



# EMPLOYMENT TRIBUNALS

**Claimant:** (1) Mr N Gilliat  
(2) Mr A Ewan

**Respondent:** ATAG Cables and Tapes Limited  
(in creditors voluntary liquidation)

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

In exercise of powers contained in Rule 72 of the Employment Tribunals Rules of Procedure 2013 (“**Rules**”), the claimants’ application of 7 December 2022, for reconsideration of the judgment made on 27 October 2022, is refused because there is no reasonable prospect of the original decision being varied or revoked.

### REASONS

1. The first claimant, in a letter dated the 28 October 2022 but received by the tribunal on 7 December 2022, stated that both he and the second claimant wish to appeal. As the letter is addressed to me, rather than the Employment Appeals Tribunal, I have understood this to be an application for reconsideration.
2. As the tribunal received the letter on 7 December 2022, I have taken this to be the date of the application for reconsideration. The application for reconsideration is therefore brought after the 14-day deadline. For that reason alone, the application might be refused. However, as the claimants are unrepresented, I have considered the application.
3. Although the application was received on 7 December 2022, due to an administrative oversight, partly for which I was to blame, I did not become aware of it until February 2022. I apologise to both claimants that they did not receive a response to the application sooner.

4. The claimants' claims for statutory redundancy payments were dismissed by a reserved judgment dated 27 October 2022, following a two-day hearing on 27 and 28 July 2022.

### Applicable Rules

5. The power to confirm, vary or revoke a judgment is found at Rule 70. That provides that a judgment can be reconsidered "*if it is in the interests of justice to do so*".
6. Rule 72(1) provides:

*"An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. ..."*

7. Where an Employment Judge refuses an application following the application of Rule 72(1), then it is not necessary to hear the application at a hearing. Rule 72(3) provides that the application for reconsideration should be considered in the first instance, where practicable, by the same Employment Judge who made the original decision. I am the judge who made the decision in respect of which the claimants make this application for reconsideration.
8. The interest of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which must be regarded against the interests of justice (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*).

### Grounds and reasons of reconsideration application

9. The application for reconsideration appears to be made on the following grounds (in summary):
  - 9.1. That the respondent's Director, Mr Graham, fabricated the costs of repairing machines.
  - 9.2. That the claimants did not remove any material from the factory. They did as they were told to do. An accompanying letter from Mr Burrows will detail that Mr Graham (the respondent's Director) sanctioned the taking of materials.
10. A letter was received by the Tribunal, from Mr Burrows, on 8 December 2022. In that letter Mr Burrows detailed that Mr Graham had initially told him that scrap copper wire could be sold at the scrap yard and the money from such used to purchase consumable items at the factory. He further detailed that following the July 2020 investigation, he agreed with Mr Graham that the scrap copper would continue being sold at the scrap yard but the proceeds would now be shared with Mr Graham. Mr Burrows enclosed four receipts with his letter made out to him from Metal Management Ltd for bright copper wire. The receipts are dated September 2020 and January, February, March 2021. They are for amounts of £429, £217, £285 and £307 respectively. Each receipt has handwritten on it "Paid Andy" then details an amount of around half of the value in each receipt, before adding "Cash" after such.

### Decision on the reconsideration application

11. The hearing was the claimants' opportunity to give information, ask questions and raise issues, which they did.
12. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can adequately explain why the matter was not raised before. Such matters also need to be relevant to the issues in the claim.
13. I am not sure of the significance of the cost of repairs to machines or the arguments the claimants are making regarding this. If this was relevant to the issues in the claim the claimants could have argued such at the hearing.
14. The claimants' assertion that the sale of copper wire was sanctioned by Mr Graham is detailed further in the letter by Mr Burrows. Mr Burrows details that the sale of scrap copper wire was agreed by Mr Graham and the proceeds were shared with him. If such was established it could be relevant to whether the reasons for the dismissal (theft of copper wire) was a sham as advanced by the claimant. However, it was advanced by the claimants at the hearing that Mr Graham was receiving payment for the copper wire. I did not consider there was evidence establishing such.
15. I note that Mr Burrows could have given evidence at the hearing. The claimants in advancing that Mr Graham was paid for copper wire would have known that this evidence could be relevant to their claim. No explanation has been given by the claimants as to why Mr Burrows did not give evidence at the hearing. No application was made at the hearing for him to give such or to adjourn for such.
16. I do not consider it would be in the interests of justice to consider the new evidence. It would not be fair for the respondent to be prejudiced by reconsideration of the judgment because the claimants have now decided to put forward new information, from a witness that would have been known to them before the hearing. I, therefore, consider there is no reasonable prospect of the original decision being varied or revoked.
17. I should also make clear that I have not accepted that Mr Burrows, letter establishes Mr Graham was part of an agreement to sell copper wire. This is a letter from someone likely on bad terms with Mr Graham and the documents submitted with it do not demonstrate there was an agreement with Mr Graham. The handwritten note on the receipts could have been added at any time and is not evidence establishing a payment has been made. My finding that Mr Graham did not receive money from the sale of copper wire remain. I also note that the focus of Mr Burrows letter is on scrap copper wire, while the reasons for dismissal of the claimants was found to be theft of copper wire rather than scrap copper wire.
18. I do not doubt that the claimants are unhappy with the judgment but, for all of the reasons outlined here, the claimants' application for reconsideration of the judgment in their case is refused.

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**Employment Judge Cansick**

Date: 17 February 2022

JUDGMENT SENT TO THE PARTIES ON

14 March 2023  
FOR THE TRIBUNAL OFFICE