

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101705/2017

5 Held in Glasgow on 5, 6, 7, 8, 9 and 12 February 2018

Employment Judge Shona MacLean

10 Mr Wilson Bannerman

Claimant
Represented by:
Mr D Flood
Counsel

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Euroscot Engineering Limited

Respondent
Represented by:
Mr A Hardman
Counsel

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that between 23 June 2014 and 17 January 2017 the claimant was not an employee of the respondent as defined by Section 230(1) of the Employment Rights Act 1996. The Tribunal does not have jurisdiction to hear the claims.

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REASONS

Background

1. The claimant sent his claim form to the Tribunal's office on 9 June 2017. He complains of:
 - a. Unfair dismissal under Section 94 of the Employment Rights Act 1996 (the ERA).
 - b. Automatic unfair dismissal under Section 104 of the ERA.
 - c. Wrongful dismissal (failure to pay notice).
 - d. Breach of contract.

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- e. Unauthorised deduction from wages.
- f. Losses incurred as a result of failure to pay wages.

2. The claimant asserts that he was employed by the respondent between 25 June 2014 and 15 January 2017. He was dismissed summarily during a telephone conversation on 15 January 2017. He asserts that his dismissal was procedurally and substantively unfair. It was also automatically unfair because it arose out of his statutory right not to suffer unlawful deduction of wages.

3. In its response, the respondent denies that the claimant was an employee. The respondent asserts that the claimant was engaged as a contractor until March 2016 when the claimant became an employee of Euroscot Engineering Middle East WLL. The respondent claims that the claimant sent an email on 19 January 2017 setting out proposals, which at a meeting on 20 January 2017 he was advised were unacceptable to the respondent. The claimant said that he would leave then left the premises. The respondent asserts that the claimant has no entitlement to bring a claim in respect of unfair dismissal. If the claimant was the respondent's employee the relationship came to an end about March 2016. Accordingly the application was out of time. If the claimant was an employee after that date the claimant terminated the employment by resignation. The claimant was not unfairly dismissed. If the claimant was a worker during all or part of that period up until January 2017 which, was denied, only the claims arising from the claimant having a status as a worker were to be determined by the Tribunal subject to them being presented timeously. The Tribunal also does not have jurisdiction to hear the claims in respect of breach of contract, as the claimant was not an employee.

4. At a preliminary hearing on 1 September 2017 it was agreed that although there was a preliminary issue regarding employment status it was inconsistent with the overriding objective to have a preliminary hearing to determine that single issue. Instead it was agreed that the hearing would be split into a merits hearing followed later, if appropriate by a remedy hearing.

5. At the merits hearing the following issues were to be determined:
- a. The status of the claimant.
 - b. If the claimant was an employee was he dismissed? If so did that dismissal take place in March 2016?
 - 5 c. If the dismissal was in January 2017 was that dismissal automatically unfair by reason of having asserted a statutory right not to suffer an unlawful deduction from wages?
 - d. Was dismissal unfair in terms of Section 94 of the Employment Rights Act 1996?
- io 6. It was agreed that the parties would prepare and exchange witness statements, which would be used as evidence in chief and taken as read. Cross-examination and re-examination was to take place in the normal way.
7. At the merits hearing witness statements were produced for the claimant; Valerie Bannerman, the claimant's wife, Kathryn Thorndycraft, Independent Forensic Document Examiner; John Fleming Rorison (Ian Rorison), Managing Director, John McMillan, Senior Engineer; John Rorison, Operations Manager; George MacShannon, Chartered Accountant and partner of McLay, McAlister & McGibbon, Chartered Accountants; and Garry Edwards, General Manager.
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8. The parties also provided a joint set of productions. The Tribunal found the following facts to have been established or agreed.
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Findings in Fact

June 2014 to December 2014

9. The respondent carries on business in Glasgow as manufacturers of high precision fittings and parts for the defence, aerospace and renewables industry.
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10. In June 2008 John Fleming Rorison (known as Ian Rorison) purchased the respondent's business. He became a director and principal shareholder of the respondent. The respondent does not employ Ian Rorison. He has the

title of Managing Director. Ian Rorison was previously a full-time farmer working on the farm where he continues to live.

11. Janie Rorison is also a shareholder of the respondent. She is Ian Rorison's wife and does not play an active part in the business.

5 12. The respondent employs about 13 shop floor machinists, two shop floor managers and a senior engineer, John McMillan. In 2010 the respondent employed John Rorison as Operations Manager. He is not a director or shareholder of the respondent. He is the son of Ian Rorison and Janie Rorison.

10 13. McLay McAlister & McGibbon, Chartered Accountants (the Accountants) have for many years provide accountancy advice to the respondent that includes payroll information and documentation; and preparation of management and statutory accounts. George MacShannon is the partner responsible for the respondent.

15 14. John Rorison gathers the wages information and sends it to the Accountants. The Accountants calculate the salaries and PAYE and National Insurance contributions and produce wage slips for the respondent. John Rorison and occasionally John McMillan distribute the payslips to the employees. The respondent makes the appropriate wages
20 payments direct to the employee's bank accounts. The majority of the respondent's employees are paid monthly. Some are paid weekly.

15. The respondent uses Peninsula for its HR and employment advice. In early 2014 Ian Rorison only was authorised to access Peninsula's services. Ian Rorison did not write job descriptions.

25 16. Around March 2014 Ian Rorison was considering developing the business and looking at ways to increase turnover and profitability.

17. The claimant and his wife Valerie Bannerman were visiting the farm to select a puppy from Janie Rorison who operates a kennel. The claimant and Valerie Banner had never met Ian Rorison. The claimant who was not

working spoke about his job. Janie Florison mentioned that Ian Rorison was looking for someone to help progress the engineering company in Glasgow.

18. Ian Rorison was given a copy of the claimant's CV. In late April 2014 they met at the respondent's premises in Glasgow. There was discussion about how the claimant could improve productivity and processes; develop the business; and find new customers. Ian Rorison was interested as he thought that the business might benefit and become more profitable.
19. Around 13 May 2014 the claimant was offered the position of Scaffolding Superintendent with Hertel BV Offshore Services Company (Hertel). The assignment was for three months from 19 May 2014 in Baku, Azerbaijan with the potential for a three-year assignment. The claimant started working for Hertel BV on 19 May 2014. The claimant's salary was £6,500 net per month.
20. Towards the end of May 2014 Ian Rorison and the claimant agreed that the claimant would join the respondent to improve productivity, processes and develop the business. He would be paid £4,500 per month. There was no job description. There was no discussion about hours of work, holidays or sick pay.
21. As the claimant was working for Hertel he was unable to join the respondent in Glasgow until 23 June 2014.
22. Ian Rorison told John Rorison that the claimant would be joining the respondent. John Rorison understood from Ian Rorison that the claimant was engaged as a contractor.
23. The claimant arrived in the respondent's office on 23 June 2014. The claimant was not given any induction, tour or introduction to any policies or procedures. John Rorison did not collate nor did the claimant provide to him any information to facilitate payment to the claimant. The Accountants did not prepare any payslips for the claimant. The claimant did not ask John Rorison or John McMillan at anytime about the claimant's payslips.

24. Around July 2014 Ian Rorison told George MacShannon that the claimant had joined the respondent as a business development consultant to help assist developing the business. Ian Rorison also told George MacShannon the claimant had been engaged as a consultant and would be paid gross and be responsible for the payment of his tax. The claimant was not enrolled in the respondent's payroll.
25. Hertel refused to pay the claimant money to which he said he was entitled. The claimant therefore borrowed money from family to help support his financial obligations.
26. The claimant chose when he came into work and tended to work full time hours. He was provided with an office, computer, business card, stationery and mobile phone. The claimant worked closely seeing how business was done and monitoring employees roles and responsibilities.
27. The claimant took over the management of the production process and organisation. He was actively involved in promoting the business and trying to attract new business.
28. At the beginning of August 2014, the claimant was provided with templates and information created by John Rorison to formulate brochures, marketing literature including business cards. The claimant designed himself Business Development Director. George MacShannon was aware of this and expressed concern to Ian Rorison as the claimant was not a statutory director and had not been appointed to that position; it was misleading to call himself as such.
29. The claimant was involved in improving productivity and ensuring less "down time" at machines. The claimant became involved in HR issues. Ian Rorison spoke to Peninsula and authorised the claimant to act for the respondent. The claimant was involved in conducting disciplinary proceedings (production 77).
30. The respondent made the first payment to the claimant on 19 September 2014 by direct bank credit transfer to the claimant's bank account, that

information having been provided by the claimant to Ian Rorison on 17 September 2014 (production 108).

31. The claimant did not provide any receipts nor did he provide any invoices for his work. Ian Rorison did not set up automatic payments to the claimant. Ian Rorison made payments manually by direct bank credit on various dates and amounts (production 833). George MacShannon expressed concern to Ian Rorison about the absence of paperwork confirming the basis of the claimant's engagement with the respondent and any invoices from the claimant.
32. The respondent purchased a car for use by the claimant around September 2014 (production 850). The claimant and Ian Rorison agreed that the respondent would provide a fuel card for the purchase of fuel for the car. The claimant said that he would arrange the necessary insurance cover to allow Valerie Bannerman drive. It was agreed that the claimant would be reimbursed the insurance premium by allowing him to purchase fuel on the fuel card both for his car and Valerie Bannerman's car.
33. The claimant was aware of Ian Rorison's plans to expand the business and he attended meetings with him in England.
34. Around September 2014 Ian Rorison asked the claimant to evaluate if it would be possible for the respondent to set up a division in the Middle East with a view to outsourcing previously awarded manufacturing activities/contacts to reduce manufacturing costs of the operations in Glasgow.
35. The claimant reported back to Ian Rorison by email sent on 9 December 2014 (production 112 to 115). The project was to set up a manufacturing facility in Bahrain where components would be manufactured and shipped back to the United Kingdom (the Middle East project). It was expected that the manufacturing could be done more cheaply in Bahrain and that even adding the cost of shipping the components back to the United Kingdom there would be a higher profit margin.

36. Euroscot Engineering (Bahrain) Limited was incorporated on 10 December 2014.

January 2015 to December 2015

- 5 37. In January 2015 the respondent issued a power of attorney to the claimant to enable him to undertake business affairs and represent the respondent in Bahrain (production 117).
- 10 38. The claimant visited Bahrain on various occasions (production 753). He was actively involved in setting up the facility in Bahrain although he continued to be involved with Peninsula about disciplinary matters involving the respondent's employees in Glasgow, receiving production figures and business development.
39. As the claimant was spending an increasing amount of time in Bahrain it was agreed that the respondent would recruit a General Manager for Glasgow.
- 15 40. The claimant was involved in recruiting Garry Edwards. Garry Edwards was offered the position of General Manager on 13 December 2015 with the remit of day to day management and responsibility for the respondent's manufacturing facility in Glasgow (production 199). He was to report to Ian Rorison and the claimant.
- 20 41. In December 2015 Ian Rorison decided to replace the car used by the claimant. The claimant's car was traded in and he was provided with a replacement, which was registered in the respondent's name. The car was purchased with finance provided by the BMW Finance. The claimant subsequently registered the car and he arranged for his personal number plate to be transferred. The car is registered in the name of Euroscot
25 Engineering Ltd Wilson Bannerman with the respondent's Glasgow address (production 798 and 799).
42. The respondent paid for the fuel, repairs and maintenance of the car and one payment of road tax. George MacShannon informed Ian Rorison that a

company car could not be provided to someone who is not an employee. For tax purposes the car is declared as a benefit in kind for Ian Rorison which he has loaned to the claimant.

43. On 21 December 2015 on behalf of the respondent Janie Rorison, designed as Project Manager wrote to the Embassy of the Kingdom of Saudi Arabia making applications for Ian Rorison and the claimant for Business Multi-visas (productions 215 to 216). They were described as employees holding the positions of Sales Manager and Business Manager respectively.
44. Euroscot Engineering (Bahrain) Limited was dissolved on 22 December 2015.

January 2016 to December 2016

45. The claimant fell and injured his hip in January 2016. His GP provided a fit note dated 20 January 2016 stating that he would benefit from amended duties from 20 January 2016 to 3 February 2016 (production 225).
46. In January 2016 the respondent signed an outsourcing agreement agreeing to outsource manufacturing services to Euroscot Engineering Middle East WLL (production 223). AMJ Project WLL, a company registered in Bahrain and owned by Mohamed Juman and family agreed to invest in the respondent to fund and support the expansion.
47. Garry Edwards' appointment started on 1 February 2016. Garry Edwards was also authorised to use Peninsula's services.
48. On 21 March 2016 the claimant sent an email to Ian Rorison. The claimant said that his role with Euroscot Engineering (Middle East) WLL "requires a contract of employment to be issued". Attached to the email was an employment agreement between the claimant and Euroscot Engineering (Middle East) WLL (the Employment Agreement) (production 329 to 335). Ian Rorison was asked to sign it on behalf of Euroscot Engineering (Middle East) WLL and return the document. Ian Rorison signed the last page of the Employment Agreement and returned it to the claimant (production 336).

49. The Employment Agreement provided for a monthly salary of BD 3,500 and for the provision of accommodation and transport allowance. The allowance for accommodation was BD 850 per month. The claimant set up authorisation and payment of the salary allowances by issuing a payment voucher that stated "Funds to be paid by AMJ Projects and reconciled upon opening of Euroscot Engineering (Middle East) WLL (production 308).
50. Around March 2016 the claimant was the lead person involved in collating information for the respondent for an R&D tax relief report for the years ended 31 August 2014 and 31 August 2015 which was being prepared in collaboration with Leytons, Business Advisory Consultants (the Report). George MacShannon reviewed some of the financial information. An element of the information required was to disclose several of the respondent's employees and their costs. The Report does not include the claimant as an employee. In the column "Externally Provided Workers" for the year ended 31 August 2015, the Report discloses that there was one externally provided worker the claimant employed "through a tri-party relationship between Euroscot Engineering, Inspection Services and Wilson Bannerman." (production 90) Inspection Services (Scotland) Limited is a service company owned by the claimant of which he is a director. George MacShannon's understanding that the claimant was a self-employed contractor or self-employed consultant but he highlighted that he was unclear of the basis of the claim as he did not have these costs through the accounting records (production 279).
51. The claimant became increasingly frustrated with George MacShannon finding issues with Report. In an email sent to Ian Rorison on 12 May 2016 the claimant said that it was coming to the point that he "*can't take any more crap*". The money from the R&D tax relief was needed to keep the business going to the wall and the claimant suggested that Ian Rorison tell George MacShannon to submit the Report or the accounts would be handed to another firm (production 394).

52. In March 2016, a payment was made by AMJ Projects WLL to the claimant (production 308). The claimant was paid £3,626.77
53. Between June 2014 to 13 April 2016 the claimant entered Bahrain under a standard tourist visa via the Visa Waiver Programme. Afterwards the claimant had an Investors 5-year Multi-entry Visa. The respondent paid the claimant's expenses; he was given use of the respondent's credit card for trips abroad and the respondent paid for the claimant's flights.
54. In April 2016 and May 2016, the respondent paid £4,500 and £1,000 into the claimant's bank account.
- 10 55. Euroscot (Middle East) Co WLL was registered in Bahrain on 22 May 2016 (production 625). The respondent was a 25 percent shareholder, the claimant was a 24 percent shareholder and Yaseen Ahmed Juman (Mohamed Juman's brother) was a 51 percent shareholder. Euroscot (Middle East) Co WLL has a bank account and trades.
- 15 56. Euroscot Engineering (Middle East) WLL was registered on 1 June 2016 (production 427). The respondent held 60 percent of the shareholding and the claimant owned the remaining 40 percent. Euroscot Engineering (Middle East) WLL did not have a bank account and it did not trade.
- 20 57. The claimant was in regular communication with Ian Rorison regarding the set up of the manufacturing operation in Bahrain. The claimant continued to be involved in undertaking business development work for the respondent and advising the respondent on matters on which he had been previously involved.
- 25 58. On 30 June 2016 the respondent paid the claimant £1,000 and Euroscot (Middle East) Co WLL paid the claimant £3,823.54.
59. At the end of June 2016, the claimant was informed that the respondent had hired Steven Harvey to be the Regional Manager in Bahrain.
60. In July 2016 the respondent made payments of £1,000, £1,000 and £500 into the claimant's bank account.

61. In August 2016 the claimant received payments from Euroscot (Middle East) Co WLL of £4,971 .04 and £4,902.50.
62. The respondent made payments to the claimant on 7 September 2016 of £1,000; £3,000 and £500 on 7 November 2016 and 17 November 2016 respectively.
63. The claimant returned from Bahrain and sent a memo dated 1 December 2016 asking for additional funding (production 581 to 582).
64. The respondent made payments to the claimant of £2,000, £2,000 and £1,000 on 1 December 2016, 23 December 2016 and 30 December 2016 (production 833).
65. The claimant was on holiday from 3 December 2016 until 18 December 2016.
66. There was an email exchange between the claimant and Ian Rorison in early December 2016 in which the claimant expressed frustration at the respondent's lack of engagement in Bahrain and failure the need for financial support for salaries for Bahrain staff.
67. Around 12 December 2016 the claimant was reassuring Mohamed Juman about being reimbursed and the need for some additional borrowing/funding.
68. The claimant was scheduled to return to Bahrain at the end of December 2016 but did not do so. Steven Harvey contacted the claimant at the end of December 2016 as he was unable to contact Ian Rorison about non-payment of his wages. The claimant made a payment to Steven Harvey's wife.
- 25 *January 2017 to August 2017*
69. The claimant telephoned and messaged Ian Rorison between Christmas and New Year and early January 2017. The claimant sent an email to Ian Rorison on 9 January 2017 expressing concern about the lack of

communication and his personal situation (production 588 to 589). In the email, the claimant referred their collective responsibilities and financial obligations in Bahrain; the claimant's concerns about Ian Rorison's commitment to "*our personal relationship and that of our business relationship*"; and how much the claimant had done for Ian Rorison's business "*(R&D and Juman support when you really needed it most)*".

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70. Around 17 January 2017 the claimant and Ian Rorison had a discussion during which Ian Rorison conveyed to the claimant that he wanted to bring their relationship to an end. The claimant did not believe that this was Ian Rorison's definite position as he had a tendency to oscillate over issues.

71. On 18 January 2017, the claimant and Ian Rorison had a message exchange (production 593).

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72. The claimant sent an email on 19 January 2017 setting out his position and demands (the 19 January Email) (production 595 to 597). The claimant said that this was a "deal breaker" and that his proposal was from 23 January 2017. The 19 January Email stated: "*Should you not wish me to be involved in I will unfortunately have to go and do what I need to do to protect myself and my interests as I have tried talking to you for more than a year and really have no alternative*" The claimant's proposal was not acceptable to Ian Rorison.

73. Following a text exchange on 19 January 2017 the claimant and Ian Rorison agreed to meet.

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74. On 20 January 2017, the claimant met Ian Rorison in his office which is accessed from the reception area via Garry Edwards' office. John Rorison's desk is in the management area of the factory which is accessed from a door in Ian Rorison's office. Ian Rorison told the claimant that his proposal was not acceptable. The discussion became heated. The claimant was very angry. As he was leaving the office the claimant shouted at John Rorison.

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75. Ian Rorison sent an email to Mohamed Juman on 20 January 2017 advising that he had cut all ties with the claimant "*as an associate of the respondent*".

76. On 4 April 2017, the claimant wrote to Janie Rorison raising a grievance and appealing against his dismissal (productions 604 to 613).

77. Around August 2017 the claimant reported to the Inland Revenue that he was an employee the respondent (production 613 to 616).

5 *Observations on Witnesses and Conflict of Evidence*

78. The Tribunal considered that the claimant gave his evidence in a confident manner. He was well prepared and familiar with all the productions. The claimant was unwilling to make concessions and on several issues as set out below the Tribunal considered that his evidence was unconvincing.

10 79. Valerie Bannerman's evidence was vague. Her witness statement did not refer to her receiving any documents from the respondent in May 2014 while the claimant was abroad and sending them to him. She candidly accepted in cross-examination that she could not remember in any detail what had been received from the respondent in May 2014 as she did not
15 read the documents.

80. Kathryn Thorndycraft's witness statement adopted her Forensic Science Report dated 22 October 2017 and provided comments on Stephen Crosslet's Forensic Science Report dated 28 November 2017. She was not cross-examined. The Tribunal accepted her evidence.

20 81. The Tribunal considered that during cross-examination Ian Rorison was wary and at times unconvincing. The Tribunal however accepted that he was candid even when it did not cast him or the respondent in the best light. He was more forthcoming during re-examination. While Ian Rorison was not an impressive witness the Tribunal considered that his evidence was more
25 often supported by other witnesses and contemporaneous documents. The Tribunal's impression was that while Ian Rorison took professional advice he did not always follow it particularly when it suited him not to do so.

82. John Rorison, John McMillan, George MacShannon and Garry Edwards gave their evidence in an honest straightforward manner. The Tribunal considered that they were credible and reliable.

83. There was conflicting evidence about several material findings in fact.

5 84. The first area was in relation to a statement of main terms and conditions of employment and job description. The claimant's evidence was that around 30 May 2014 he received an offer letter from the respondent to his home address. It was unsigned. It outlined his role and remuneration package. The claimant produced a statement of main terms and conditions of
10 employment and job description (the Contract) (production 62). Valerie Bannerman's said that the "job offer" came through the door. She did not read the documents; she forwarded them to the claimant by courier. Ian Rorison's evidence was that he first saw the Contract on 10 October 2017 as part of the document exchange for the merits hearing. He had never
15 prepared a job description. He had not instructed Peninsula to so. Ian Rorison said he lacked the expertise to prepare a letter with bullet points. Although the letter and Contract bore his signature it was not his signature. He also said that the logo on the letter was not brought into use until August 2016. John Rorison confirmed this. Kathryn Thorndycraft's opinion was that
20 there was a high probability that the signatures on the letter and Contract were not the genuine signature of Ian Rorison.

t 85. The Tribunal referred to the claim form. While the paper apart referred to the start date and annual gross remuneration it did not mention the Contract. Although additional information was provided after the response
25 was sent, the Tribunal found it surprising that when issue was raised about the claimant's status the claimant did not mention the Contract at that stage.

86. The Tribunal considered that evidence of the claimant and Ian Rorison was vague about what they discussed after their meeting in April 2014 and the claimant joining the respondent in June 2014. Although the claimant was
30 interested in the role he did not consider that the respondent could afford him. As the claimant was not in work it was in the Tribunal's view

understandable that he took up temporary employment with Hertel. The Tribunal also thought on hearing that the respondent was also interested in the claimant he would have been willing to give up the temporary employment for the opportunity to being involved in the respondent's business.

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87. While the respondent had engaged Peninsula for employment advice and the Accountants provided payroll support, there was no evidence to suggest that in May 2014 Ian Rorison involved either in the claimant's appointment. The statement of main terms and conditions appeared to be a template used by the respondent for salaried employees. However, the job description was bespoke. In August 2014 Ian Rorison authorised the claimant to contact Peninsula but that was in relation to existing employees. There was no evidence that Peninsula understood that the claimant was the respondent's employee. The Tribunal considered that it was most unlikely that in May 2014 Ian Rorison would have had the ability let alone the inclination to provide the claimant with the letter and the Contract. Had he done so the Tribunal considered that there was no reason Ian Rorison would not have told George MacShannon about it when they were discussing the claimant in July 2014. The Tribunal therefore did not find that the respondent issued the Contract to the claimant in May 2014.

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88. Another area of conflict was about requests for invoices from the claimant. The claimant's evidence was that the respondent had never requested any invoices or information similar from him. The respondent did not tell him that he would be accountable for PAYE and NIC and that payments he was receiving were paid without deduction of PAYE and NIC. The claimant said that he repeatedly asked for payslips. He received payslips in April 2017. Ian Rorison said that it was agreed that the claimant would be paid £4,500 per month gross and the claimant would be responsible for his own tax. He also said that it was agreed that the claimant would be work the first three months free of charge. Ian Rorison made the payments manually. He expected the claimant to issue invoices from Inspection Services (Scotland) Limited. John Rorison said that in discussion with Ian Rorison he

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understood that the claimant was a contractor. Also, John Rorison did not receive any payslips from the Accountants for the claimant. George MacShannon said that he was told by Ian Rorison in July 2014 that the claimant was a business development consultant who would be paid gross and be responsible for his own tax. The Accountants did not issue the payslips produced by the claimant.

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89. In the Tribunal's view telling John Rorison and George MacShannon that the claimant was a consultant was consistent with Ian Rorison's view of the relationship. The Tribunal saw no reason at that time for Ian Rorison not to tell them that the claimant was an employee if that were so. The Tribunal had no doubt that on being aware that the respondent was making payments to the claimant George MacShannon impressed upon Ian Rorison the importance of having invoices. The Tribunal considered that it was likely that Ian Rorison did not ask the claimant for invoices. The Tribunal formed this view on the basis that Ian Rorison used the respondent's overdraft facility to its maximum and appeared to run the business where possible by using another's money rather its own. The Tribunal therefore considered that it was likely that Ian Rorison would not have pressed the claimant to produce invoices.

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90. The Tribunal was unconvinced by the claimant's evidence that he repeatedly asked about payslips. The claimant was aware that John Rorison usually distributed the payslips, whom failing John McMillan. The Tribunal considered that neither of these witnesses formed the impression that the claimant was expecting payslips nor did he ask them for his payslips. Indeed, to the contrary the impression given by the claimant was that he was not expecting payslips.

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91. There was conflicting evidence about payments due to the claimant between June and August 2014. The claimant said that although he started late in June 2014 Ian Rorison told him that he would be paid for the period as he had done work remotely. He said that it was an error that he was not paid in July 2014 and that due to cash flow he would not be paid in August

2014. Ian Rorison said that it was agreed that the claimant would receive the first monthly payment in September 2014; the claimant agreed to work the first three months free of charge.

5 92. The Tribunal considered that the claimant's evidence was unconvincing on this issue. The Tribunal thought if the claimant believed he was employed and entitled to a monthly salary it was incredible that he continued working for no payment especially when he had not been paid by Hertel and had to borrow money. In the Tribunal's view it was more likely that when the claimant joined the respondent in June 2014 he expected to get paid in July 10 2014 but Ian Rorison said that there were cash flow difficulties and they agreed that that the claimant would be paid until September 2014. The Tribunal felt that it was not a coincidence that around this time the claimant was also provided with the car.

15 93. There was conflicting evidence about the Employment Agreement. The claimant's evidence was that he did not send the email on 21 March 2016. He said that until April 2017 he did not know of any contract of employment in Bahrain with his name on it. The claimant also said that he has since had the hard drive of his laptop recovered and the format of the email was different. Ian Rorison said that he received the email on 21 March 2016 20 from the claimant attaching the Employment Agreement which he signed and returned.

25 94. The Tribunal considered that it was more likely than not that on 21 March 2016 the claimant sent Ian Rorison the email attaching the Employment Agreement which Ian Rorison signed and returned. The Tribunal's impression was that the claimant was responsible for preparing any documentation needed for the Middle East project and Ian Rorison was content to accept that what the claimant produced was required and he was willing to sign documents regardless of whether they were factually accurate.

30 95. There was conflicting evidence about who employed the claimant from March 2016. The claimant's said that he continued to be employed by the

respondent. The claimant denies that he was employed by Euroscot Engineering Middle East WLL. Ian Rorison also said as far as he was concerned the claimant commenced working for Euroscot Engineering (Middle East) WLL in March 2016. He relied on the Employment Agreement. Ian Rorison said that he continued to pay the claimant out of charity.

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96. While the Tribunal considered that the claimant sent the email and Ian Rorison signed the Employment Agreement the Tribunal was not convinced that Ian Rorison believed that the claimant was employed by Euroscot Engineering (Middle East) WLL from March 2016. Ian Rorison knew that Euroscot Engineering (Middle East) WLL did not exist until June 2016 and it did not ever have a bank account.

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97. There was conflicting evidence about the claimant's involvement in the Report. The claimant's evidence was that he had no significant involvement in its preparation. George MacShannon's evidence was that the respondent enlisted the assistance of Leytons as business advisory consultants but the claimant was the lead person involved in pulling the claim together. The Tribunal preferred George MacShannon's evidence as it was in the Tribunal's view more consistent with the contemporaneous email exchange it was also consistent with the claimant's comments in his email to Ian Rorison sent on 9 January 2017.

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98. There was conflicting evidence about the payslips produced by the claimant (productions 839 to 847). The claimant said that he received the payslips around April 2017. They were delivered to him anonymously but on inspection they appeared the same as four payslips he had previously been given. George MacShannon's evidence was that payslips produced by the claimant were not issued by the Accountants and he explained several differences between genuine payslips and the ones that were produced. The Tribunal was not convinced for the reasons previously explained that the claimant was issued with any payslips between June 2014 and January

2017. The Tribunal accepted George MacShannon's evidence which was in the Tribunal's view credible and reliable.

5 99. There was disputed evidence about events in mid-January 2017. The claimant's evidence was that he spoke to Ian Rorison around 17 January 2017 and was told that his job was terminated and not to come back. He texted Ian Rorison on 18 January 2017 and got no response. The claimant said that his email password was blocked on 19 January 2017. He said that he did not send the 19 January Email but it conveyed what he has said on previous occasions. The claimant said that met Ian Rorison on 20 January 10 2017. There was a discussion and Ian Rorison told the claimant to get out and not come back. Later the claimant sent a message to Ian Rorison and they agreed to meet on 22 January 2017 when the claimant said he was told to walk away and not cause trouble. Ian Rorison said that there was an exchange of messages on 18 January 2017. He received the 19 January 15 Email in which the claimant set out his proposal effective from 23 January 2017 which was a deal breaker. The proposal was unacceptable to Ian Rorison who took from the 19 January Email that the claimant was determined to leave if Ian Rorison did not agree to what was being proposed. When they met on 20 January 2017 Ian Rorison said that the 20 proposal was unacceptable. Ian Rorison said that the claimant became furious and made threats and left the building. He took it that the claimant had resigned. John Rorison and Garry Edwards who were in the vicinity gave evidence of a heated conversation and the claimant shouting.

25 100. From the email sent on 9 January 2017 the Tribunal considered that it was highly likely that the claimant and Ian Rorison spoke on or around 17 January 2017 during which Ian Rorison conveyed to the claimant that wanted to cut ties with him. The Tribunal felt that the claimant's experience of Ian Rorison was such that he did not take this conversation as definitive that the relationship was at an end because the claimant continued to ask 30 Garry Edwards to provided information.

101. The Tribunal found it surprising that the claimant denied sending the 19 January Email while accepting that it conveyed what he had said on various occasions. The Tribunal considered that it was likely that the claimant thought Ian Rorison would have reconsidered his position and prepared the 19 January Email. However, given the problems with sending emails that morning he was not sure if Ian Rorison had received it.

102. The Tribunal considered that at the time the claimant had several personal issues to address and was understandably very emotional. The Tribunal therefore considered that it was highly likely that the claimant was angry and upset when he met Ian Rorison on 20 January 2017.

The Law

103. Section 230 of the Employment Rights Act 1996 states:

“(1) In this Act 'employee' means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act 'contract of employment' means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act 'worker' (except in the phrases 'shop worker' and 'betting worker') means an individual who has entered into or works under (or, where the employment has ceased, worked under)

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Act 'employer', in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act 'employment' —

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

5 and 'employed' shall be construed accordingly."

Submissions

104. Mr Flood and Mr Hardman helpfully prepares written submissions which are summarised below.

The Claimant's Submissions

10 105. The claimant contends that all the relevant factors point, on balance, to him being the respondent's employee for the following reasons:

a. He worked only for the respondent.

b. He worked full normal working hours

c. He worked under the ultimate supervision and control of Ian Rorison.

15 d. His involvement went well beyond Business Development and production, phones, staff performance, discipline, recruitment and finance. He effectively became Ian Rorison's number two.

20 e. He was given the title of Business Development Director on all his company correspondence as well as board memos and held out to the world by the respondent as such, as well as being described as an employee on official documents. To the objective and outside observer, the claimant was a wholly integrated member of the respondent company and had all the appearance of an employee.

25 f. He was paid with the respondent's employees rather than with their suppliers.

g. His expenses were paid. The claimant was given the use of the company credit card for his trips abroad and his flights were paid for on business trips.

- h. He was provided with two company cars, and the expenses for those cars were paid. The claimant was given a fuel card and an undertaking that the insurance for the first company car would be paid.
- 5 i. There was no deduction made in his pay for sickness absence. Ian Rorison accepted that he could not remember whether the claimant attended work during the currency of this sick note. The claimant's case is that he did not.
- j. There was no deduction from the claimant's pay in respect of the holidays he took.
- 10 k. The claimant never invoiced for his work and there is no record of the claimant ever been asked for an invoice. Ian Rorison contends that he was asked verbally on many occasions. The claimant denies this. Neither the Accountants nor the respondent can produce any record of any request for invoices. George MacShannon accepted that compiling management and statutory accounts without this information was highly unsatisfactory.
- 15 l. The claimant has a signed contract and wage slips. It is perhaps ironic that the two sets of documentation that evidence claimant's employment in this matter are hotly disputed, whilst the many factors that point towards it, set out above, are not. The claimant contends that the validity of these documents must be considered against the background of all the other facts rather than a stand alone "winner takes all" issue. The expert hand writing evidence points towards the signature on the contract documentation not being that of Ian Rorison.
- 20 But the experts, by definition, must, do, and can only talk in terms of probability. If all other factors point towards a contract, the claimant should be given the benefit of what doubt there is in relation to the signatures. In relation to the wage slips the claimant is candid about their source. He was not given them contemporaneously, they were
- 25 delivered to him anonymously after the end of his contract by persons unknown and he cannot vouch for their provenance, save to say that on a very brief inspection of four wage slips he had previously been
- 30 given, they appeared to be the same documents. Their authenticity

depends upon balancing other factors in this case. It is highly unlikely that the claimant would have dropped a £6,500 a month job abroad to dash back to Scotland for an open ended contracting role.

106. The claimant contends that, if he was employed by the respondent in June 5 2014, that employment did not terminate in March 2016 for the following reasons:
- a. The respondent's position is based on Ian Rorison's evidence that "as far as he was concerned" he "took the view" that the claimant's work for the respondent ended in March 2016 as he became employed by 10 Euroscot Engineering (Middle East) WLL. The respondent relies on the Employment Agreement between the claimant and Euroscot Engineering (Middle East) WLL, which company did not exist until 1 June 2016. It is void as it is a contract with a non-existent legal person that Ian Rorison was not a director of and, by definition, did not have 15 the power to bind. The Employment Agreement was also defective for various technical reasons.
 - b. Even if there was no written contract and the respondent relied upon a general plea based on the evidence, the fact remains the claimant could not have worked for Euroscot Engineering (Middle East) WLL 20 before it existed.
 - c. After it existed there is no evidence it ever traded or had a bank account or employed anybody. The claimant's case is that it had no bank account and therefore never traded. The company that did trade was set up by Mohamed Juman and called Euroscot (Middle East) Co 25 WLL. The respondent's case is not that the claimant was employed by this company. There is no contract of employment between the claimant and either company.
 - d. By its own admission, the respondent continued to pay the claimant 30 substantial sums of money after 21 March 2016. Ian Rorison's evidence that this was out of charity to the claimant does not sit well with the tenor of his other evidence, of conducting himself like a

farmer in all financial matters and making late or even no payment as a badge of honour.

5 e. The claimant continued to be "in the loop" in e mail traffic exactly as he had before. The claimant's work permit did not permit him to work for any Bahrain company, but merely be there as an investor in a company. In any event, the company named in this documentation is Euroscot (Middle East) Co WLL, not Euroscot Engineering (Middle East) WLL.

10 f. There were two months when the claimant was not in Bahrain, before his dismissal and after March 2016 when he contends that he was working in the respondent's office when not on holiday. Ian Rorison denied this but could produce no evidence to corroborate this.

107. The claimant's case is that he was dismissed. He relies upon the following:

15 a. The respondent says that it took the claimant to have resigned after he walked out of a meeting on the 20 January 2017 having written the 19 January Email that appeared to contain an ultimatum. The claimant says that he was dismissed by Ian Rorison before that. The respondent's evidential case appears to be that the respondent took the claimant to have resigned.

20 b. Ian Rorison accepts that the claimant never wrote or said the words "I resign" or any such words with a similar meaning and accepted that the claimant's resignation was an inference and an inference that he drew from the circumstances, principally on the 20 January 2017, rather than any specific utterance of the claimant.

25 c. Legally, even on the respondent's case this is neither a case of ambiguous or unambiguous language, but of Ian Rorison's own inference. The claimant's evidential case is that at the earlier date Ian Rorison's language was clear.

30 108. The claimant's case is that the terms of his contract were as set out at production 62 and that he believed the monthly payments of £4,500 were his wages net of tax and NI (being 67% of his gross pay of £6,666.66). The claimant has never been asked for tax payments by HMRC, who George

MacShannon candidly admitted, are continuing to investigate the respondent in this regard.

5 109. The claimant contends that the respondent's position that the claimant agreed to non-payment until September 2014 is wrong and inherently unlikely. There was no motive for the claimant to swap his £6,500 per month job abroad for three months of non-payment. The truth of the matter is that that the respondent could not have afforded to pay the claimant during those three months of June to August 2014.

10 110. The claimant contends that the overwhelming likelihood is that, if the Tribunal finds that he was employed, the terms of that employment are as per his written contract of employment.

The Respondent's Submissions

15 111. From the claim form and the claimant's evidence the claims are based on the assertion that the claimant was employed by the respondent under a contract of employment.

20 112. The crucial issue to be addressed is whether the claimant was employed by the respondent under a contract of employment or not. He insists he was an employee as defined under Section 230(1) of the ERA. He does not claim to have been a 'worker', as defined under Section 230(3)(b) of the ERA. His case is imperiled upon his status as an employee. If he was not an employee of the respondent, then his whole claim falls.

25 113. If he was an employee of the respondent, then each of the claims fall to be considered in detail. It then, and only then, becomes relevant to find in fact the terms of any contract of employment, and when and how such a contract of employment was terminated.

114. The Tribunal was invited to prefer the evidence of the respondent's witnesses to that of the claimant and Valerie Bannerman. In so doing the Tribunal was invited to make the following conclusions.

115. The claimant was not employed by the respondent. There was no proper description of any job for him. He was a consultant to the respondent. That was consistent with Ian Rorison's arrangements for running the business. The only inferences which might suggest employment, (apart from a Visa application which was inaccurately completed the claimant) came from the claimant at and after the end of the parties' relationship. He sought to 'take up my past role as senior manager'; he purported to raise a grievance with Janie Rorison. Similarly, he reported to the Inland Revenue that he was an employee, but only in or around August 2017. These references are all made in hindsight by the claimant in preparation for the present dispute. In contrast, almost all references to the claimant during the course of his relationship with the respondent, are consistent with his being a consultant to, and not an employee of, the business.
116. Ian Rorison understood that payments were to be made to the claimant through his service company, Inspection Services (Scotland) Ltd. No invoices were received from the claimant despite requests for them. Payments were initially made regularly, and then (as the claimant became involved in the Middle East project) *ad hoc* as and when the claimant asked for payments, and when Ian Rorison agreed payments should be made. No payslips were ever issued to the claimant and he was not on the payroll system administered by the Accountants.
117. Ian Rorison for the respondent, provided the claimant with the cars for his use and the use of his wife during the arrangement between them. That arrangement ended. He further agreed that the respondent would meet the claimant's insurance premiums for the car being driven by him and his wife, but that by permitting the claimant and his wife to use the respondent's company fuel card.
118. There was no control of the claimant's work by the respondent. The claimant and Ian Rorison agreed on an informal and *ad hoc* basis what the claimant would do. There were no trappings of employment. The claimant was not part of the respondent's work force but held himself apart from and

above it. He did not wear the company's polo shirt. He was not required to work fixed hours, but chose to come in to the respondent's premises, on 23 June 2014 the claimant was not part of any sick pay arrangement. He produced a fitness note to Ian Rorison, but only in order that he could make a claim for damages against a third party.

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119. In March/April 2015, the claimant commenced work on behalf of Euroscot Engineering (Middle East) WLL. He ultimately became an employee of that enterprise. His former involvement with the respondent ceased at that point, subject only to his continuing with matters unresolved before his effective move to Bahrain.

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120. In late 2016, the parties fell into dispute because of the claimant's perception that Ian Rorison was not committed to the Middle East project. The primary dispute between them did not relate to payments due to the claimant. The claimant presented Ian Rorison with an ultimatum on 19 January 2017. He met Ian Rorison on 20 January 2017 at the respondent's offices in Glasgow. Ian Rorison rejected the ultimatum. The claimant became angry and stormed out of the building. By his actions, he effectively terminated any relationship which might at that point have remained between the parties (although the respondent maintains the relationship between these parties - which was an informal consultancy - effectively ended in March 2015).

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121. On these conclusions, the claimant fails to make his case that he was employed under a contract of employment. Accordingly, the claimant's case falls to be dismissed.

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122. The claimant maintains that he worked under a contract of employment, express, and in writing. He does not suggest that such a contract was oral, or that it is to be implied. Accordingly, this claim must fall in its entirety. The ERA is not engaged as pled for the claimant. The Tribunal has no jurisdiction to hear this claim, and must reject it.

123. If the claimant seeks some remedy for amounts he maintains are due to him by the agreement reached between the parties (which is denied), then the correct forum to consider that dispute is the Sheriff Court.

5 124. Even were the claim to be presented on a different basis from that set out in the claim form the evidence demonstrates that no oral, or implied, contract of employment existed between the parties.

10 125. The ingredients necessary for a contract of service or employment are well known and long established, as set out in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions [1968] 1 All ER 433*. There requires to be agreement between the parties which demonstrates the following:

15 a. Personal Work. - In consideration of some remuneration the employer agrees that he will provide his own work and skill in the performance of some service for his employer. In this case, there was vague and general agreement on this. However, the agreement was that although the claimant would provide personal work, it was to be as a consultant to, and not as an employee of, the respondent.

20 b. Sufficient Control - The employee agrees that in the performance of that service he will be subject to the other's control in sufficient degree to make that other his employer. In this case there was no agreement or evidence of control by Ian Rorison over the claimant's actings in sufficient degree to make the respondent his employer.

25 c. Trappings of Employment - The other provisions of the agreement are consistent with its being a contract of employment. In this case there was no agreement as to a fixed place of work, no uniform, no tools were supplied, no holiday arrangements, no working hours, no required training or method, and no restriction on other work (as is evident from the middle east project).

50 126. Accordingly, even were it averred by the claimant (and it is not) there is insufficient evidence to support an averment of implied employment. Finally even were it to be found that a contract of employment ever existed, then

that employment terminated when the claimant commenced work on behalf of Euroscot Engineering (Middle East) WLL.

Deliberations

127. The first issue that the Tribunal had to consider was the claimant's status. The claimant asserted that he was an employee as he had entered into a written contract of employment. The respondent denied that the claimant was an employee, that there was a written contract of employment or a contract of employment at all; the respondent asserted that the claimant was self-employed.
128. The Tribunal referred to Section 230(1) of the ERA for the definition of "an employee": "an individual who has entered into or works under (or where employment has ceased worked under) a contract of employment." the Tribunal then noted that Section 230(2) defines a "contract of employment" as a "contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing".
129. Although the Tribunal did not find that the respondent and the claimant entered into the Contract the Tribunal did not consider that was the end of the matter as suggested by the respondent. In the Tribunal's view, it had to establish what the terms were of the agreement between the parties. Then it should consider whether any of the terms were inconsistent with the existence of the contact of employment.
130. Having referred to the authorities to which the representatives had directed the Tribunal noted the central factors in determining whether an employment relationship exists between parties. Although all factors must be considered, some were more important than others: personal service mutuality of obligation and control. These all need to be evidenced by the claimant, as a minimum, if he was to succeed in his position that he was the respondent's employee.
131. As regards personal service the Tribunal was satisfied that the claimant required to perform work personally. When he was on holiday and when he

injured his hip there was no evidence that the respondent sought or the claimant offered to send a replacement. From 2015 when the claimant spent increasingly more of his time in Bahrain the respondent employed Garry Edwards who reported to Ian Rorison and the claimant.

5 132. The Tribunal considered the condition of mutuality of obligation. There was no evidence to suggest that during the period late June 2014 to January 2017 the claimant declined to do work for the respondent or that he was not offered work by the respondent. In 2016 the claimant received payments from Euroscot (Middle East) Co WLL and the respondent.

10 133. The Tribunal turned to consider whether the respondent exercised control over the claimant in the performance of his work. MacKenna J in *Ready Mixed Concrete* (above) says: "Control includes the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when and the place where it shall be done. All these aspects of control must be considered in deciding whether the right exists in a sufficient degree to make one party the master and the other his servant."

15 134. The Tribunal found the respondent outsource payroll and all accounts to the Accountants and HR support to Peninsula. They provided advice to Ian Rorison who decided the extent, if any that it was to be followed. The Tribunal considered that in relation to UK business development; improving productivity and processes; and the Middle East project Ian Rorison took advice from the claimant. The Tribunal did not consider that Ian Rorison supervised the claimant but rather the claimant was given a free reign. The emails sent by the claimant tended to show that he was giving advice to the respondent, recommending preferred options and drafting the appropriate documentation for execution. The Tribunal's impression was that Ian Rorison's role was to decide whether to take that advice.

25 135. The Tribunal accepted that the claimant was involved in more than business development. However, the claimant's remit was also to improve productivity and processes. It seemed to the Tribunal that the claimant's

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involvement in recruitment of Garry Edwards and disciplinary matters was part of this.

5 136. The Tribunal found that the claimant took the lead in collating the information for the Report. The Tribunal considered that the tenor of the email that the claimant sent to Ian Rorison on 12 May 2015 about George MacShannon suggested that it was the claimant who was telling Ian Rorison in no uncertain terms what needed to be done, how and when.

10 137. In relation to the visits to Bahrain and documentation relating to those visits and the Middle East project, the Tribunal considered that the claimant once again took the lead and it was Ian Rorison who followed often heedlessly. For example, the claimant said he needed a Power of Attorney and the Employment Agreement needed to be signed, Ian Rorison did what was asked yet there was no board meeting on 13 January 2015 and the company referred to in the Employment Agreement did not exist in March
15 2016.

138. While the ultimate decisions rested with Ian Rorison this in itself was not in the Tribunal's view a sufficient exercise of control over the claimant by the respondent.

20 139. In addition to the above three central elements of an employment contract, other factors can be relevant in construing the true nature of a purported contract.

25 140. It was also relevant to consider how the claimant was portrayed to third parties. In correspondence, the claimant had the title of Business Development Director and in a business visa application to the Embassy of the Kingdom of Saudi Arabia the claimant was described as an employee.

141. The Tribunal's impression was that the claimant decided his title to which Ian Rorison acquiesced despite George MacShannon's concerns. While Janie Rorison signed the Business Multi-visa applications the Tribunal thought it unlikely that she prepared them. They were a fiction: Janie Rorison

was not an employee or Project Manager. Ian Ronson was also not an employee or Sales Manager.

142. The respondent provided the claimant with two company cars and paid the expenses. Ian Rorison knew from George MacShannon that a non-
5 employee could not be given a company car. The Contract on which the claimant relied made no reference to the claimant being provided with a car. The Tribunal's impression was that the timing of the claimant being provided with cars seemed to coincide with periods when the claimant was disgruntled because of delays in payments or funding. The fact that the
10 claimant was provided with a car was a neutral factor and in the Tribunal's view was wholly insufficient on its own to evidence the existence of an employment relationship.

143. The Tribunal did not find that the claimant received pay slips from the respondent nor did the respondent receive or request invoices from the
15 claimant. The claimant was not on the payroll prepared by the Accountants. The timing of his payments did not always coincide with payments to the respondent's weekly or salaried employees. The Tribunal noted that there was no evidence that the claimant ever received P60s. The Tribunal thought that it was highly unlikely that he did yet the claimant did not approach the
20 Inland Revenue until August 2017.

144. The claimant chose when he came into the office in Glasgow and tended to work full working hours. He did not always receive the agreed amount of monthly payment but there was no evidence that the respondent was making deductions when the claimant was on holiday or sick absent. Nor
25 was there evidence to suggest that he had to request permission before taking holidays.

145. From March 2016 onwards the Tribunal considered that the claimant's focus was on the Middle East project. He spent less time in Glasgow although he continued to be involved in various matters there. The respondent continued
30 to make some payments to the claimant. He also received payments from Euroscot (Middle East) Co WLL of which the claimant was a shareholder.

There was no evidence nor was it suggested that the claimant was employed by Euroscot (Middle East) Co WLL. He did not receive any payments from Euroscot Engineering (Middle East) WLL. It did not exist until 1 June 2016 and it did not ever have a bank account.

5 146. Taking all the factor into account the Tribunal concluded that between 23 June 2014 and 17 January 2017 the claimant was not an employee of the respondent as defined by Section 230(1) of the ERA.

147. The Tribunal appreciated that the protection of wages provisions under section 13 of the ERA apply to the wider category of a worker as defined under Section 230(3) to include a contract to do work personally In the Tribunal's view the claimant did not assert in his claim form that he had anything but a contract of employment with the respondent. In any event the Tribunal considered that the broader scope of employment under the protection of wages provisions did not negate the requirement to show subordination, personal service and mutuality of obligation, as with a contract of employment. The factors relevant in assessing whether the claimant was employed under a contract of service were not essentially different from those relevant in assessing whether he was employee. As indicated above the Tribunal was not convinced that the respondent exercised a sufficient degree of control over the claimant. The Tribunal felt that from the language used in various email exchanges the claimant did not act as if he was subordinate to Ian Rorison. The claimant held himself apart from the respondent's employees. It also seemed to the Tribunal that when he was involved in the Middle East project the claimant was undertaking commercial risk.

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148. Having concluded that the claimant was not an employee the Tribunal did not consider that is was necessary to consider the other issues listed in paragraph 5 above.

149. As the claimant was not an employee of the respondent and the claim under Section 13 of the ERA was based on the assertion that he was employed as

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defined in Section 230(1) the Tribunal considered that it did not have jurisdiction to hear the claims.

5 Employment Judge: Shona MacLean
Date of Judgment: 26 March 2018
Entered in register: 05 April 2018
and copied to parties

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