

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100940/2026

Held by Cloud Video Platform on 21 August 2026 and 25 September 2026

Employment Judge: M. Kearns

Mr R Nelson	**Claimant** **In person**
SWAT International Ltd	**Respondent** **Represented by:** **Mr A Kelly** **Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was that:

1. The respondent unlawfully deducted sums from the claimant's wages contrary to Section 13 of the Employment Rights Act 1996. The respondent is ordered to pay to the claimant the sum of **£615 (SIX HUNDRED AND FIFTEEN POUNDS)** net of Tax and National Insurance in respect thereof.

2. The claim for notice pay is dismissed.

3. The respondent did not present an employer's contract claim in the ET3 received by the Employment Tribunal on 28 April 2026. The employer's contract claim received by the Employment Tribunal on 10 August 2026 is rejected for lack of jurisdiction because it was presented more than 3 months late and is not a contract claim.

REASONS

1. The claimant was employed by the respondent as a steeplejack from July 2023 until January 2026, when his resignation took effect. Having complied with the early conciliation requirements, he presented an application to the Employment Tribunal on 7 April 2026 in which he claimed unauthorised deductions from his wages including holiday pay. He also made a claim for notice pay.

Evidence

2. The claimant gave evidence on his own behalf. Mr Kelly gave evidence on behalf of the respondent and called the following witnesses, who were all former steeplejack colleagues of the claimant: Kyle Gielty, Luke Dennis and Michael Hladky. There were two hearings in this case owing to the matters described below and relating to the respondent's late presentation of an employer's contract claim. The claimant did not attend the second hearing on 25 September. The clerk attempted to call him without success. I decided to proceed in his absence. The date had been arranged at the previous hearing and he had been consulted for his availability. I was satisfied the date had been confirmed in a Notice of Hearing and that the claimant knew of it. It was not in line with the over-riding objective to delay.

Findings in fact

3. The following material facts were admitted or found to be proved.

4. The claimant worked for the first respondent as a steeplejack from 31 July 2023 until 29 January 2026, when he resigned with immediate effect.

5. On or about 31 July 2023, the claimant signed a document entitled: '*Equipment Register & Training Agreement/ Personnel issue'*. The document stated: "*Equipment Issued – As per GC18 LOLER Inspection Record for Project. SWAT Kit no 16 #KIT 12 Black Helmet c. 12/08/*23". The claimant's signed declaration in relation to this kit was (so far as relevant) in the following terms: "*Equipment &Training*

Declaration

I accept this equipment and remain fully responsible for the equipment during my duration of the project. It remains my responsibility to inspect it on a daily basis for functionality and performance. I will report all defects/ missing parts to my supervisor immediately. It remains my responsibility to retain the equipment in full. I understand I will require to pay for replacement at cost plus 30% recovered via my pay/ invoice.

……..”

6. The claimant left the respondent on 29 January 2026 with immediate effect following a disagreement. He did not give any notice. On 3 February 2026, the respondent's director, Mr Andrew Kelly telephoned the claimant and informed him he had noticed a crack in the instrument cluster of the van the claimant had driven as part of his job. The claimant said he had not driven the van since 5 January 2026 and that he had not seen any damage. Mr Kelly told him that he did not know if the claimant was responsible for the damage but that the claimant had known about it and failed to report it and that he was therefore deducting the cost of repairing it from the claimant's wages. The claimant objected to this and said he wanted to raise a grievance and Mr Kelly told him to come in and they would investigate it properly. He arranged a meeting for 9 February. However, on 9 February, the claimant sent Mr Kelly a WhatsApp message to say that he would not make it to the meeting because the person who was supposed to accompany him could no longer come.

7. On or about 5 February 2026, the claimant received his final pay slip (dated 6 February 2026) from the respondent which stated that £800 was being deducted from the net wages owing to the claimant of £615.21 for “*Damage to Ford Transit”*. The final pay slip shows the sum due to the claimant as £542.30 gross plus pay for holiday accrued but untaken at termination amounting to £149.60 gross, giving a total deduction of £768.59 gross of tax and National Insurance or £615.21 net. The claimant has not received his final pay from the respondent and this remains unpaid.

8. The claimant notified ACAS of his intention to make this tribunal claim on 5 February 2026. The early conciliation certificate was issued on 26 March. On 7 April 2026, the claimant presented an application to the employment tribunal in which he claimed arrears of pay amounting to £615.21 net of tax and National Insurance. The ET1 was served on the respondent on 8 April 2026.

9. On 28 April 2026, the employment tribunal received the respondent's ET3 by post with an accompanying letter dated 27 April on the respondent's headed paper. The accompanying letter referred to “**CASE No. 4100940/2026**” but the number in the top right hand box of the ET3 the respondent submitted along with the letter was “4100641/2026”, which is the number of a claim by the claimant's father against the same respondent. In the box on the ET3 for the claimant's name, the respondent had instead typed the respondent's name. Otherwise, all the details contained in the ET3 (apart from the case number) related to the claimant's case, the correct number for which is 4100940/2026. The dates of employment given were the claimant's. In answer to question 2.4: “*What type of employer is the respondent?”* the words: “*Private Limited company (Micro business)”* had been typed. The details in

box 6.1 concerned the claimant's case. Page 6 of the pro forma ET3 was missing altogether and no employer's contract claim was included. In answer to section 6.1 of the ET3 the respondent had stated that the claimant had been aware of the damage to the company van, as confirmed by his former colleagues, and that '*had he followed a fair and reasonable and company procedure and reported the damage we could have taken the appropriate action to rectify to avoid further damage …. and avoid voiding the three year warranty*'. The basis of the respondent's case was that: "*We believe the claimant was negligent in failing to report the damage."*

10. In their covering letter dated 27 April 2026, the respondent again stated that the basis of their defence was that they believed the claimant had been "*negligent in following basic ethics and procedure*". The employment tribunal administrative staff processed the ET3. The ET3 processing form stated that no employer's contract claim had been included.

11. On 7 May 2026 the Tribunal wrote to the respondent following initial consideration of the claim asking 'what legal basis the respondent claimed for withholding the sums apparently due to the claimant (notwithstanding any negligence on the claimant's part)'. The respondent replied by letter dated 7 May 2026 enclosing a copy of the claimant's 'new start form dated 31 July 2023 relating to 'equipment and training'' quoted in paragraph 5 above. The respondent suggested that this gave them a legal basis for withholding the claimant's wages.

12. A final hearing was fixed, rearranged for 21 August and notified to the parties on 8 June 2026.

13. By email to the tribunal (copied to the claimant) dated 10 August 2026, the respondent stated: "*Our response remains the same as Section 7 of the ET3 response form document and calculation sheet included.// We believe we have the authorisation to recover costs from wages as acknowledged by Ryan Nelson on his appointment dated 31/07/23*". Included with this email was what appeared to be a fresh ET3, this time including an employer's contract claim.

14. The ET3 attached to the letter of 10 August 2026 was different from the copy received by the tribunal by post on 28 April 2026 in the following respects: It contained the claimant's name instead of the respondent's name in the "*claimant's name*" box at 1:1. Under "*Respondent's details*" at 2.1, the box next to "Mr" now had a cross. In answer to question 2.4: "*What type of employer is the respondent?"* the words: "*Private Limited Company"* had been typed. The words *"(Micro business)*" did not appear as they had in the original ET3 form received by post on 28 April 2026. Further, the correct case number had been entered in the top right hand box of the ET3 of 10 August 2026 instead of the claimant's father's case number. The new ET3 contained a

purported employer's contract claim, which had not been in the original ET3 received on 28 April 2026.

15. No application was received from the respondent for an extension of time for the employer's contract claim. They instead maintained that the ET3 received on 10 August was a copy of the original ET3 received by the tribunal on 28 April (a copy of which had been sent out to parties along with the Notice of the continued hearing under cover of a letter from the tribunal dated 2 September 2026).

Applicable Law

16. Rule 24(1) provides so far as relevant as follows:

"24.— Making an employer's contract claim

17. *(1) A respondent who wishes to make an employer's contract claim must do so by including it as part of the response to a claim which includes an employee's contract claim, and the Tribunal must receive the response by the time specified in rule 17(1) (response), or by any extension of time granted under rule 21 (applications for extension of time for presenting response).*

(2) The Tribunal may reject the whole or part of any employer's contract claim on the ground that—

(a) it has no jurisdiction, or

(b) it does not contain any grounds on which the respondent relies, cannot sensibly be responded to or is an abuse of process.

(3) Where the Tribunal rejects an employer's contract claim, rule 14 (reconsideration of rejection of claim) applies except that—

(a) references to a claimant or a claim must be read as a reference to a respondent or to an employer's contract claim respectively,

(b) reference to rule 12 is to be read as a reference to rule 24, and

(c) reference to rule 13 is to be ignored."

18. The time specified in rule 17(1) is within 28 days of the date that the copy of the claim form was sent to the respondent by the tribunal.

Discussion and decision

Claim for unauthorised deductions from wages

19. Section 13 of the Employment Rights Act 1996 gives workers the right not to suffer unauthorised deductions from their wages. Under section 13(3) a deduction occurs 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."*

20. The claimant's former colleagues testified frankly and carefully. Their evidence was that the van had been damaged for some time. Mr Hladky stated that this had been the case since at least since October 2025. None of the claimant's former colleagues stated that the claimant had caused the damage to the van. Indeed, Mr Kelly's own evidence was that he did not know if the claimant was responsible for the damage but that the claimant knew about it and failed to report it and that he had accordingly been negligent.

21. Mr Kelly's submission was that the declaration the claimant had signed on 23 July 2023 covered the reporting of damage to the van and that the respondent was therefore authorized to deduct from the claimant's final pay slip the cost of repairing the damage to the van. I did not accept this submission because the only equipment mentioned in the declaration is: "*SWAT Kit no 16 #KIT 12 Black Helmet*". (See paragraph 5 above.) There is no mention of the van. Also, the claimant was not the only person driving the van, so the words in the declaration: "*It remains my responsibility to retain the equipment in full"* would not make any sense in relation to the van, whereas they make perfect sense in relation to a SWAT kit. For the reasons given above, the deduction from the claimant's final pay of the cost of repairing the van is unauthorised and the claimant is entitled to his money.

Whether the respondent presented an employer's contract claim in the ET3 sent to the Tribunal on 28 April 2026.

22. Having heard from Mr Kelly about this on 25 September 2026, and double-checked with the Tribunal administration, the ET3 received on 28 April 2026 by post under the respondent's covering letter of 27 April was the one at page 1 of the electronic document file referred to at the 25 September hearing. (A copy of the original ET3 received on 28 April was sent to the parties by the tribunal on 2 September for their assistance). It did not contain an employer's contract claim.

Whether the tribunal should allow the respondent's employer contract claim presented on 10 August to be received late by amendment.

23. The respondent presented a fresh ET3 to the employment tribunal on 10 August 2026. The fresh ET3 was different from that originally presented in the respects set out in paragraph 14 above. In contrast to the original ET3

received from them by post on 28 April, the new ET3 contained an employer's contract claim. Under rule 24 of the Employment Tribunal Procedure Rules 2024, this employer's contract claim should have been incorporated into the original ET3 and lodged within 28 days of 8 April 2026 (the date when the Notice of Claim was served). Thus it should have been submitted by 6 May 2026. Instead, it was lodged on 10 August, 3 months and 4 days late and 11 days before the final hearing. Mr Kelly's position was that this ET3 was simply a copy of the original ET3. He did not make any application to amend the response to incorporate the employer's contract claim nor did he make any application for an extension of time/ late acceptance. Accordingly, I have rejected the employer's contract claim both because it is late; but also because - as stated by Mr Kelly in his covering letter dated 27 April 2026 - the claim the respondent seeks to make against the claimant is a claim in delict for alleged negligence for which the employment tribunal does not have jurisdiction. Such a claim would require to be presented in the sheriff court. Mr Kelly argued that the reference to equipment in the declaration at paragraph 5 above included the company van but that is not a statable interpretation of the declaration, which clearly refers to: "*Equipment Issued – As per GC18 LOLER Inspection Record for Project. SWAT Kit no 16 #KIT 12 Black Helmet*" and does not mention a van as explained in paragraph 21 above.

24. **The respondent has the right to request reconsideration of the rejection of the employer's contract claim under rule 24(3) of the Employment Tribunal Procedure Rules 2024. Any application for reconsideration must be in writing and must be received by the tribunal within 14 days of the day notice of rejection is given.**

Claim for holiday pay

25. As set out in the findings in fact above, the claimant was entitled to statutory holiday pay. This is included in the claim for unauthorised deductions from wages.

Claim for notice pay

26. Although the claimant ticked the box on the ET1 form to claim notice pay, he in fact resigned from the respondent's employment on 29 January 2026 with

immediate effect and did not offer to work notice. In these circumstances, he does not have a claim for notice pay and that claim is dismissed.

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Date sent to parties 01 October 2026