



EMPLOYMENT TRIBUNALS

Claimant: Mr Mark Edwards

Respondent: Sowga Ltd

JUDGMENT

The claimant's application dated **28 June 2022** for reconsideration of the Judgment sent to the parties on **16 June 2022** is refused.

REASONS

The claimant makes the request for reconsideration in respect of 2 claims in this Judgment: unfair dismissal and unlawful deduction from wages.

Unfair dismissal

The claimant applies for a reconsideration of *'the belief there was a genuine reason for redundancy in any case'* [emphasis added]. There is no reasonable prospect of the original decision being varied or revoked. This is not a request for the reconsideration of the Judgment. The Tribunal found that Mr Edwards was unfairly dismissed. The claimant is requesting a review of a finding of fact by the Tribunal on the issue of genuine redundancy, and the Tribunal's conclusion.

A decision to make employees redundant is a commercial decision for an employer. On the balance of probability, the employer discharged its burden in evidence that it had made a commercial decision based on its financial considerations at the time of the dismissal, and the Tribunal made a finding of fact, that the redundancy was a genuine commercial decision of the employer.

Tasks undertaken by an employee can be absorbed by other employees at the employer's direction. This is a commercial decision for an employer. The Judgment sets out the reason why the Tribunal concluded that the employer was able to adjust to undertake estimates in a more efficient way, with the estimates calculated by existing employees. The fact a company is in profit does not preclude a genuine redundancy; this is a misunderstanding of the law. An employer can make employees redundant even if a company is in profit if it is able to restructure its business in a more efficient way. For example, as a result of a commercial decision tasks can remain, absorbed by other employees, to increase efficiency or reduce

costs. The respondent had not employed someone as a standalone estimator at the time of the redundancy.

Unlawful deduction from wages

The claimant applies for a reconsideration of the Judgment that the claimant's complaint that there was an unlawful deduction from his wages is not well founded on the basis that *'[t]he respondent has provided the evidence that not all overtime has been paid.'* There is no reasonable prospect of the original decision being varied or revoked.

The Judgment sets out the reasons for the conclusion that the claimant was not legally entitled to be paid for some of the overtime claim forms he submitted, and of which the respondent had copies and accepted had not been paid as this work was not undertaken at the direction of the respondent, as required, the Tribunal determined, by the terms of the claimant's contract of employment.

Employment Judge **Hutchings**
08 August 2022