic rate of £12.24 per hour, which is £2.23 per hour. The amount is £1.12.

51. I calculate that the total due to the claimant is accordingly the sum of £113.26

30 52. For the avoidance of doubt I was satisfied that the Claim was competently before the Tribunal and within its jurisdiction.

Conclusion

35 53. On the basis of the evidence before me, I conclude that there was no overpayment of overtime and that the deduction for that was unauthorised under section 13. I also consider that there was an underpayment for 0.5 hours for work done, as addressed, but that otherwise there was not an unauthorised deduction.

54. The award is made gross. It may be subject to deductions, for income tax. If it is, that is provided for above. I note that the August 2025 payment was

not taxed. It is not clear to me if that was correct, as it was payment for work carried out rather than a termination payment.

55. As a general comment normally what pay is due for work carried out is relatively simple, and issues of the complexity of this case rarely arise. One issue appears to me that the payslips do not clearly set out what is being paid for, and over what period of time. Another is the differing timing for payment of basic hours and overtime. These are not matters directly relevant to the determination of the case but matters that the respondent may wish to consider for the future. Whether or not to do so is for it.

56. For completeness I note that the evidence was that proportions of hours were rounded up or down to the nearest 0.25. It was not challenged in the evidence before me. Whether doing so was always done correctly was not a matter raised in evidence. It seems to me that with modern payment and payroll systems that is a somewhat surprising practice, whether it complies with the 1996 Act I have not been asked to determine, and I should not be taken as having approved that practice, or indeed not to have done so, or the matter as to the calculation of holiday pay not including overtime as noted above, in this Judgment.

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Date sent to parties

2 June 2026