



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Contreras  
**Respondent:** Gamma Energy Ltd  
**Heard at:** East London Tribunal Hearing Centre  
(remotely by Cloud Video Platform)  
**On:** 10-11 February 2026  
**Before:** Employment Judge Smyth

## Representation

**Claimant:** In person  
**Respondent:** Mr Thomas, Counsel

**JUDGMENT** having been sent to the parties on 24 February 2026 and written reasons having been requested in accordance with Rule 60(4)(b) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

# REASONS

## Introduction

1. The claimant provided services to the respondent from 18 April 2016 to 23 September 2024 pursuant to a Collaboration Agreement between Plenol Limited, of which the claimant was a Director, and the respondent, dated 18 April 2016 and subsequently varied on 27 September 2018.
2. The claimant submitted a claim form which was received by the Employment Tribunal on 24 February 2025. He initiated Early Conciliation on 3 November 2024 and obtained an Early Conciliation certificate on 15 December 2024.
3. The claimant claims that he was unfairly dismissed. The claimant withdrew his breach of contract claim. He stated that he reserves his position as to bringing any such claim in the County Court.

4. The claimant asserts that he became an employee within the meaning of section 230(1) of the Employment Rights Act 1996 ('the 1996 Act') when the Collaboration Agreement was varied on 27 September 2018. He accepts that he was not an employee prior to this date.
5. The respondent asserts that the claimant was never an employee within the meaning of the 1996 Act, and therefore he cannot claim unfair dismissal. The respondent asserts in the alternative that the reasons for dismissing the claimant amount to a potentially fair reason for dismissal, namely redundancy or some other substantial reason.

## **The hearing**

### **Preliminary Issues**

6. Mr Thomas applied to rely on two additional documents not contained in the bundle. These were the Diggia Group's updated organisational chart dated 15 October 2020 and an email from Human Resources to which the organisational chart was attached. They were submitted to the Tribunal the day before the hearing.
7. Mr Thomas submitted that the respondent has an ongoing duty of disclosure. The documents were recently identified by Jose Manuel Zorrilla, the CEO / President of Diggia Group after German Sainz Rodriguez, the Human Resources Director, had left the company. The documents are material because it is relevant that the claimant does not appear on the organisational chart.
8. The claimant opposed the application. He submitted that there is already an organisational chart in the bundle.
9. The late evidence relied upon by the respondent was submitted late and in breach of case management orders made on 21 March 2025. Under Rule 6(2)(a) of The Employment Tribunal Procedure Rules 2024 I have the power, in the case of non-compliance, to waive any order of the Tribunal if it is considered just. Further, under Rule 41(3) I am not bound by strict rules of evidence.
10. I decided to admit the late evidence. I accept the organisational chart and the accompanying email is potentially relevant to the issues I am required to determine, as the respondent will argue that the absence of any reference to the claimant is significant. I further accept the explanation for the delay, which is due to these having been identified by Mr Zorrilla after Mr Rodriguez had left the company. I considered there to be minimal prejudice to the claimant once he was given additional reading time to digest the material, following which he confirmed that he was ready to proceed. My decision to admit the late evidence is consistent with the overriding objective set out in Rule 3, as it avoids delay while still ensuring the parties are on an equal footing. I considered it to be more proportionate than to exclude the evidence or to admit it and adjourn the hearing.

### Evidence

11. I heard evidence from the claimant, who affirmed the contents of his witness statement dated 12 July 2025, and Mr Zorrilla, who affirmed the contents of his unsigned and undated witness statement. A Spanish interpreter had been booked, but the claimant chose to give evidence in English while the interpreter remained on standby in case he encountered difficulties. As no such difficulties arose, the interpreter was released at the end of the first day.
12. During cross-examination of the claimant on the first day, Mr Thomas referred to an email in Spanish on page 137 of the bundle. This email had not been translated. Counsel suggested that the interpreter could translate the email for the Tribunal. I informed Mr Thomas that this was not the role of the interpreter. Mr Thomas sought permission to provide a translated copy of the email before the commencement of the hearing on the second day. Mr Contreras had no objection, as this caused him no prejudice because as a native Spanish speaker he could read the original email. In such circumstances I decided to admit the late translation, which was duly provided the following day.

### Submissions

13. I heard submissions from Mr Thomas and the claimant. The hearing was recorded and their submissions form part of the record of proceedings.

### **Relevant Law**

14. Section 230 of the Employment Rights Act 1996 provides, in so far as is relevant:

#### **230 Employees, workers etc.**

(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.

15. In Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1967] [1968] 2 QB 497, [1968] 1 All ER 433, the Court of Appeal set out the classic formulation for determining whether a contract is one of employment:
  - (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master.
  - (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.

- (iii) The other provisions of the contract are consistent with its being a contract of service.
16. The question of whether an individual is an employee is one of substance, not form. The Tribunal must consider the true agreement between the parties, having regard not only to the written terms but also to how the relationship operated in practice. In Autoclenz Ltd v Belcher & Ors [2011] UKSC 41, the Supreme Court held that the Employment Tribunal is not bound by the terms of any written agreement where they do not reflect the reality of the relationship. The assessment is a multi-factorial one. No single factor is determinative, and the Tribunal must consider all the circumstances of the case in the round.

## **Findings**

17. The claimant contends that he opened a London office in 2019, and that 40 staff members reported to him, and he was actively involved in the hiring, firing and training of those individuals. I have considered the evidence before me carefully. I have considered an email dated 5 August 2024 from the Head of HR, Seryan Mustafa, who states that the claimant “would like to meet with any potential candidates too”, but this is the only evidence before me that suggests the claimant had any involvement with recruitment and it relates only to a single candidate that was interviewed the previous Friday. There is no documentary evidence before me to suggest that the claimant had recruitment authority. I am prepared to accept that the claimant may have been present in interviews, participated in discussions, or offered views on potential candidates. However, on the evidence before me I do not accept that he had any decision-making authority, including the authority to recruit or dismiss employees. The evidence before me does not support the claimant’s assertion that he opened a London office and nor that 40 staff members reported to the claimant within a managerial hierarchy.
18. I accept that the claimant was a named director of several group companies and was described externally as “Head of UK operations.” However, statutory directorship does not, in law, imply employment. I find that these titles were commercial in nature and did not carry managerial or supervisory authority. I have already found that the claimant had no responsibility for staff. I further find that there is no evidence before me to demonstrate that the claimant controlled budgets, participated substantively in governance decisions, or did anything else to suggest that the external job title was any more than what Mr Zorrilla described as “a commercial title.”
19. I have carefully considered the Collaboration Agreement dated 18 April 2016 and the variation dated 27 September 2018. I accept that the claimant was required under that agreement to work 24 hours per week on the specific days of Tuesday-Thursday at the respondent’s London premises. I accept that the claimant was required to have wider availability to join conference calls and assist with meetings when necessary. I also accept that the claimant was entitled to 15 days’ annual leave. These are factors that are capable of pointing towards an employer-employee relationship.

20. However, I have considered the evidence in the round. I find it significant that these factors were not sufficient for the claimant to claim that he was an employee prior to 27 September 2018. I also find that these factors are outweighed by other factors suggestive of a relationship as a contractor, namely the claimant's invoicing of the respondent through his company (not the claimant personally) for fees and expenses with VAT, the absence of any tax or national insurance payments by the respondent, the lack of exclusivity, and remuneration by way of a monthly retainer and payments linked to successful introductions and transactions.
21. The 27 September 2018 variation to the Collaboration Agreement is, in the context of the question as to whether it brought about a change in the claimant's employment status, modest. I do not accept that the Equity participation furthers the claimant's claim that his role evolved to that of an employee given this was conditional on the claimant's introduction of a new client or venture. I find it significant that nothing is added in the 2018 variation, for example, by way of disciplinary procedures or redundancy frameworks.
22. I return to the test in Ready Mixed Concrete, considering mutuality of obligation, control, and whether the overall relationship is consistent with employment. In determining status, I must look at the reality of the relationship, not merely the label. I remind myself that I should consider the evidence in the round and no single factor is determinative.
23. In terms of mutuality of obligation, the claimant was entitled to a retainer and was expected to attend the office on agreed days. However, the economic reality was that his reward was substantially linked to successful introductions and transactions. This was not a case where the respondent was obliged to provide continuous work in the conventional employment sense, nor where the claimant was integrated into a hierarchical structure with ongoing assigned duties. The arrangement is best characterised as an ongoing commercial collaboration.
24. In terms of control, the respondent specified days of attendance and required leave approval. Those are employment-like features. However, control in the Ready Mixed Concrete sense concerns the right to direct what work is done and how it is done. I find that the claimant operated with autonomy. He was not subject to supervision, performance management, or disciplinary control. He did not manage staff. The requirement to attend the office is consistent with coordination of a commercial relationship and does not, of itself, establish subordination.
25. Standing back and assessing the relationship as a whole, I conclude that although certain features resemble employment, the overall character of the relationship remained that of a commercially aligned collaborator bearing entrepreneurial risk and enjoying entrepreneurial reward. The 2018 variation did not bring about a material change to the claimant's employment status. I find that the written agreements reflect the true relationship between the claimant and the respondent.

**Conclusion**

26. I find the claimant was not working under a contract of service within the meaning of section 230 of the 1996 Act. It follows that he is not an employee and his claim for unfair dismissal must be dismissed.

**Approved by:  
Employment Judge Smyth  
Dated: 6 April 2026**