

Citation: Uniart Design Group Ltd. (Re)
2020 BCEST 47

An appeal

- by -

Uniart Design Group Ltd.

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

PANEL: Carol L. Roberts

FILE NO.: 2020/064

DATE OF DECISION: May 21, 2020

DECISION

SUBMISSIONS

Ali Sepehr Ghomsheh

on behalf of Uniart Design Group Ltd.

OVERVIEW

1. This is an application by Uniart Design Group Ltd. (the “Applicant”), for a reconsideration of Tribunal Decision 2019 BCEST 78 (the "Original Decision"), issued August 14, 2019.
2. On March 15, 2019, a delegate of the Director of Employment Standards (the Director”) issued a Determination finding that the Applicant had contravened the *ESA* and ordering the Applicant to pay a former employee \$2,900.81 in unpaid wages and interest. The Director also imposed four \$500 administrative penalties for the contraventions, bringing the total amount owed to \$4,900.81.
3. The Applicant appealed the Determination contending that the Director failed to observe the principles of natural justice in making the Determination. The Applicant also argued that evidence had become available that was not available at the time the Determination was being made. The Tribunal Member concluded that the Applicant had not demonstrated a failure to observe natural justice and had not met the test for new evidence. The Member dismissed the appeal.
4. The deadline for filing the application to reconsider the Original Decision was September 13, 2019. The application was filed April 20, 2020.
5. In addition to seeking reconsideration of the Original Decision, the Applicant also seeks an extension of time in which to file the application for reconsideration.

ISSUES

6. There are two issues to be addressed in this decision:
 1. Should I extend the time period for filing this reconsideration application?
 2. If so, does the reconsideration request meet the threshold established by the Tribunal in *Milan Holdings Ltd.* (BC EST #D313/98) for reconsidering a decision? If the application is not summarily dismissed, the respondent party and the Director will be notified and requested to make submissions on the merits of the application.

ANALYSIS

7. The *ESA* confers an express reconsideration power on the Tribunal. Section 116 of the *ESA* provides:
 - (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.

...

(2.1) The application may not be made more than 30 days after the date of the order or decision.

8. In the reconsideration request, the Applicant states that after it filed an appeal, it did not hear back from the “Ministry of Labour” regarding the Tribunal decision. The Applicant states that on April 9, 2020, he “called the Ministry of Labour” because his bank account was “frozen” and discovered that the Original Decision had been issued. The Applicant seeks an extension of time to make the application as well as a “new hearing.” In support of the application, the Applicant submitted a one-page narrative of its view of the circumstances leading to the complaint.
9. Section 109(1)(b) of the *ESA* gives the Tribunal the power to extend the statutory time limit for filing an appeal or applying for reconsideration.
10. The Tribunal has established a number of criteria to evaluate when considering an application to extend the time period in which to file an appeal (see *Niemisto*, BC EST # D099/96). Those criteria include whether: i) there is a reasonable and credible explanation for failing to appeal within the statutory time limit; ii) there has been a genuine and on-going *bona fide* intention to appeal; iii) the respondent parties were made aware of this intention; iv) one or more respondent parties will be unduly prejudiced by extending the appeal period; and v) there is a strong *prima facie* case in favour of the appellant.
11. Those criteria are also applicable when considering a request for an extension of time to apply for reconsideration (see *Serendipity Winery Ltd.*, BC EST # RD108/15).
12. The reconsideration application was filed approximately seven months after the statutory deadline for doing so. The only reason advanced by the Applicant for not filing the application for reconsideration within 30 days was that it did not know about it.
13. The Tribunal sent the Original Decision to the Applicant by both regular mail at the address listed on the appeal form, and by email at the address used to communicate with the Tribunal to that date. The Tribunal received confirmation that the email containing the Original Decision was delivered.
14. While it is impossible to prove a negative, even if the Applicant did not receive a copy of the Original Decision either by regular mail or email, it is difficult to understand why it would not want to know the results of its appeal of the Determination, in which the Applicant was ordered to pay over \$4,000. The Applicant appears to have taken no steps to ascertain its potential liability for that amount until, as I understand its submission, the Branch took steps to enforce the order, garnisheeing funds from the Applicant’s bank account.
15. There is no evidence there has been a genuine and on-going *bona fide* intention to appeal to Original Decision and given that the Branch has taken steps to enforce the Determination, I infer that both the Employee and the Director would be prejudiced by extending the appeal period.
16. Finally, I also find that the Applicant does not have a strong *prima facie* case.

17. The Tribunal reconsiders a decision only in exceptional circumstances. The Tribunal uses its discretion to reconsider decisions with caution in order to ensure finality of its decisions and to promote efficiency and fairness of the appeal system to both employers and employees. This supports the purposes of the *ESA* detailed in section 2 “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.”
18. The primary factor weighing in favour of reconsideration is whether the Applicant has raised questions of law, fact, principle or procedure which are so significant that they should be reviewed because of their importance to the parties and/or their implications for future cases. The reconsideration panel will also consider whether the Applicant has made out an arguable case of sufficient merit to warrant the reconsideration (see *Milan Holdings BC EST #313/98*).
19. The reconsideration request does not raise any questions of law, fact, principle or procedure that were not fully and properly addressed by the Tribunal Member in the Original Decision.
20. The application is neither timely nor appropriate for reconsideration. The application is denied.

ORDER

21. Pursuant to subsection 116(1)(b) of the *ESA*, the decision of the Tribunal issued in 2019 BCEST 28 is confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal