EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002820/2025

Held in Edinburgh on 28 April 2026

Employment Judge J G d'Inverno

Mr Pawel Jan Galka	**Claimant** **No appearance and** **No representation**
Elenic Construction Ltd	**Respondent** **No appearance and** **No representation**

JUDGMENT REASONS OF THE EMPLOYMENT TRIBUNAL

1. This undefended complaint, of Unauthorised Deduction from Wages in terms of section 13 of the Employment Rights Act 1996, called for Final Hearing at Edinburgh on 28 April 2026 in terms of Notice of Hearing issued to parties on 1 August 2025.

2. The claimant did not attend.

3. The Employment Judge delayed the start of proceedings while unsuccessful attempts to make contact with the claimant on the telephone number provided by him for that purpose were taken forward by the clerk.

4. The case is one in which the respondent had not entered appearance and accordingly, although entitled to be present at the Hearing, could only participate to the extent allowed by the Judge.

5. The respondent's Director, Mr Konstantinos Daniiloudis, attended and tendered, via the clerk, a statement in which he set out the respondent's reasons for non- payment to the claimant of the wages which were the subject of the claim.

6. Upon reviewing the digital case file, including the claimant's most recent responses to requests of information from the Tribunal, the Judge determined:

    a. in terms of Rule 47, that the Hearing would proceed in the absence of the claimant

b. allowed the respondent's Director's statement, it being information which was then available to the Tribunal, to be received, in order that it might be considered as required by the terms of Rule 47 and,

c. converted the Hearing to an In Chambers Hearing, at which attendance by parties was not required, for consideration and determination of the claim on paper.

The issue

7. The issue before the Tribunal for determination at Hearing was whether, in the month of August 2025 and contrary to the provisions of section 13 of the Employment Rights Act 1996, the respondent made an unauthorised deduction from the claimant's wages of a net sum equivalent to the gross amount of £1,054, being wages due and resting owing to the claimant for 62 hours of work carried out by the claimant, at a contractual rate of £17 per hour, in the periods 28 July to 1 August 2025 and 4 August to 6 August 2025.

Findings in fact

8. On the documentary evidence available to it the Tribunal makes the following essential Findings of Fact restricted to those relevant and necessary to the determination of the issue.

9. In July and August of 2025, the claimant was employed by the respondent company under an "umbrella scheme".

10. He was separately a worker within the statutory definition of that term.

11. He enjoyed the protection afforded to workers and employees in terms of section 13 of the ERA, from the making, by their employer, of unauthorised deductions from their wages all as set out in that section of the 1996 Act.

12. The claimant was contracted to work at an agreed rate of £17 gross per hour for up to 40 hours per week.

13. In the period 28 July to 6 August 2025 inclusive, the claimant carried out 62 hours of work for the respondent.

14. The respondent did not make payment to the claimant, in respect of those hours worked.

15. The respondent's non-payment to the claimant of the wages in respect of the hours worked by him in July/August 2025 constituted an unauthorised deduction from the claimant's wages contrary to the provisions of section 13 of the ERA.

16. The respondent declined to pay the claimant and continues to decline to pay the claimant because of what it asserts was the poor quality of the work carried out by him including, in relation to the building of a double partition wall in respect of which the respondent asserts amongst other matters:-

    a. That the wall was not vertical, and did not have the same height as the existing wall.

    b. That the wall was not at a 90◦ degree angle to the existing wall.

    c. That the framing was not at every 600mm centre.

    d. That the wall needed to be dismantled and repaired resulting in a waste of time and material at a cost of £680 to the respondent.

The applicable law

17. The right not to suffer unauthorised deductions from wages is set out in section 13 of the Employment Rights Act 1996 ("ERA") which is in the following terms:

"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.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

(8) In relation to deductions from amounts of qualifying tips, gratuities and service charges allocated to workers under Part 2B, subsection (1) applies as if—

(a) in paragraph (a), the words "or a relevant provision of the worker's contract" were omitted, and

(b) paragraph (b) were omitted."

18. Deductions which are excepted from the protection contained in section 13 are set out at section 14 of the 1996 Act which is in the following terms:-

"14 Excepted deductions.

(1) 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, or

(b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,

made (for any reason) by the employer to the worker.

(2) Section 13 does not apply to a deduction from a worker's wages made by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

(3) Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.

(4) Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—

(a) in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or

(b) otherwise with the prior agreement or consent of the worker signified in writing,

and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.

(5) Section 13 does not apply to a deduction from a worker's wages made by his employer where the worker has taken part in a strike or other industrial action and the deduction is made by the employer on account of the worker's having taken part in that strike or other action.

(6) Section 13 does not apply to a deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer."

Discussion and decision

19. The case is one which had proceeded to an undefended hearing, the respondent company not having entered appearance and not having lodged a Response Form ET3 such that although entitled to be present at the Final Hearing set down for 28 April it was entitled to participate only to the extent that the Judge allowed. The respondent's Director attended at the time set

down for Hearing and tendered a statement in which he effectively set out the company's Grounds of Resistance.

20. The Tribunal having determined in terms of Rule 47 that the Hearing should proceed in the absence of the claimant and further that it be converted to an In Chambers Hearing at which the claim would be considered and determined on paper, the Tribunal allowed the respondent's Director's written statement to be received, it falling into the category of information which was now available to the Tribunal which it required to consider in terms of Rule 47.

21. The Respondent's Director's statement does not put in dispute the issue of the claimant's employment, nor the asserted agreed contractual hourly rate of pay of £17 per hour gross nor the number of hours worked in respect of which the claimant was not paid [all as set out in his correspondence (invoice) sent to the respondent company on 8 August 2025,] nor does it put in dispute the dates between which the claimant asserts he carried out the work. Rather, the statement sets out a defence in contract namely that the work carried out by the claimant was not carried out to the implied standard of a reasonably competent tradesperson, thus entitling the respondent to retain performance (i.e. payment of the wages claimed) and, on their remedying what they described as the "sloppily and imprecisely" done work, resulting in a residual claim for damages in the sum of £680 being the cost of materials and labour expended in carrying out remedial work.

22. Under the Scots Law of Contract those grounds, if established, would amount to an effective defence against the claimant's claim for payment and, in so far as they are averred (asserted) in the face of a claim might, prior to their being established, provide a ground for retaining performance of the respondent's reciprocal obligation of payment pending their determination at an evidential hearing. They do not, however, fall within the category of excepted deductions which are enumerated in section 14 of the ERA. They do not operate as a defence to a complaint of Unauthorised Deduction from wages in terms of section 13 of the Act.

23. Neither would the Tribunal have jurisdiction to consider a counter claim in those terms in the absence of the claimant, for his part, first invoking the Tribunal's contractual jurisdiction upon termination of employment, which the claimant has not sought to do.

24. Section 13 of the 1996 Act has as its purpose, amongst others, the protection of workers and employees from the making of just such deductions pending the determination of any contractual disputes between their employer and themselves

25. The respondent's now confirmed reasons for non-payment of the sums claimed in wages do not amount to relevant Grounds of Resistance in the face of the section 13 ERA complaint of Unauthorised Deduction from Wages which the Tribunal finds, on the preponderance of the documentary evidence presented including the respondent's Director's statement and on the balance of probabilities, to have been established.

26. The Tribunal accordingly finds in Fact and in Law that in the month of August 2025 the respondent made an unauthorised deduction from the claimant's wages, contrary to the provisions of section 13 of the Employment Rights Act 1996 in a net sum equivalent to the gross amount of £1,054, in respect of wages due for 62 hours of work carried out by the claimant, at a contractual rate of £17 per hour gross, in the period 28 July to 6 August 2025. The Tribunal Orders the respondent to make payment to the claimant in a gross sum equivalent to the net deduction, that is to say in a gross sum of £1,054, and Orders the claimant to account directly to His Majesty's Revenue and Customs for the income tax payable, and for the appropriate employee's National Insurance contribution, on that gross sum, once received.

27. It will be a matter for the respondent to consider if they wish to pursue an action in damages for breach of contract against the claimant in the Sheriff Court but the mere raising of such proceedings against the claimant will not entitle them to withhold payment to the claimant as is now ordered by the Tribunal in terms of the Judgment to which this Note of Reasons is attached.

J G d'Inverno

Employment Judge

30 April 2026

Date of Judgment

Date sent to parties 15 May 2026