

Citation: A Taste of Punjab Restaurant Ltd. (Re)
2019 BCEST 86

An Application for Reconsideration

- by -

A Taste of Punjab Restaurant Ltd.
("ToP")

- 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: David B. Stevenson

FILE No.: 2019/136

DATE OF DECISION: August 21, 2019

DECISION

SUBMISSIONS

Harjit Singh Multani

on behalf of A Taste of Punjab Restaurant Ltd.

OVERVIEW

1. Pursuant to section 116 of the *Employment Standards Act* (the “*ESA*”), A Taste of Punjab Restaurant Ltd. (“*ToP*”) seeks reconsideration of a decision of the Tribunal, 2019 BCEST 54 (the “*original decision*”), dated June 12, 2019.
2. The original decision considered an appeal of a determination (the “*Determination*”) issued by Elaine Ulrich, a delegate of the Director of Employment Standards (the “*Director*”), on January 31, 2019.
3. The *Determination* was made by the Director on a complaint filed by a former employee (“*the complainant*”) who had alleged *ToP* had contravened the *ESA* by failing to pay regular wages, overtime wages, annual vacation pay, statutory holiday pay, and had made unauthorized deductions from wages.
4. In the *Determination*, the Director found *ToP* had contravened sections 18, 21, 40, 45, and 46 of the *ESA*. The Director found the complainant was owed wages under the *ESA* in the amount of \$4,528.97 and that *ToP* was liable for administrative penalties in the amount of \$2,500.00.
5. An appeal of the *Determination* was filed by *ToP* alleging the Director had failed to observe principles of natural justice in making the *Determination*.
6. The Tribunal Member making the original decision dismissed the appeal under section 114(1) of the *ESA*, finding *ToP* had not complied with the statutory requirements for an appeal set out in section 112(2) of the *ESA*, had not filed the appeal within the statutory time period found in section 112(3), and had failed to meet the requirements for an extension of the appeal period. The Tribunal Member refused to exercise the discretion granted under section 109(1) (b) of the *ESA* to extend the appeal period and dismissed the appeal.
7. The application seeks to have the original decision varied to allow the appeal to go forward.

ISSUE

8. In any application for reconsideration, there is a threshold, or preliminary, issue of whether the Tribunal will exercise its discretion under section 116 of the *ESA* to reconsider the original decision. If satisfied the case warrants reconsideration, the issue raised in this application is whether the Tribunal should cancel the original decision and refer the matter back to the original panel or, if more appropriate, to the Director.

ARGUMENT

9. This application does nothing more than seek to have this panel of the Tribunal interfere with an exercise of discretion made in the original decision to refuse an extension of the appeal period, without providing any legal basis for doing so. In fact, the application does not address the refusal to extend the time period at all.
10. The substance of the application simply identifies five matters which ToP says it believes were “not considered during the hearing”, alleges an improper motivation by the complainant for filing the complaint, and expresses disagreement with the result of the Determination.

ANALYSIS

11. I commence my analysis of this application with a review of the statutory provisions and policy considerations that attend an application for reconsideration generally.
12. Section 116 of the *ESA* reads:
 - (1) On an application under subsection (2) or on its own motion, the tribunal may
 - (a) reconsider any order or decision of the tribunal, or
 - (b) confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.
 - (2) The director or a person served with an order or a decision of the tribunal may make an application under this section.
 - (2.1) The application may not be made more than 30 days after the date of the order or decision.
 - (2.2) The tribunal may not reconsider an order or decision on the tribunal’s own motion more than 30 days after the date of the decision or order.
 - (3) An application may be made only once with respect to the same order or decision.
 - (4) The director and a person served with an order or a decision of the tribunal are parties to a reconsideration of the order or decision.
13. The authority of the Tribunal under section 116 is discretionary. A principled approach to this discretion has been developed and applied. The rationale for this approach is grounded in the language and purposes of the *ESA*. One of the purposes of the *ESA*, found in section 2(d), is “to provide fair and efficient procedures for resolving disputes over the application and interpretation” of its provisions. Another stated purpose, found in section 2(b), is to “promote the fair treatment of employees and employers”. The approach is fully described in *Milan Holdings Inc.*, BC EST # D313/98 (Reconsideration of BC EST # D559/97). Briefly stated, the Tribunal exercises the reconsideration power with restraint. In *The Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, BC EST # RD046/01, the Tribunal explained the reasons for restraint:

. . . the Act creates a legislative expectation that, in general, one Tribunal hearing will finally and conclusively resolve an employment standards dispute.

There are compelling reasons to exercise the reconsideration power with restraint. One is to preserve the integrity of the process at first instance. Another is to ensure that, in an adjudicative

process subject to a strong privative clause and a presumption of regularity, the “winner” not be deprived of the benefit of an adjudicator’s decision without good reason. A third is to avoid the spectre of a Tribunal process skewed in favour of persons with greater resources, who are able to fund litigation, and whose applications will necessarily create further delay in the final resolution of a dispute.

14. In deciding whether to reconsider, the Tribunal considers timeliness and such factors as the nature of the issue and its importance both to the parties and the system generally. Delay in filing for reconsideration will likely lead to a denial of an application. An assessment is also made of the merits of the original decision. The focus of a reconsideration application is, generally, the correctness of the original decision.
15. The Tribunal has accepted an approach to applications for reconsideration that resolves itself into a two-stage analysis. At the first stage, the reconsideration panel decides whether the matters raised in the application in fact warrant reconsideration. The circumstances where the Tribunal’s discretion will be exercised in favour of reconsideration are limited and have been identified by the Tribunal as including
 - failure to comply with the principles of natural justice;
 - mistake of law or fact;
 - significant new evidence that was not available to the original panel;
 - inconsistency between decisions of the Tribunal that are indistinguishable on the critical facts;
 - misunderstanding or failure to deal with a serious issue; and
 - clerical error.

(See *Zoltan Kiss.*, BC EST # D122/96)
16. It will weigh against an application if it is determined its primary focus is to have the reconsideration panel effectively re-visit the original decision and come to a different conclusion.
17. If the Tribunal decides the matter is one that warrants reconsideration, the Tribunal proceeds to the second stage, which is an analysis of the substantive issue raised in the reconsideration.
18. I find this application does not warrant reconsideration.
19. I am not persuaded there is anything about this application that raises any circumstance which would mitigate in favour of reconsideration.
20. The application does nothing to address the discretionary decision in the original decision to refuse to grant and extension of the appeal and to dismiss the appeal on a failure to comply with the requirements of section 112(2) within the period required in section 112(3) of the *ESA*.
21. This application is wholly misdirected and is without substance or merit.
22. I also completely agree with the original decision finding ToP had failed to satisfy the requirements for an extension of the appeal period.

23. The application is denied.

ORDER

24. Pursuant to section 116 of the *ESA*, the original decision, 2019 BCEST 54, is confirmed.

David B. Stevenson
Member
Employment Standards Tribunal