



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND)

**Judgment of the Employment Tribunal in Case No: 8000432/2026 Issued
Following Open Preliminary Hearing Heard at Edinburgh on 7 July 2026**

Employment Judge J G d’Inverno

Ms C Reed

**Claimant
Represented by:
Ms Williams, friend**

Property Studios Ltd

**Respondent
Represented by:
Mr Caters, -
Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is

(First) That the claimant has failed to discharge her burden of proof such as to establish that she was an employee within the terms of section 230(1) and (2) of the Employment Rights Act 1996.

(Second) That the claimant has failed to discharge her burden of proof such as to establish, let it be assumed, that she had acquired the status of employee, that she had thereafter been continuously employed for a period of two years prior to the effective date of determination of her contractual relationship with te respondent (asserted dismissal) on 31December 2025

(Third) That the claimant's complaint of unfair dismissal is dismissed for want of jurisdiction.

Date sent to Parties

6 August 2026

REASONS

1. This case called for Open Preliminary Hearing on the Cloud Based Video Platform at 10 am on 7 July 2026 with a time allocation of 3 hours. The allocation was inadequate, the Hearing requiring a full day. The start time was delayed until 10.30 to allow the claimant, a litigant in person represented by a friend, an opportunity to consider additional documents intimated and sent by the respondent's representative to the Tribunal on the morning of the Hearing. The Tribunal thereafter sat through until 2 pm to conclude the oral evidence of both principal witnesses and following a curtailed adjournment of 30 minutes resumed at 2.30 pm to hear parties' submissions.
2. At the outset of the Hearing the Tribunal confirmed with parties, each agreeing the same in turn, that the issue for determination at Open Preliminary Hearing was: -

“Whether the claimant, during the period of her engagement with the respondent from 11 July 2022 until 31 December 2025, was an employee, as opposed to a worker, as defined by section 230 of the Employment Rights Act 1996 and, if so was so, for a sufficient continuous period of 2 years prior to the date of her alleged dismissal (that is on or prior to 30 December 2023) such as to acquire title in law to present a complaint of unfair dismissal.

3. The Tribunal explained to parties the process that would be followed for the eliciting of oral evidence from witnesses including the purpose of examination in chief, of cross examination, and of re-examination, while stressing the importance of challenging, with opposing witnesses, in cross examination, all matters of fact in respect of which a party either had given, or was going to give, evidence which was contrary to the evidence of the witness, together with the risk associated with failing to do so of being held to have accepted the witnesses version of events.
4. Although a litigant in person, the claimant set out in her substantial paper apart Particulars of Claim, the relevant tests applicable to the determination of the preliminary issue of employment status demonstrating an understanding on her part of the issues of fact and in law relevant to its determination.

Sources of Oral and Documentary Evidence

5. The respondent's representative had compiled and lodged an electronic bundle of documents extending to some 98 pages which included the documents which both the respondent and the claimant wished to place before the Tribunal at Open Preliminary Hearing. On the morning of the Hearing the respondent's representative added an additional document to the bundle being a later issued version of the Company Handbook (Team Bible) and in consequence of which, the claimant requesting time to consider the document, the Tribunal delayed the start time of the Hearing until 10.30 am.
6. The claimant attached to her initiating application ET1 a number of documents to some of which parties referred in the course of the Hearing.

7. The Respondent Company's Managing Director Michelle Milnes gave oral evidence on affirmation. The claimant, Miss Catriona Reed, gave evidence on oath on her own behalf. Each witness answered questions in cross examination put by the other party (and Miss Milnes in re-examination) and questions from the Tribunal.
8. It was a matter of agreement between the parties, binding on the Tribunal for the purposes of the Hearing, that the claimant met the statutory definition of worker set out in section 230(3) of the Employment Rights Act 1996 ("ERA") viz:

"2.30(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."

9. It was further the claimant's confirmed position in evidence that:-
 - (a) prior to her entering into her first contract with the respondent on 14 September 2020 (page 20 of the Hearing bundle) and, after a gap of 4 months following its termination,
 - (b) as at the point of entering into her second contract with the respondent on 11 July 2022 and, during its currency and following an agreed contractual variation, and,
 - (c) as at the time of her third contract with the respondent on 1 October 2024,
 - (d) that, both she and the respondent, intended and that she, the claimant, understood herself to be entering into a contract for supply of and to be supplying services on a self-employed basis,
 - (e) that throughout the currency of her relationship with the respondent she had understood herself to be doing so and,
 - (f) that she had believed that the terms of the written contracts under which she was supplying services to the respondent reflected her doing so on a self-employed basis, and,
 - (g) That it was only following the termination of her final contract on 31 December 2025, that she, having carried out research, retrospectively formed the view that she might in fact and in law have been an employee of the respondent during some or all of that period.

10. Although parties had lodged a Hearing Bundle extending to some 98 pages including a copy of the initiating Application ET1 to which there was appended several Annexes, and what appeared to be a written submission, the Tribunal made clear at the outset of the hearing that it would take into account only such documentary evidence as the parties referred to either in the course of evidence or submission and would determine matters on the basis of the oral evidence led and oral submissions made at today's Hearing.
11. Although the terms of her paper apart Particulars of Claim might be open to such interpretation, the claimant did not adopt a position, either in evidence or in submission at the Open Preliminary Hearing, let it be assumed that she was an employee for all or some part of the period from 11 July 22 to 31 December 25, which was denied by the respondent, that she fell to be regarded as having been continuously so employed from 14 September 2020 notwithstanding the 4 month break between the termination of the first contract and the start date of the second contract.
12. In these circumstances the case advanced by the claimant was, albeit having intended to supply services to the respondent in the period 11 July 22 to 31 December 25, and further, notwithstanding the terms of the relevant written contract/contracts and further again, notwithstanding her belief throughout that period that she was not an employee of the respondent, that the reality of the working relationship which developed and existed in that period between the parties was such as to have changed her status from that of Worker to that of Employee as defined by section 230(1) and (2) of the ERA; viz, -

"230(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".

13. Further and, impliedly, in the context of the principal complaint of unfair dismissal, that transition from the status "self employed" worker to that of employee, took place on or before 30 December 2023, such as to afford the claimant the requisite 2 years of continuous employed service necessary to confer upon her the title to present a complaint of unfair dismissal.

Impressions of the Evidence

14. The Tribunal did not find either the respondent's Managing Director Miss Milnes, or the claimant, Miss Reed, to be incredible witnesses. Nor did it consider that sought to be disingenuous in the answers which they gave to questions. Thus, the Tribunal's determination of matters of disputed fact turned, for the most part, on the sufficiency and reliability of the evidence given in the context of the burden of proof

15. In relation to matters in which the evidence of witnesses was in direct conflict, and in so far as the evidence of a witness was not challenged in cross examination in relation to such matters of alleged fact, the Tribunal preferred the evidence of that witness on a question of sufficiency and in respect of its reliability.

Findings in Fact

16. On the documentary and oral evidence presented, the Tribunal makes the following essential Findings in Fact, restricted to those relevant and necessary to the determination of the preliminary issue of employment status.
17. Let it be assumed that the claimant did satisfy the requirements of section 230(1) and (2) of the Employment Rights Act 1996 during the currency of her first contract with the respondent, that is in the period 14 September 2020 up until 4 March 2022, which is denied by the respondent, the 4 month break between the termination of the first contract on 4h March 2022 and the commencement of the second contract on 11 July 2022, would have served to break the continuity of any such employment.
18. The claimant was first engaged by the respondent under a worker contract forming part of the respondent's flexible operational workforce alongside employees and freelance contractors.
19. The claimant provided booking coordination services remotely while also operating her own independent business "Findels and Boo". The engagement operated on a commercial basis with hours and rates varying over time.
20. That first engagement ended on 4 March 2022 following a commercial disagreement regarding the claimant's proposals to increase her hourly rate of charge. In July of 2022 the claimant entered into a new worker contract with the respondent on revised commercial terms.
21. Following a review / probationary period from 1st September 2025 to 01st December 2025 consensually introduced following the focusing of concerns regarding performance under the contract, the respondent terminated the second engagement in December of 2025.
22. Copies of the written contracts under which the claimant was engaged are produced in the joint bundle. It was a matter of concession, on the part of the claimant, made in the course of her evidence, that the title strips superimposed in blue upon those copy contracts which are produced at which bear to describe them as "Contract of Employment" were descriptors added by the claimant in contemplation of this litigation.
23. The first of the two contracts produced, that which terminated on 4 March 2022 ,bears to incorporate by reference the terms of the respondent's then company handbook known as the "Property Studios Team Bible" and contained a signing declaration on the part of the claimant that she had read both the contract

document itself and the team bible and “agreed to the terms and conditions stated in both.”

24. The nature of the respondent's business is such that they engage staff and procure services variously under three sets of contractual arrangements:-
 - (a) they engaged some individuals directly as employees under PAYE employment contracts,
 - (b) they contract for services with workers under worker contracts in terms of which workers operate under flexible service arrangements and may carry out services remotely while managing their own availability,
 - (c) they procure specialist services from self employed freelancers under separate freelance agreements.
25. The respondent maintained separate operational guidance for each of these categories reflecting the different contractual relationships within the business.
26. The contract under which the claimant was engaged was a “worker contract” within the respondent's terminology. The contract differed from the respondent's employee contracts.
27. The respondent engaged the claimant under their worker's structure to assist with booking coordination for the respondent's network of photographers. The claimant worked remotely and organised her own working schedule.
28. During the course of her engagement, the claimant relocated (in 2025) to another country, where she expanded her independent business activities including operating Findels and Boo – Devon and later “Findels and Boo – Switzerland”.
29. The respondent did not direct or restrict where the claimant lived or worked.
30. The claimant was not required to work exclusively for the respondent and remained free to undertake other work and business activities throughout her engagement subject only to the exception of not working for direct competitors of the respondent.
31. Throughout the engagement the claimant operated her own independent business “Findels and Boo”.
32. The engagement operated on a commercial basis in relation to the cost of services. On a number of occasions the claimant notified the respondent that her hourly charge out rate would increase from a specified date and the respondent then considered whether to accept the revised rate, to refuse it or to negotiate a compromise rate.
33. In January 2022 the claimant notified the respondent that her hourly rate would increase by 50 per cent, effective from 1 February 2022 due to rising costs.

The respondent declined the proposed rate and the engagement was brought to an end with a contractual end date recorded of 4 March 2022.

34. In July of 2022 the claimant contacted the respondent offering to enter into a further contractual arrangement on revised commercial terms which the respondent accepted and the parties entered into a further (second) "worker contract" on revised commercial terms, on 11 July 2022.
35. Following the emergence of operational concerns on the part of the respondent relating to the booking coordination services being supplied by the claimant there was included in the second contract a probationary period from 1 September 2025 to 1 December 2025 at the end of which period the respondent terminated the engagement.
36. The second contract made reference to the respondent's company handbook known as the "Property Studios Team Bible" and contained a signing declaration on the part of the claimant that she had read both the contract itself and the team bible and agreed to the terms and conditions stated in both.
37. Under the second contract the respondent was not obliged to provide a fixed amount of work to the claimant and operational tasks could be allocated to other individuals where necessary.
38. The claimant for her part was free to adjust her availability and would inform the respondent when she was unavailable due to business or personal commitments.
39. It was accepted in evidence, on behalf of the respondent that the claimant carried out an operational function within the respondent's workflow by assisting with booking coordination for the respondent's network of photographers.
40. The respondent operates a distributed service model in which employees, workers and freelance contractors contribute to the delivery of services by the respondent to clients.
41. The booking coordination function to which the claimant contributed formed part of a shared operational system and was not tied to any single individual. The tasks could be performed by multiple individuals using shared systems and operational log-in details. Access to those systems was not exclusive to the claimant and the same functions could be carried out by other individuals within the respondent's operational workflow where required. The claimant formed part of the respondent's operational workflow in the same way as other workers and contractors also supporting the delivery of services.
42. The claimant was not required to work fixed hours nor did she work fixed hours for the majority of the engagement. Estimated hours varied over time and were discussed for operational planning purposes only.

43. The claimant was free to adjust her availability and would at times inform the respondent that she was unavailable due to commitments relating to her own business or personal circumstances.
44. The claimant worked remotely and was not required to attend the respondent's premises.
45. Under the pertaining contractual arrangements the respondent accorded to the claimant the statutory rights applicable to individuals engaged as workers.
46. The claimant received paid annual leave in accordance with the Working Time Regulations.
47. The claimant was responsible for organising and requesting her own periods of annual leave.
48. The process of booking leave involved workers and employees utilising internal booking software. That software did require a counter signature of a manager in order to record the leave as taking place.
49. In relation to the claimant that was the implementation of a technical requirement rather than an authorising/permissive step.
50. The claimant was never asked by the respondent not to take leave on dates that she sought to.
51. In the course of 2025, the respondent reviewed operational roles as part of a wider company restructure.
52. The respondent had previously discussed with the claimant in 2025 operational concerns relating to booking coordination and service delivery. Those discussions culminated in an official recorded meeting on 22 August 2025, during which the respondent confirmed that a review period to run from 1 September to 1 December 2025 would be introduced at the end of which and depending on performance the claimant's contractual engagement might be brought to an end.
53. Following the review period the respondent concluded that the engagement should come to an end.
54. The respondent informed the claimant on 10 December 2025 that the engagement would end on 31 December 2025. The claimant was offered the opportunity to attend a further meeting and was also offered an opportunity to appeal against the respondent's decision to terminate the engagement.
55. Although not contractually obliged to proceed in that way, the respondent sought to address its concerns with the services being provided by the claimant in a reasonable and transparent manner and wished to give the claimant the opportunity to respond with the possibility of her being able to reassure the

respondents such that the position to terminate the contractual arrangement might be open to reconsideration.

56. In May of 2021 the claimant declined an offer of employment preferring to remain with her then worker status, the claimant paid her own National Insurance and Income Tax.
57. The claimant rendered invoices to the respondent in respect of the work which she performed. The respondent paid the claimant the sums set out in the invoices.
58. The contracts which the claimant entered into and agreed to provide services under included an “autonomy and accountability clause” – “this is a fully autonomous position. You are empowered to make decisions and manage your workload independently within your specialist domain. You are expected to demonstrate the ability to self-govern and operate without direct supervision”.
59. The claimant had accepted in evidence that she had never made a request for sick leave nor for emergency leave.
60. The Claimant knew she had no entitlement to sick pay.
61. The claimant had the flexibility to set her own hours.
62. The respondent did not provide the claimant with equipment.
63. The claimant had use of her own mobile phone.
64. The respondent automatically enrolled its employees in a pension scheme with an opt out provision. They did not do so for the claimant for whom they made no pension provision.
65. The claimant was not subject to a disciplinary process.
66. The matters which underlay the respondent’s decision to determine the contract with the claimant in December of 2025 were not disciplinary matters (see the letter of termination pages 39 and 40 of the bundle).

Submissions

67. It is not the function of the Tribunal to set out verbatim the submissions made by parties. Notwithstanding, given the brevity of the submissions made by the claimant the Tribunal sets them out below in full as contemporaneously recorded by the Judge.
68. ***Submissions for the claimant***

- “a. Everything that we have submitted has been honest.
- b. Miss Reed has been honest in the answers given today.
- c. The case is not about the label (applied to the contract) it is more about the reality. I was an integrated member of the business.
- d. The contract which looks like an employee contract supports that.
- e. There was an expectation that she would work particular hours and would deliver her services personally;
- f. there were in effect set working hours in practice and the company bible was included in the contract.
- g. There was no end date in the contract.”

Summary of submissions for the respondent

69. The respondent's representative submitted as follows: -

- (a) That the starting points were respectively the first and then the second contracts which were designed by the respondent for the engagement of persons assuming the role of workers as opposed to employees. They set out a start date and a rate of contractual price per hour for the services to be provided.
- (b) It was the intention of both parties, the respondent and the claimant, throughout the relationship that it was not an employer/employee relationship and that was something reflected in the evidence given at the hearing today.
- (c) The break of some five months between the first and second contract meant that even if it were the case that the claimant had been an employee, which she had not been, any alleged continuity of employment had been broken by the gap.
- (d) The claimant's position throughout the contractual relationship had been clear. In May of 2021 the respondent had offered to engage her on a full-time contract of employment in the position of full-time admin person, but she had declined. At page 79 of the bundle there is an email of 7 May in which a Company Finance Director notes *“Cat has declined the job offer to be a full-time office admin person. Her main reasons were that she also has her own candle making business and because of that, the PAYE model does not suit her and according to her calculation and taking taxes into account, she would be effectively earning less for doing more hours so she would rather stay within her current role”*.

- (e) The respondent sourced services from and engaged the people provided them on three separate bases; from freelance contractors and from employees and, in between those two categories, also engaged individuals as workers which was the category in which they had contracted with the Claimant for the supply of services and which was the basis on which she, the claimant, had delivered services to them.
- (f) The claimant paid her own Tax and National Insurance.
- (g) The Claimant always provided invoices for the work that she performed and was paid the sums specified in those invoices from which no deductions were made by the respondent.
- (h) The respondent's employees did not submit invoices.
- (i) The claimant had accepted in evidence that she had agreed to work under the autonomy and accountability clause. The claimant made no request for sick leave and no request for emergency leave.
- (j) The claimant had the flexibility to set her own hours. The claimant did not need to seek prior approval of her paid holiday entitlement before entering it on the internal system for recording.
- (k) The respondent did not supply the claimant with equipment, she had access to and used her own mobile phone as required.
- (l) Whereas the respondent automatically enrolled its employees in a pension scheme with the option to opt out, they did not do so for the claimant because she was not an employee nor did the claimant ask to be enrolled in such a scheme.
- (m) The claimant was not subject to disciplinary process. The matters which led to the respondent's decision to terminate the second contract with the claimant in December of 2025 were not dealt with by the respondent as disciplinary matters rather as matters of performance under the contract justifying its termination.
- (n) The facts of the case as set out in the evidence were such as to place the claimant's engagement with the respondent within the definition of section 230(3) of the Employment Rights Act 1996 namely that the claimant personally performed services for the respondent in the capacity of a worker in terms of section 230(3)(b) of the Employment Rights Act 1996, namely that she ;- *"worked under an "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 out by the individual.”

- (o) The respondent’s representative submitted that the position on the face of the written contract was clear and the Tribunal should find that the evidence presented by both parties when viewed overall and considered in the context of the written terms of the contract, as insufficient to establish a reality that was so materially different from that recorded in the written agreement(s) such as to place the claimant within the terms of section 230(1) and (2) of the ERA.

Discussion and determination

69. Both the first and second written contracts into which parties consensually entered appear, in their terms, to be compatible with the claimant working with a status of worker (section 230(3)(b)) of the ERA and incompatible with the terms of section 230(1) and (2) i.e. with the status of employee.

70. Applying to the first and the second contracts, consensually entered into and varied between the parties, the normal rules of construction and according to the words used their normal English language meaning, each contract, objectively construed, falls to be regarded as sitting within the terms of section 230(3)(b) of the Employment Rights Act 1996 (“ERA”) that is to say, “*any other contract etc*” and not within the terms of section 230(1) and (2) of the 1996 Act.

71. While the terms of the written contract are not of themselves determinative of the issue of status, the onus rests with the claimant to prove, on the preponderance of the evidence and on the balance of probabilities, that the reality of performance under the contract(s) was sufficiently different from that described and envisaged by parties at the time of entering into them and as recorded in their contemporarily drawn written contracts, such as to confer upon the claimant the status of employee; and further, that the date by which that status had been conferred was a date not later than 30 December 2023 such as to result in the claimant establishing that prior to the date of termination of the contract, she had been so employed for a requisite continuous period of two years for the purposes of section 108 of the ERA absent which she lacks Title in law to present and the Tribunal Jurisdiction to consider, a complaint of unfair dismissal.

72. It was a matter of concession on the part of the claimant that the banner which appeared in blue at the top of the copy contracts produced and which described them and other documents lodged by her in the Appendices to her Form ET1 as “*Contract of Employment*”, were added by her after the event and in contemplation of this litigation.

73. Where parties reduced their contract writing, a presumption arises that they do so for the purpose of putting beyond doubt its terms. While it is long established that that is not of itself determinative where it can be established by extraneous

evidence, including the oral evidence of parties as to their intentions that the reality of parties' mutual performance under the contract is such as to change its character and effect the Tribunal considered that such evidence as was presented in this case was insufficient to overturn the presumption arising from the terms of the written contracts.

74. The claimant, to her credit, readily conceded in evidence that in entering into the contracts; -

- a). she had intended to and believed that she was doing so not as an employee but rather as a self-employed contractor or a worker;
- b). that she had continued to believe that that was the capacity in / status with which she was carrying out work for the respondents during the currency of both contracts, and,
- c). that it was only after the determination of the second contract, in December 2025, that she formed the view, in retrospect, that her status might in fact have been that of an employee.

75. The Tribunal separately found, let it be assumed that it had been satisfied that at some point during the course of the second contractual engagement the claimant's status had changed to that of employee, which it has not, that the potentially relevant evidence presented was insufficiently specific to enable the Tribunal to have made a finding in fact as to the date by which such a change in status had occurred. Accordingly, the Tribunal considered that the claimant would have failed to discharge her burden of proof such as to establish the requisite two years of continuous employment in terms of section 108 of the ERA. Thus, and in any event, the claim would fall to have been dismissed for want of jurisdiction.

76. In conclusion, the Tribunal finds that the claimant has failed to prove, on the preponderance of the evidence and on the balance of probabilities, that she was an employee within the meaning of section 230(1) and (2) of the ERA 1996 and separately and in any event, has failed to prove, let it be assumed that she was an employee, that she had been so for a continuous period of two years prior to the date of termination of her second contract that is from on or prior to 30 December 2023.

76. The claimant has accordingly failed to establish that she has Title to Present, and that the Tribunal has Jurisdiction to consider, her complaint of unfair dismissal which complaint falls to be dismissed for want of jurisdiction.

Date sent to Parties

6 August 2026