Employment Standards TRIBUNAL

Citation: Armand Norman (Re)
2020 BCEST 56

An Application for Reconsideration

- by -

Armand Norman
(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: Jacquie de Aguayo

FILE No.: 2020/037

DATE OF DECISION: June 2, 2020

DECISION

SUBMISSIONS

Armand Norman on her own behalf

OVERVIEW

1. The Applicant applies for reconsideration under section 116 of the *Employment Standards Act* (the "*ESA*") of Tribunal Decision Number 2020 BCEST 15 (the "Appeal Decision") rendered by Member Carol L. Roberts (the "Member") on February 25, 2020.

2. The Appeal Decision dismisses the Applicant's appeal of a determination (the "Determination") made by a delegate of the Director of Employment Standards (the "Delegate"), dated November 20, 2019. The Determination dismisses 15 complaints filed by the Applicant alleging that Vancouver Island Health Authority ("VIHA") contravened the *ESA* by failing to pay her wages. The Delegate concluded that the Applicant was not an employee of VIHA and, as such, the *ESA* did not apply to the complaints (Appeal Decision, paras. 2, 12).

3. The Appeal Decision sets out the background to the Delegate's Determination and the bases for appeal at paragraphs 3 – 12. Briefly, the Applicant alleged that the Delegate erred in law and breached her right to a fair hearing. The Applicant also sought to introduce new evidence in support of her appeal.

4. For the reasons set out at paragraphs 13 – 27, the Appeal Decision concludes there is no reasonable prospect that the appeal will succeed: section 114(f) of the *ESA*.

ANALYSIS

5. The application for reconsideration is a single paragraph. The Applicant maintains she presented sufficient evidence to support her claim that she was in an employment relationship with VIHA. The Applicant also alleges that her participation in programs offered through VIHA constituted employment because the Director of the Mental Health & Substance Use program required her to submit to demands and treatments.

6. Whether or not to grant an application for reconsideration is discretionary and the Tribunal exercises its reconsideration power in limited circumstances: *Milan Holdings Inc. (Re)*, BC EST # D313/98 ("*Milan Holdings*"). The Tribunal's approach is to first assess whether an application for reconsideration raises an arguable case of sufficient merit. If it does not, the Tribunal will dismiss the application. The reasons for this two-step approach are set out in *Milan Holdings* (p.7) as follows:

> 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. At this stage the panel is assessing the seriousness of the issues to the parties and/or the system in general. The reconsideration panel will also consider whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration. This analysis was summarized

in previous Tribunal decisions by requiring an applicant for reconsideration to raise “a serious mistake in applying the law”: *Zoltan Kiss, supra*. As noted in previous decisions, “The parties to an appeal, having incurred the expense of preparing for and presenting their case, should not be deprived of the benefits of the Tribunal’s decision or order in the absence of some compelling reasons”: *Khalsa Diwan Society* (BCEST #D199/96, reconsideration of BCEST #D114/96).

7. As such, I will first consider whether the Applicant has raised an arguable case of sufficient merit. In doing so, like the Member below, I have taken into account that the Applicant is self-represented and does not have legal training. Thus, I have considered the grounds for reconsideration in a large and liberal manner and will give the Applicant the benefit of any doubt with respect to whether the application passes the first stage of the *Milan Holdings* test: *Triple S Transmission Inc.*, BC EST # D141/03, *Jordan Enterprises Ltd.*, BC EST # RD154/16 (Reconsideration of BC EST # D114/16).

8. I have considered the Appeal Decision and the record of material before me. I find the Appeal Decision correctly upheld the Delegate’s Determination.

9. Specifically, the Appeal Decision correctly identified the Tribunal’s approach to assessing whether the Delegate erred in law (para. 17). I further agree with the Member’s conclusion that the Delegate properly applied the relevant sections of the *ESA* to the particular facts and, as such, did not err (paras. 18 – 19, Determination, pp. R5 – R8). As such, I find the Applicant has not raised an arguable case that the Appeal Decision erred in dismissing this ground of appeal: *Milan Holdings*.

10. The Appeal Decision also correctly identifies the relevant principles for determining whether the Applicant was denied procedural fairness before the Delegate (para. 20). For the reasons set out at paragraphs 21 – 22, I agree with the finding in the Appeal Decision that the Delegate provided the Applicant with the opportunity to advance her case and that there was no evidence of bias. Accordingly, I find the Appeal Decision was correct in dismissing this ground of appeal for the reasons set out.

11. Finally, I find the Appeal Decision correctly identifies the Tribunal’s requirements for admitting new evidence on appeal (para. 24). I further agree with the finding in the Appeal Decision that even if admitted, the new evidence would not have led the Delegate to come to conclude the Applicant was an employee, rather than a client, of VIHA. Accordingly, I find the Appeal Decision correctly dismisses this ground of appeal for the reasons set out at paragraphs 25 – 27.

12. For the reasons given, I find the Appeal Decision does not err in concluding there was no reasonable prospect that the appeal would succeed and dismissing it on that basis. As such, I find the Applicant has not raised an arguable case of sufficient merit that warrants reconsideration in the present case: *Milan Holdings*.

ORDER

13. Accordingly, for the reasons given, the application for reconsideration is dismissed. Pursuant to section 116 of the *ESA*, the Appeal Decision is confirmed.

Jacquie de Aguayo
Chair
Employment Standards Tribunal