

Citation: Sinorama Travel Vancouver Inc. (Re)  
2019 BCEST 105

An Application for Reconsideration

- by -

Sinorama Travel Vancouver Inc.  
("STV")

- of a Decision issued by -

The Employment Standards Tribunal  
(the "Tribunal")

pursuant to section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**PANEL:** Robert E. Groves

**FILE NO.:** 2019/47

**DATE OF DECISION:** October 3, 2019

## DECISION

### SUBMISSIONS

Hong Qian

on behalf of Sinorama Travel Vancouver Inc.

### OVERVIEW

1. Sinorama Travel Vancouver Inc. (“STV”) applies for a reconsideration of an appeal decision of the Tribunal dated April 17, 2019, and referenced as 2019 BCEST 34 (the “Appeal Decision”).
2. On January 7, 2019, a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”) issued a determination (the “Determination”) ordering that STV pay \$22,723.79 in wages and penalties found to be owed in respect of complaints filed by five former employees of the company (the “Complainants”) pursuant to section 74 of the *Employment Standards Act* (the “ESA”).
3. STV filed an appeal challenging the Determination pursuant to section 112 of the *ESA*. The Appeal Decision confirmed the Determination.
4. I have before me STV’s appeal form and application for reconsideration, its submissions delivered in support, the Delegate’s Determination and her accompanying Reasons, and the record the Director was required to deliver to the Tribunal pursuant to subsection 112(5) of the *ESA*.
5. Pursuant to Rule 30(4) of the Tribunal’s *Rules of Practice and Procedure*, I must assess the Applicant’s application for reconsideration, and I may dismiss it, in whole or in part, without seeking submissions from the other parties. Here, I do not feel it necessary to request submissions from any other party.

### FACTS AND ARGUMENT

6. I accept, and incorporate by reference, the facts set out in the Determination and the Appeal Decision.
7. I summarize the salient facts as follows.
8. STV operated a travel agency, having been incorporated in British Columbia in 2012. Early in August 2018, Consumer Protection BC, acting under regulatory powers granted in the *Travel Industry Regulation*, suspended STV’s licence to operate the agency on the ground that STV did not have sufficient working capital. Some of the Complainants had their employment cease on the same day. The other Complainants ceased to be employed within days thereafter.
9. On August 20, 2018, Consumer Protection BC announced the cancellation of STV’s travel agency licence.
10. The Complainants subsequently filed complaints under section 74 of the *ESA*, claiming that they were owed wages, vacation pay, statutory holiday pay, and compensation for length of service.
11. The Director sent a registered letter, dated September 27, 2018, to STV and its listed directors, including one Hong Qian (“Qian”), advising that complaints had been received and that an investigation had been

commenced. The letter contained a Demand for Employer Records, to be delivered by October 10, 2018, and a statement that if the records were not produced as required a determination would be issued.

12. Qian received the September 27, 2018 correspondence.
13. By letter and an email dated October 4, 2018, the Director advised STV and its directors that a further complaint had been received.
14. On November 26, 2018, the Delegate sent a registered letter to STV and its listed directors, outlining her preliminary findings supporting the validity of the Complainants' claims, and noting that Qian, in an October 5, 2018 email, had acknowledged "unpaid salary, vacation and severance pay". The letter gave notice that if STV wished to dispute the Delegate's findings, it should do so by December 7, 2018. Thereafter, the Delegate would consider all the evidence and issue a determination.
15. Qian received the November 26, 2018 correspondence on December 4, 2018. He then asked the Delegate for an extension of time, which was granted. Having received no further information of substance from STV or its directors thereafter, and the date to which the extension had been given having passed, the Delegate issued the Determination.
16. STV did not dispute that wages were owed as a result of the company's losing its agency licence and closing its doors. STV argued, however, that it was unable to pay the Complainants the amounts owed because Consumer Protection BC had also "frozen" all of the company's bank accounts, especially its general account, out of which the amounts owed would otherwise have been paid.
17. In these circumstances, the Delegate did not hesitate to find that STV had contravened the *ESA*, and that sums for wages, vacation pay, statutory holiday pay, compensation for length of service, and mandatory administrative penalties were payable.
18. STV appealed, citing subsection 112(1)(c) of the *ESA*. It alleged that evidence had become available that was not available at the time the Determination was being made. The evidence on which STV relied repeated the statements provided to the Delegate concerning the freezing of the company's bank accounts, and the efforts STV had made to determine when those monies might become available to it, if at all, so that the company might be liquidated. STV also argued that Consumer Protection BC should pay the amounts owed to the Complainants, as it was the regulatory agency that had been responsible for the seizure of the company's funds which had rendered impossible any payment to the Complainants.
19. The Appeal Decision confirmed the Determination. The Tribunal decided that STV had not met the burden resting on it to establish a basis for the Tribunal to interfere.
20. The Tribunal also found that the submissions STV had made on appeal could have been presented to the Delegate before the Determination was made, and so the evidence was not "new". The Tribunal decided, further, that even if the evidence tendered as "new" had been presented to the Delegate, it would not have led her to a different conclusion on any material issue.
21. Finally, the Tribunal noted that STV had not taken steps to refute the assertion by Consumer Protection BC that it had insufficient capital, nor had it complied with the regulatory agency's demand for financial

records. Instead, STV had decided to cease doing business. The Tribunal concluded that these facts contradicted STV's submission that the company had sufficient assets to pay the sums owed to the Complainants.

## ISSUES

22. There are two issues which arise on an application for reconsideration of a decision of the Tribunal:
1. Does the request meet the threshold established by the Tribunal for reconsidering a decision?
  2. If so, should the decision be confirmed, cancelled, varied or referred back to the original panel or another panel of the Tribunal?

## DISCUSSION

23. The power of the Tribunal to reconsider one of its decisions arises pursuant to section 116 of the *ESA*, the relevant portion of which reads as follows:
- 116 (1) On application under subsection (2) or on its own motion, the tribunal may
- (a) reconsider any order or decision of the tribunal, and
  - (b) confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.
24. As the Tribunal has stated repeatedly, the reconsideration power is discretionary and must be exercised with restraint. Reconsideration is not an automatic right bestowed on a party who disagrees with an order or decision of the Tribunal in an appeal.
25. The attitude of the Tribunal towards applications under section 116 is derived in part from section 2 of the *ESA*, which identifies as purposes of the legislation the promotion of fair treatment of employees and employers, and the provision of fair and efficient procedures for resolving disputes over the application and interpretation of the statute. It is also derived from a desire to preserve the integrity of the appeal process mandated in section 112.
26. With these principles in mind, the Tribunal has repeatedly asserted that an application for reconsideration will be unsuccessful absent exceptional circumstances, the existence of which must be clearly established by the party seeking to have the Tribunal's appeal decision overturned.
27. The Tribunal has adopted a two-stage analysis when considering applications for reconsideration. In the first stage, the Tribunal considers the applicant's submissions, the record that was before the Tribunal in the appeal proceedings, and the decision the applicant seeks to have reconsidered. The Tribunal then asks whether the matters raised in the application warrant a reconsideration of the decision at all. In order for the answer to be "yes", the applicant must raise questions of fact, law, principle or procedure flowing from the appeal decision which are so important that they warrant reconsideration (see *Re Milan Holdings*, BC EST # D313/98).

28. In general, the Tribunal will be disinclined to reconsider if the primary focus of the application is to have the reconsideration panel re-weigh arguments that failed in the appeal. It has been said that reconsideration is not an opportunity to get a “second opinion” when a party simply does not agree with an original decision of the Tribunal (see *Re Middleton*, BC EST # RD126/06).
29. If the applicant satisfies the requirements in the first stage, the Tribunal will go on to the second stage of the inquiry, which focuses on the merits of the Tribunal's decision in the appeal. When considering that decision at this second stage, the standard applied is one of correctness.
30. I have decided that STV's application must be dismissed because I do not discern it has raised any questions of fact, law, principle or procedure flowing from the Appeal Decision which are so important that they warrant a reconsideration.
31. STV's submissions on this application repeat the assertions it previously relied upon in the proceedings before the Delegate and on appeal. It blames Consumer Protection BC for creating the circumstances in which the Complainants were deprived of wages, when the agency froze the company's bank accounts. It argues that the company has yet to receive any communication regarding its accounts from Consumer Protection BC, or any explanation for the forcible taking of the company's funds. It again submits that the Tribunal should ask Consumer Protection BC to pay what STV owes to the Complainants.
32. STV's application for reconsideration was received by the Tribunal on May 17, 2019. It requested an extension of time for a reconsideration pursuant to subsection 109(1)(b) of the *ESA*. Its argument in support of this request is that Consumer Protection BC continues to deal with claims against the province's Travel Assurance Fund arising from the cancellation of STV's licence.
33. STV initially requested an extension until August 31, 2019. The Tribunal requested a further submission from STV by that date. No such submission was received within the time stipulated.
34. On September 5, 2019, the Tribunal received a further submission from the company repeating, in large measure, the arguments it had previously made. In addition, the company referred to an update published by Consumer Protection BC, dated August 9, 2019, advising that the period for making claims against the Travel Assurance Fund had expired, and that in the months to follow the agency would be adjudicating the claims it had received for travel booked through STV. STV now seeks a further extension until December 31, 2019.
35. I decline to grant the extension. The outcome of the process through which Consumer Protection BC might adjudicate claims against the Travel Assurance Fund resulting from the cancellation of STV's licence is a matter that is entirely separate from the resolution of the issues the Delegate was required to determine under the *ESA*. The Delegate was required to determine whether STV owed the Complainants sums for wages, vacation pay, statutory holiday pay, and compensation for length of service. The Delegate also had to decide whether STV was obliged to pay administrative penalties.
36. STV does not deny that it owes the sums found to be payable in the Determination, and the actions of Consumer Protection BC do not alter the fact that STV has contravened the *ESA*. It follows that while it may be the case that the steps taken by Consumer Protection BC within its jurisdiction under the *Travel Industry Regulation*, resulting in the cancellation of STV's travel agency licence and the seizure of its bank

accounts, contributed to STV's financial difficulties, those actions can in no way be said to absolve STV from meeting its statutory obligations under the *ESA*. Accordingly, I discern no reason why the Appeal Decision should be reconsidered or, indeed, why the reconsideration period should be extended.

### **ORDER**

37. STV's application for reconsideration is denied. Pursuant to section 116 of the *ESA*, the Appeal Decision, 2019 BCEST 34, is confirmed.

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**Robert E. Groves**  
**Member**  
**Employment Standards Tribunal**