Employment Standards TRIBUNAL

Citation: Patrick Beaulieu (Re)
2019 BCEST 90

An application for reconsideration

- by -

Patrick Beaulieu
(the "Applicant")

- 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.: 2019/139

DATE OF DECISION: August 23, 2019

DECISION

SUBMISSIONS

Patrick Beaulieu — on his own behalf

OVERVIEW

1. Patrick Beaulieu (the "Applicant") seeks a reconsideration of a decision of the Tribunal dated July 10, 2019, and referenced as 2019 BCEST 66 (the "Appeal Decision"). The application is brought pursuant to section 116 of the *Employment Standards Act* (the "*ESA*").

2. The Applicant filed a complaint under section 74 of the *ESA* asserting that his former employer, Cottonwood R.V. Sales and Service Ltd. (the "Employer"), had contravened the statute when it failed to pay him compensation for length of service.

3. In a determination dated February 13, 2019 (the "Determination"), a delegate (the "Delegate") of the Director of Employment Standards (the "Director") concluded that no contravention of the *ESA* had occurred and that no further action would be taken regarding the Applicant's complaint. The Determination followed a hearing conducted by the Delegate on February 1, 2019, at which the Applicant and witnesses for the Employer attended and gave sworn evidence.

4. The Applicant filed an appeal with the Tribunal, requesting that his complaint be referred back to the Director.

5. The Appeal Decision confirmed the Determination.

6. 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

7. I accept, and incorporate by reference, the relevant facts set out in the Determination and in the Appeal Decision.

8. I summarize those facts as follows.

9. The Applicant commenced work for the Employer in 1994, as an RV Technician.

10. On Friday, March 9, 2018, a dispute arose between the Applicant and the owner of the Employer, Ken Krunick ("Krunick"). Krunick challenged the Applicant's work and the time it was taking for him to complete it. The Applicant disagreed with Krunick's statements. Krunick persisted with his critique. The Applicant became frustrated. He told Krunick he had heard enough and that he was leaving for the day. He ceased doing his work, got into his truck, and left the workplace.

11. The Applicant had behaved in this manner on several previous occasions.

12. The Applicant returned to work on Monday, March 12, 2018. He again spoke to Krunick, who repeated his concerns about the Applicant's work. The Applicant again disagreed with Krunick's assessment. The Delegate found as a fact that the Applicant then asked Krunick if he required notice of resignation and if so, how much. Krunick communicated, in substance, that it was unnecessary for the Applicant to give any notice. The Applicant realized that his working relationship with the Employer was over. He gathered his tools and left the worksite. He did not return.

13. In his complaint, the Applicant claimed that he had been dismissed. The Employer responded with the assertion that the Applicant had quit.

14. The Delegate concluded that the Applicant had indeed quit. In so doing, the Delegate relied on the following statement of the applicable law, set out in *Burnaby Select Taxi Ltd. and Zoltan Kiss*, BC EST # D091/96, at page 10:

> ...The right to quit is personal to the employee and there must be clear and unequivocal facts to support a conclusion that this right has been voluntarily exercised by the employee involved. There is both a subjective and an objective element to a quit: subjectively, the employee must form an intent to quit employment; objectively, the employee must carry out an act inconsistent with his or her further employment. The rationale for this approach has been stated as follows:
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> > . . . the uttering of the words "I quit" may be part of an emotional outburst, something stated in anger, because of job frustration or other reasons, and as such it is not to be taken as really manifesting an intent by the employee to sever his employment relationship. **Re University of Guelph**, (1973) 2 L.A.C. (2d) 348

15. The Delegate's rationale for determining that the Applicant had quit is captured in the following excerpts from her Reasons for the Determination, at R5:

> ...I am satisfied that the Complainant quit on March 12, 2018....
>
> At no time during their conversation on the previous Friday or during their meeting on Monday, did Mr. Krunick tell the Complainant he was terminated. Instead, I find that it was during the meeting on the morning of March 12, 2018 that the Complainant indicated his intention to quit when he realized his performance was being challenged. I find it significant that the Complainant did not actually proposed *(sic. "propose")* any notice period of resignation but instead indicated that he was prepared to give notice of resignation ***if*** the employer needed time to find a replacement for him. Accordingly, I do not find Mr. Krunick's response (that he didn't need notice or didn't care if the Complainant gave notice) to be a termination of the Complainant during a notice period but instead an answer to the Complainant's query of whether he needed notice. I also find that the Complainant's unilateral decision to depart from the workplace with his tools after his meeting with Mr. Krunick on Monday was consistent with his intention to quit without notice.

16. The Applicant's appeal to the Tribunal purported to engage all three of the grounds identified in subsection 112(1) of the *ESA*. It alleged that the Director had erred in law and had failed to observe the principles of natural justice in making the Determination. It also asserted that evidence had become available that was not available at the time the Determination was being made.

17. The Appeal Decision noted that the Applicant's submissions on appeal did not identify any specific errors of law committed by the Director, other than to say that the Applicant did not intend to quit. The Tribunal Member inferred from this that the Applicant's appeal submission on this ground was to the effect that the Delegate had misapplied an applicable principle of general law or had acted on a view of the facts which could not be reasonably entertained.

18. The Tribunal Member declined to accept that submission. He observed that the Delegate had reviewed the evidence of the Applicant and the other witnesses for the Employer with care and that her conclusions were entirely reasonable.

19. The Tribunal Member also affirmed that the legal test for determining whether an employee had resigned was as set out in the excerpt from the *Zoltan Kiss* decision I have referred to above. Critically, the Tribunal Member decided that the Delegate had applied the test correctly when she determined that the Applicant's asking Krunick how much notice of resignation he required evidenced a subjective intention on the part of the Applicant to resign.

20. Regarding natural justice, the Tribunal Member remarked that the Applicant had provided no specific evidence or arguments supporting a conclusion that the proceedings before the Delegate were in some manner conducted unfairly. Accordingly, this ground of the appeal was dismissed summarily.

21. The Tribunal Member also dismissed the Applicant's claim that evidence had become available which was not available at the time the Determination was being made, for the simple reason that the Applicant had identified no new evidence on which such a claim could rest.

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
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> (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.

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 the Applicant's application must be dismissed because I do not discern the Applicant has raised any questions of fact, law, principle or procedure flowing from the Appeal Decision which are so important that they warrant reconsideration.

31. The Applicant's material in support of his application re-affirms that at no time did he intend to quit his job. He asserts that he did not use the words "quit" or "resign", and that his actions were based on the perception that he had been dismissed.

32. The Applicant's submission is in substance the same as the one he made to the Tribunal Member on appeal. That submission was rejected by the Tribunal Member, for the reasons I have described above, and with which I agree.

33. To be sure, the Delegate's Reasons do not say that the Applicant uttered words like "quit" or "resign" in the discussion he had with Krunick on March 12, 2018. It is not, however, essential to a finding that the Applicant intended to quit that he must have said either of those words. The Applicant also asked Krunick how much notice of resignation he required. That statement, taken in context, was also evidence on the basis of which the Delegate could conclude, reasonably, that the Applicant intended to resign. The fact the Applicant contends that the Delegate reached an incorrect conclusion on that point of fact is insufficient to establish that the Delegate erred in law in making that finding.

34. It must be remembered that the appellate jurisdiction of the Tribunal under section 112 does not permit it to correct errors of fact. Instead, the Tribunal may only correct errors of law. An error of fact does not amount to an error of law unless the Tribunal concludes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have made the impugned finding of fact (see *Gemex Developments Corp. v. B.C. (Assessor)* (1998) 62 BCLR 3d 354; *Delsom Estates Ltd. v. British Columbia (Assessor of Area 11 – Richmond/Delta)* [2000] BCJ No.331). This prescription means that even in circumstances where the evidence before the delegate might have led the Tribunal to make different findings of fact than those appearing in a determination, the Tribunal must not interfere (see *Britco Structures Ltd.* BC EST # D260/03; *Carestation Health Centres (Seymour) Ltd.* BC EST # RD106/10).

35. In my view, it was at least one reasonable conclusion the Delegate could have drawn from the evidence that the Applicant intended to resign on March 12, 2018. That being so, and given the fact the Applicant has offered nothing that establishes the Delegate's conclusion was unreasonable, despite his assertion that it was wrong, it was entirely right for the Tribunal Member to have decided that the Delegate committed no reviewable error.

ORDER

36. The Applicant's application for reconsideration is denied. Pursuant to section 116 of the *ESA*, the Appeal Decision, 2019 BCEST 66, is confirmed.

Robert E. Groves
Member
Employment Standards Tribunal