EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100639/2026

Held in Aberdeen via Cloud Video Platform (CVP) on 11 August 2026

Employment Judge A Kemp

Mr K Fair	**Claimant** **Represented by:** **Mr S Johnston - Solicitor**
Colins Tyres	**Respondent** **No appearance and No representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The respondent dismissed the claimant for having made protected disclosures and the dismissal is automatically unfair under section 103A of the Employment Rights Act 1996.

2. The respondent subjected the claimant to a detriment under section 47B of the Employment Rights Act 1996 by threatening to (i) withhold payment of wages due, as was done and (ii) tell his former colleagues about the claimant making said disclosures.

3. The claim that the respondent did not provide a statement of particulars in accordance with the terms of sections 1 – 4 of the Employment Rights Act 1996 succeeds.

4. The Tribunal grants a declaration that the respondent made unauthorised deductions from the wages of the claimant under section 13 of the Employment Rights Act 1996 by not paying him wages due, and for outstanding holiday pay.

5. The Tribunal grants a declaration that the respondent is in breach of section 8 of the Employment Rights Act 1996 by failing to provide payslips when due.

6. The respondent is in breach of contract in not giving the claimant notice of termination of employment.

7. The claimant is awarded the sums payable by the respondent to the claimant as follows:

   (i) The sum of **TWELVE THOUSAND SIX HUNDRED AND FIVE POUNDS THIRTEEN PENCE (£12,605.13)** in respect of the automatically unfair dismissal and said detriments.

   (ii) The sum of **TWO THOUSAND NINE HUNDRED AND EIGHTY FOUR POUNDS SEVENTY PENCE (£2,984.70)** in respect of the unauthorised deductions from wages.

   (iii) The sum of **SEVEN HUNDRED AND TWENTY POUNDS (£720)** as damages for breach of contract.

   (iv) The sum of **TWO THOUSAND EIGHT HUNDRED AND EIGHTY POUNDS (£2,880)** as compensation for the respondent not providing a statement of particulars of employment.

8. The sums awarded at 7(ii) and (iii) are payable gross, subject to such deductions for income tax as the respondent may be required to make. The respondent may make a deduction from those awards to account for tax properly due on it. If the respondent makes any deduction it shall make payment to His Majesty's Revenue and Customs of the amount of that deduction and at the same time provide written evidence to the claimant of its having done so.

9. The Tribunal defers consideration of a penalty under section 12A of the Employment Tribunals Act 1996 for a period of 14 days to allow the respondent to make representations.

REASONS

Introduction

1. This was a Final Hearing into claims made by the claimant against the respondent. The respondent has not defended the Claim, and did not appear at this hearing.

Evidence

2. The claimant had provided documents by a single Bundle. The claimant gave evidence in answer to questions from Mr Johnston. I asked questions to elicit the facts under Rule 41.

Facts

3. I found the following facts, material to the issues before me, to have been established:

4. The claimant is Mr Kevin Fair

5. The respondent is Colins Tyres.

6. The claimant commenced employment with the respondent on 17 June 2024 as Tyre Fitter/ Mobile Technician.

7. At no stage did the respondent provide the claimant with a written statement of particulars of employment.

8. From early on in his employment the claimant informed Mr Richard Evans of the respondent verbally of his concerns over how other members of staff were undertaking work. That included that brakes were not properly serviced such that brake failure was possible; service lights had been removed from a vehicle without any service being carried out; oil not being changed when required; and holes being cut or formed in the undertray of a vehicle, which was in place to protect the engine. He did so in the context of the respondent carrying out work for a car hire company, which hired vehicles out to customers. The claimant believed that the health and safety of customers was being or likely to be endangered. His belief was reasonable, and he reasonably held the belief that raising matters was in the public interest.

9. Mr Evans initially dismissed the claimant’s concerns, stating words to the effect that the claimant was talking a load of nonsense. The claimant continued to raise matters with Mr Evans. Latterly the claimant intimated that he would raise the matter directly with the customer. Shortly thereafter in WhatsApp messages from Mr Evans to the claimant on 14 November 2025, Ms Evans stated “emolument terminated” and then made reference to giving him a P45, which the claimant considered might have been a dismissal, with the term emolument he thought being a typographical error for employment. Mr Evans then apologised for doing so in a message sent the following day, saying that he was a drunken idiot, but thereafter that same day stated in a message “you are unemployed”. The claimant was unsure of his employment status at that stage. On 19 November 2025 Mr Evans told the claimant in a telephone call that he was not getting his job back. Mr Evans stated in a further message to the claimant that day that he would pay the claimant nothing.

10. On 20 November 2025 Mr Evans sent a message that “due to your threats I personally pulled your wages”. The claimant took the reference to his threats to be a reference to his [the claimant’s] comment as to informing the customer of his belief as to endangering health and safety and the disclosures he made to Mr Evans about them. That same date Mr Evans sent a message stating that he would forward messages to “guys of your workplace and they can deal

with you". The claimant took that to be a threat to inform colleagues of what he had said about endangering health and safety, and that some form of retribution that could include an assault, was possible. .

11. The claimant was not paid for work he carried out on Sunday 9 November 2025, for which the sum of £150 gross was payable. The claimant was not paid for the work he carried out in the period 10 – 14 November 2025, for which the sum of £720 gross was payable. The respondent withheld those sums because of the disclosures made to the respondent, and the claimant stating that he would inform the customer.

12. The claimant was dismissed by the respondent on 19 November 2025 because he had made said disclosures, and because the respondent believed that the claimant would inform the customer of them after the claimant said that he would do so.

13. A form P45 issued by the respondent indicated a termination date of 28 November 2025. It stated the employer as "Colins Tyres" as did an earlier P60 and payslips.

14. The claimant was provided with payslips from the respondent until on or around 30 June 2025, after which none were provided. Prior to that the respondent had on occasion provided payslips later than the date on which payment was made to the claimant.

15. The claimant's standard pay, gross, when employed by the respondent was £720 per week, calculated on the basis of 40 hours per week at £18 per hour worked on Mondays to Fridays. The claimant also worked some days at weekends.

16. The claimant's average net pay per week with the respondent was £564.33 in the twelve week period ending on the date of termination.

17. The claimant did not receive any state benefits.

18. After the termination of employment with the respondent the claimant commenced new employment with Fife Auto Centre, working for 40 hours per week and paid £15.50 per hour gross. He commenced that employment on 24 November 2025, and it ended on 13 January 2026.

19. On 14 January 2026 the claimant commenced employment with Euroroute Recovery. He is paid £541.42 net per week, and that employment continues.

20. The claimant commenced Early Conciliation on 25 November 2025. The Certificate for that was issued on 6 January 2026. The present Claim was presented on 31 March 2026.

21. The claimant was upset by the dismissal. He was concerned at the threats made to inform colleagues of his disclosures, which he feared may result in an assault. He was inconvenienced by the failure to pay sums due for outstanding wages and holiday pay.

The law

22. The Employment Rights Act 1996 ("the 1996 Act") makes provision in sections 1 – 4 for a written statement of particulars of employment to be provided to a worker where the worker begins employment. There are exceptions at section 5 not relevant for the present claim. The remedy for breach of that is provided for in section 38 of the Employment Act 2002 "the 2002 Act"). It is not a standalone remedy, but requires that one of the provisions in Schedule 5 of the 2002 Act is engaged. One of those provisions is section 23 of the 1996 Act as to unauthorised deductions.

23. The 1996 Act makes provision for payslips to be provided in section 8, at or before the time at which any payment of wages is made. Section 11 entitles a worker to make a claim to the Employment Tribunal for any breach of sections 1, 4 or 8.

24. The right not to suffer unauthorised deductions from wages is set out in section 13 of the 1996 Act. There are exceptions in section 14 which are not relevant for the purposes of this case. There is a right to make a claim at the Employment Tribunal provided for in section 23. The definition of wages is within section 27, and includes holiday pay.

25. A protected disclosure is defined in section 43 of the 1996 Act. Provision is made in relation to detriment in section 47B and automatic unfair dismissal in section 103A. A complaint may be made to the Tribunal under section 111.The level of compensation is addressed in sections 118 – 124.

26. The right to holiday pay arises from the Working Time Regulations 1998, and includes accrued entitlement as at the date of termination of employment under Regulation 14. Not paying it is an unauthorised deduction from wages.

27. A failure to give notice which is due is a breach of contract. Section 86 of the 1996 Act provides for a minimum period of notice dependent on completed years of continuous service.

Discussion

28. I was entirely satisfied that the claimant gave credible and reliable evidence.

(i) Identity of respondent

29. One issue that was not entirely clear was the legal entity that constituted the respondent. That was not through fault of the claimant, but the failure of the respondent to provide a statement of particulars, which would have identified that. Colins Tyres was the name given on payslips where provided, and the P60 and P45. It may have been the name of a partnership, or the trading name of an individual, but the claimant had not been told of that detail. I have granted the Judgment using that name, being the name in the Claim Form, as there is no evidence available to me for an alternative.

(ii) Detriment and dismissal for making protected disclosures

30. The claimant’s evidence was that he made protected disclosures to the principal of the respondent, Mr Richard Evans, on several occasions during his employment. They are referred to in the findings in fact. I considered that his evidence should be accepted, and that what had been disclosed met the definition in section 43. I was satisfied that that was the sole or principal reason for the dismissal, accepting the claimant’s evidence on that. It had support from contemporaneous messages, which included a number of threats made against the claimant, which were in part acted on - particularly the lack of payment of sums for work carried out.

31. The date of termination was not clear. It seems to me that the most likely date was 19 November 2025, on which date Mr Evans told the claimant he would not be getting his job back. Prior to then there had been a message indicating emoluments terminated, the claimant considered to be a typographical error for employment terminated as there was then a reference to a P45, but that was followed by a form of apology and what amounted to a retraction, and then by further messages. I consider that it was when Mr Evans said that the claimant was not getting his job back that there was sufficient clarity of matters to amount to a dismissal.

32. The P45 issued by the respondent indicated a termination date of 28 November 2025, and that may have been an alternative date, but there was nothing in the evidence to support it from what I could see. No evidence was given by the respondent, and on that basis it did not seem to me that that date was the correct one.

33. On the basis that the termination in law took place on (or indeed after) 19 November 2025 I accept that the Claim Form was presented timeously, such that the Tribunal has jurisdiction.

(iii) Statement of Particulars and payslips

34. I accepted that the statement of particulars required by the 1996 Act was never provided

35. The issue in relation to payslips was somewhat different. Payslips were provided but only up to around the end of June 2025. There did not appear to be any dispute but that they were provided during the employment period until then. The issue was both that they were not always provided on time, and then not at all after that date.

36. Section 8 states that a payslip must be provided at or before the time of payment, and it was not in all cases, latterly not at all. On that basis I consider that there had been a breach of section 8 and this claim succeeds.

(iv) Wages

37. There were two issues as to unauthorised deductions from wages. The first is the lack of payment of wages for the days worked between 9 (a Sunday) and 14 (a Friday) November 2025. The second is as to outstanding holidays, on which the claimant's evidence was 134.15 hours, which I accepted.

(v) Remedy

38. As to remedy, I address the issue of the dismissal and detriments first. The claimant seeks firstly the sum of £10,000 as injury to feelings. I consider that that is a proportionate and appropriate award to make. The dismissal impacted the claimant, as did the threats that were made, and the lack of payment for sums due which was deliberately withheld. I consider that what happened in those respects fell within the definition of detriment for the purposes of the 1996 Act.

39. Secondly the claimant seeks a basic award, which I award in the sum of £719 being the maximum, very slightly less than as sought.

40. Thirdly I address the compensatory award. The position in relation to wage loss is as follows. Firstly the claimant has been awarded loss for the first week, and it is not to be awarded a second time. That takes the period from which loss starts for these purposes up to 21 November 2025. The claimant commenced employment on 24 November 2025. He had one day of work lost, being 23 November 2025. From the details of the evidence I heard his net wage from the respondent was £564.33. For a five day standard week that equates to £112.86 per day, which I award for that date.

41. He then commenced new employment at £15.50 per hour. That is a differential of £2.50 per hour, with the claimant again working a standard 40 hour week. No payslips were produced for this employment. I accepted however the evidence given. I calculate the net loss to be of the order of £70 per week. It is liable to be higher than that but I have used the figure that is

the minimum I consider the loss to be in light of the lack of vouching. The period of loss is from 24 November 2025 to 13 January 2026. That is a little over 7 weeks. At £70 per week the loss is £490.

42. From 14 January 2026 the loss is £564.33 less £541.42 per week net. The period to the date when this Judgment is liable to be promulgated is of the order of 7 months. The loss for this period is a figure of £694.89. The claimant sought future loss for one year, and in my view that is a reasonable assessment of losses likely to be sustained as a result of the automatically unfair dismissal. The claimant has limited opportunity for higher earnings, but some, and set against that is that the current position is a permanent one. The future loss award is £1,191.24. The total losses of earning past and future is £1,886.13.

43. Whilst the claimant sought interest, I am not aware of any provision to award that save for a discrimination claim. The total awards for the basic and compensatory awards is therefore £12,605.13. That is a compensatory amount, and not subject to tax. As there is a different tax treatment for the awards they are made separately in the Judgment above.

44. I next address the claim for the lack of a statement of particulars. A declaration as to the fact of an unauthorised deduction from wages having been made, the condition of a matter falling within Schedule 5 is met. I may award between two and four weeks' pay for this, and in the circumstances I consider that the appropriate award is of four weeks pay. That is the sum of £2,880. That is also a compensatory payment, not subject to tax.

45. In relation to the issue of payslips I have granted a declaration, but in all the circumstances, which include the award made in the preceding paragraph, do not consider that any further financial award is appropriate.

46. So far as unauthorised deduction from wages is concerned, section 24(2) of the Act provides that where a declaration is made the Tribunal "may order the employer to pay to the worker ……such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of."

47. The claimant seeks pay for 9 November 2025 at £150 and for the week commencing 10 November at £720. The total of those sums is £870.

48. For holiday pay the figure is 134.15 hours x £18 per hour which is £2,414.70. The total award to the claimant for unauthorised deductions from wages is accordingly the sum of £2,984.70. As it is for wages due, it requires to be subject to any appropriate statutory deductions as provided for above.

49. The claimant did not receive notice. The entitlement is to one week under section 86 of the 1996 Act, not the two weeks sought. It was not given and that is a breach of contract. It is also subject to statutory deductions. The sum awarded for damages for the breach is £720.

Penalty

50. Employment Tribunals have a discretionary power in certain circumstances to order employers to pay a financial penalty to the Secretary of State, under the Employment Tribunals Act 1996 section 12A, which was inserted by section 16 of the Enterprise and Regulatory Reform Act 2013. It has subsequently been amended.

51. The provision is as follows:

"12A Financial penalties

(1) Where an employment tribunal determining a claim involving an employer and a worker—

(a) concludes that the employer has breached any of the worker's rights to which the claim relates, and

(b) is of the opinion that the breach has one or more aggravating features,

the tribunal may order the employer to pay a penalty to the Secretary of State (whether or not it also makes a financial award against the employer on the claim).

(2) The tribunal shall have regard to an employer's ability to pay

(a) in deciding whether to order the employer to pay a penalty under this section;

(b) (subject to subsections (3) to (7)) in deciding the amount of a penalty.

(3) The amount of a penalty under this section shall be—

(a) at least £100;

(b) no more than £20,000.

This subsection does not apply where subsection (5) or (7) applies.

(4) Subsection (5) applies where an employment tribunal—

(a) makes a financial award against an employer on a claim, and

(b) also orders the employer to pay a penalty under this section in respect of the claim.

(5) In such a case, the amount of the penalty under this section shall be 50% of the amount of the award, except that—

(a) if the amount of the financial award is less than £200, the amount of the penalty shall be £100;

(b) if the amount of the financial award is more than £40,000, the amount of the penalty shall be £20,000.

(6) Subsection (7) applies, instead of subsection (5), where an employment tribunal—

(a) considers together two or more claims involving different workers but the same employer, and

(b) orders the employer to pay a penalty under this section in respect of any of those claims.

(7) In such a case—

(a) the amount of the penalties in total shall be at least £100;

(b) the amount of a penalty in respect of a particular claim shall be—

(i) no more than £20,000, and

(ii) where the tribunal makes a financial award against the employer on the claim, no more than 50% of the amount of the award.

But where the tribunal makes a financial award on any of the claims and the amount awarded is less than £200 in total, the amount of the penalties in total shall be £100 (and paragraphs (a) and (b) shall not apply).

(8) Two or more claims in respect of the same act and the same worker shall be treated as a single claim for the purposes of this section

(9) Subsection (5) or (7) does not require or permit an order under subsection (1) (or a failure to make such an order) to be reviewed where the tribunal subsequently awards compensation under—

(a) section 140(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (failure to comply with tribunal's recommendation),

(b) section 117 of the Employment Rights Act 1996 (failure to reinstate etc),

(c) section 124(7) of the Equality Act 2010 (failure to comply with tribunal's recommendation), or

(d) any other provision empowering the tribunal to award compensation, or further compensation, for a failure to comply (or to comply fully) with an order or recommendation of the tribunal.

(10) An employer's liability to pay a penalty under this section is discharged if 50% of the amount of the penalty is paid no later than 21 days after the day on which notice of the decision to impose the penalty is sent to the employer.

(11) In this section—

"claim"—

(a) means anything that is referred to in the relevant legislation as a claim, a complaint or a reference, other than a reference made by virtue of section 122(2) or 128(2) of the Equality Act 2010 (reference by court of question about a non-discrimination or equality rule etc), and

(b) also includes an application, under regulations made under section 45 of the Employment Act 2002, for a declaration that a person is a permanent employee;

"employer" has the same meaning as in Part 4A of the Employment Rights Act 1996, ………

"financial award" means an award of a sum of money, but does not including anything payable by virtue of section 13

"worker" has the same meaning as in Part 4A of the Employment Rights Act 1996, …….".

52. This power was granted to Tribunals, according to the Explanatory Notes to the 2013 Act by which that amendment was introduced:

"to encourage employers to take appropriate steps to ensure that they meet their obligations in respect of their employees, and to reduce deliberate and repeated breaches of employment law".

53. The Explanatory Notes also comment on the factors that a Tribunal might take into account as follows:

“An employment tribunal may be more likely to find that the employer’s behaviour in breaching the law had aggravating features where the action was deliberate or committed with malice, the employer was an organisation with a dedicated human resources team, or where the employer had repeatedly breached the employment right concerned. The employment tribunal may be less likely to find that the employer’s behaviour in breaching the law had aggravating features where an employer has been in operation for only a short period of time, is a micro business, has only a limited human resources function, or the breach was a genuine mistake.”

54. It seems to me that the respondent’s conduct may meet the test for a penalty. It appears from the evidence I heard that there was a deliberate failure to pay sums due after disclosures were made, with detriments and dismissal because of those disclosures. The respondent has made what are threats against the claimant. Before any final decision is taken however it is appropriate that the respondent be put on notice that this issue is to be considered, and have the opportunity to make any comment it wishes to.

55. I also require to consider separately the issue of ability to pay under sub-section 2(a), and the respondent has an opportunity to set out that, with supporting documentation, and make any other comments on any circumstance it considers relevant.

56. The respondent has 14 days from the date of this Judgment being sent to it to respond in relation to the issue of penalty with its written arguments and any supporting documentation it wishes to provide.

57. A decision on whether or not to issue a penalty will be made after the respondent has responded or the 14 day period has elapsed. For the avoidance of doubt, if a penalty were to be imposed that is not paid to the claimant, but to the Secretary of State.

Date sent to parties **19 August 2026**