EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000376/2025

Held in Glasgow via Cloud Video Platform (CVP) on 2 September 2025

Employment Judge D Hoey

Mrs S Shepherd	**Claimant** **In Person**
Global DX Ltd	**Respondent** **Not present and** **Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claimant was an employee of the respondent from 1 October 2018 until 6 January 2025

2. The claimant is entitled to be paid the following:

   (1) outstanding (and unpaid) salary in the sum of **£867.95** (in respect of 22 days worked) subject to such deductions required by law;

   (2) unpaid accrued but untaken holidays in the sum of **£1,384.60** in respect of 5 weeks pay (less any deductions required by law);

   (3) 6 week's pay in lieu of notice in the sum of **£1,480.16** (less any statutory deductions); and

   (4) a redundancy payment in the sum of **£2,220.24**.

REASONS

1. The claimant seeks holiday pay, unpaid wages, notice pay and a redundancy payment from the respondent. The respondent entered administration on 6 January 2025 and the administrator consented to the claim proceeding. In order to determine the entitlement to the sums sought, the claimant requires first to establish that she is an employee in law and then that the sums sought are due to her.

2. The Tribunal heard oral evidence from the claimant who had provided a written witness statement and productions.

Facts

3. The claimant's late husband was the founder of the company in December 2017. The respondent offered diagnostic rapid tests to the companion and livestock markers. There were 2 shares in the business with the claimant and her late husband owning one share each.

4. At the formative stages of the respondent, from late 2017 and 2018, the claimant was nominally a director but it was her late husband who did work and took control of the company, the claimant carrying out no tasks. Her appointment was administrative and procedural, and she did not exercise control over the company's strategic or scientific direction.

5. The position changed on 1 October 2018 when the claimant began to carry out work for the respondent. She was asked by her late husband to work in the business, She took control of bookkeeping, administration and VAT and associated matters and received a salary and payslip. This commenced in October 2018 and continued until her dismissal. The claimant took no dividends as a shareholder. While the claimant was not given a written contract of employment, she acted on a day to day basis as any other employee (notwithstanding that her late husband was her line manager).

6. From the outset of her becoming a worker of the respondent she worked in an administrative capacity. Her duties included office management, bookkeeping and accounts, settlement of supplier invoices, supplier orders, preparing and submitting VAT returns, managing payroll and bank reconciliations. She reported directly to the CEO, her late husband. She did not set her own salary or working conditions. Her salary was determined by her late husband based on the company's financial constraints.

7. The claimant received regular monthly payslips and P60s from October 2018 onwards. Her salary was paid via bank transfer, and National Insurance contributions were deducted and paid. She did not receive dividends. Her working hours were fixed, and she took holiday and sick leave in line with standard employee procedures.

8. The respondent was run by the claimant's late husband who had control of the business and its day to day activities. He invited the claimant to work for the respondent and directed the salary. There were no benefits.

9. Other staff had been given a written contract but given the parties' relationship the claimant was not provided with any written contract. Her terms were

determined by her late husband. She followed the standard employee procedures in terms of day to day matters as the other staff did.

10. The claimant had initially worked a 4 day week which became 5 days. She would essentially work full time carrying out work for the respondent.

11. Prior to her late husband's death, he (as CEO) was the claimant's line manager and directed what work the claimant do and services she undertakes. He was also in control of the business and its strategy.

12. The respondent employed around another 3 persons, who took control of the scientific background. Those individuals had specialist experience (of which the claimant had none). Those individuals had written contracts of employment.

13. The claimant was issued with payslips in respect of which any tax and national insurance that was payable was paid and set out.

14. When the claimant's husband died in May 2021, his share transferred to the claimant (such that she became 100% shareholder in the respondent). Work that he had done was distributed amongst others in the business. The claimant became the CEO. Some of the claimant's duties had already been outsourced, such as tax and accountancy services and the claimant took on greater marketing responsibilities. The claimant took ultimate control and direction of the respondent and was able to determine how the business progressed. She worked full time in relation to the business and dedicated her working time to its success.

15. Following the passing of the claimant's husband in March 2021, on 24 May 2021, his directorship was formally ceased via Companies House, and his single share was transferred to the claimant. That was a procedural matter and did not alter the claimant's employment relationship or responsibilities. Business continued and the claimant continued to work as the other employees even although she became the CEO.

16. On 18 October 2021, the claimant was listed as CEO to maintain company operations to keep the business functioning. By this time all accounting and payroll functions were outsourced to a professional firm. The claimant's role shifted to marketing, business development and distributor outreach, and she remained under the direction of the scientific and operations staff. On a day to day basis the operations manager exerted a significant degree of control since they had a scientific background and had knowledge of the approach needed. The claimant followed their instructions and sought to develop the business and continue upon its success.

17. The claimant's monthly salary increased by a few hundred pounds such that upon the termination of employment she earned £1,200 per month gross and £1,121.53 net. That was £276.92 a week gross and £258.81 (net) a week.

18. The trading position of the respondent deteriorated. In view of the financial problems the claimant did not draw a full salary but by December 2024 the claimant reached the conclusion she required to contact an insolvency practitioner.

19. On 6 January 2025 administrators were appointed and the claimant was dismissed as redundant the business having ceased providing work for the claimant to do. The claimant had not been paid 22 days outstanding salary and 5 weeks holiday which was accrued but untaken. She was also not given any notice or notice pay. She did not receive a redundancy payment.

The law

20. In order to receive holiday pay, a redundancy payment and notice pay the individual requires to be an employee. Section 230 Employment Rights Act 1996 provides that 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.

21. ***Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 All ER 433*** set out factors which must be considered in determining whether there is an employment relationship between parties.

22. Various tests have been identified in order to determine these issues such as the control test, the integration test and economic reality tests. In addition, the multiple factors test as set out in ***Ready Mixed Concrete*** (above) remains relevant. The irreducible minimum requirements of a contract set out in that case was confirmed by the Supreme Court in ***Autoclenz Ltd v Belcher and ors 2011 ICR 1157, SC***. Determining whether a contract exists can be considered by reference to the answers to the following questions: Did the worker agree to provide his or her own work and skill in return for remuneration; Did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of employer and employee; And were the other provisions of the contract consistent with its being a contract of service?

23. The cases of ***Clark v Clark Construction Initiatives Ltd 2008 ICR 635*** and ***Secretary of State v Neufeld 2009 EWCA Civ 280*** concerned circumstances

where a director of a company also sought to argue that they were an employee of that company.

24. It is clear from those cases and subsequent cases which make reference to them, that there is no reason in principle why someone is a shareholder and director of a company cannot also be an employee and that ultimately it is a question of fact for the tribunal to consider. While lack of a written contract of employment is likely to be an important factor to be considered in that context, it is not likely to be determinative. Equally, payment of ‘salary’ with payslips will be relevant but not determinative.

25. In ***Secretary of State for Business and Trade v Karpavicius and anor 2025 EAT 89***, the Employment Appeal Tribunal held that an Employment Tribunal had erred when it decided that the fact that the claimant was the sole shareholder with 100 per cent control of the company of which he claimed to be an employee was irrelevant to the question of his employment status. In the Employment Appeal Tribunal’s view, the tribunal had overlooked the important nuances of the Court of Appeal’s guidance in ***Secretary of State for Business, Enterprise and Regulatory Reform v Neufeld*** (above) on the relevance of a controlling shareholding. The Court’s observation that a 100 per cent or controlling shareholding will ‘ordinarily’ be irrelevant fell short of the proposition that this will necessarily always be the case. The fact that the individual controlled the company may form the background or backdrop to the consideration of other factors, particularly where there was no written contract (as in the instant case), and the tribunal may have to scrutinise and evaluate more closely, against that backdrop, the actual arrangements and what the individual actually did.

Unpaid wages (and holidays)

26. In terms of sections 13 and 23 of the Employment Rights Act 1996, where the sum paid to the worker is less than that properly payable in terms of their contract, the Tribunal can make a declaration to that effect and award the sum due. That can include wages that were due and holidays that were accrued but untaken.

27. Under the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 a Tribunal can award a claimant damages for breach of contract where the claim arises or is outstanding on termination of employment. The cap of the award that a Tribunal can make is currently £25,000.

Notice and notice pay

28. For the purposes of section 86 of the Employment Rights Act 1996, the statutory notice entitlement for an employee is one week’s notice for each

year of continuous employment (up to a maximum of 12 weeks). Failure to pay notice that is due can be recovered as damages for breach of contract.

Redundancy

29. Redundancy is defined in section 139 of the Employment Rights Act 1996 as arising where the dismissal is wholly or mainly attributable to the fact the employer ceases or intends to cease to carry on the business for the purposes she was employed or in the place she was employed or where there is a cessation or diminution of the requirements for employees to carry out work of a particular kind or to carry out work of a particular kind in the place they were employed.

30. Under section 163 of the Employment Rights Act 1996, where an employee has been dismissed by reason of redundancy, they may be eligible for a statutory redundancy payment. An employee must have a minimum of 2 year's complete service and the payment is calculated according to the formula set out at section 162 of the 1996 Act, whereby the employee receives 1.5 week's gross pay for every year of employment in which they were not below 41, 1 week's gross pay for each year of employment when they were below 41 but not below 22 and 0.5 week's gross pay for each year they were below 22. There is cap on a gross week's pay for someone dismissed. A maximum of 20 years can be taken into account.

Discussion and decision

31. Having considered the legal tests in light of the evidence and having carefully analysed what the claimant did on a day to day basis in light of the authorities, the Tribunal is satisfied that the claimant was, in law, properly characterised as an employee of the respondent. That was an analysis carefully carried out in light of the authorities in this area set out above and given the facts.

32. No one factor is determinative and the Tribunal took care to assess the evidence. The claimant had a contract with the respondent. There was an implied contract whereby the claimant had agreed to provide her work and skill in return for remuneration. She was subject to the control of the late CEO in terms of the work to be done.

33. Following the passing of the CEO, she took control but business continued. The Tribunal carefully considered the evidence to determine whether or not her relationship with the respondent changed. The Tribunal was satisfied that it did not. The claimant continued to devote her working time to the success of the business. She continued to work for the business. Her status did not change when she assumed more duties (and became the sole director and shareholder).

34. The Tribunal took account of the fact that the claimant became CEO and that she had ultimate control of the company. However, it was clear that she continued to carry on as before in terms of the work that she did. The payment position continued (and that she continued to work as if she was an employee). The claimant was treated as an employee in terms of tax and national insurance. While no written contract was issued, the claimant took holidays and proceeded to act (and be treated as) an employee.

35. Having assessed the facts in light of the applicable law, the Tribunal finds that the claimant was an employee of the respondent from 1 October 2018 until 6 January 2025.

Salary and holiday entitlement

36. She is entitled to 22 days outstanding salary. As her monthly gross pay was £1200, a day's pay was £1200 x 12 divided by 365 which is £39.45. She is therefore entitled to £39.45 x 22 which is **£867.95** (less any deductions required by law).

37. She is also entitled to 5 weeks' holiday pay. She is therefore entitled to £276.92 x 5 which is **£1384.60** (less any deductions required by law).

Notice entitlement

38. The claimant was not given any notice. She had worked 6 years as an employee and is therefore entitled to 6 week's pay in lieu of notice in the sum of **£1,480.16** (less any statutory deductions).

Redundancy entitlement

39. The claimant was dismissed because there was a cessation of the employer's need for business to be carried out. She was dismissed by reason of redundancy and she is entitled to a redundancy payment.

40. She was aged 64 when dismissed. She had worked for the respondent (as an employee) for 6 complete years. Her gross weekly pay was £276.92. She is therefore entitled to 9 weeks' pay (6 x 1.5 week's for each full year worked) which is **£2,220.24**.

10 September 2025

Date sent to parties ______________________