Employment Standards TRIBUNAL

Citation: Raed Eid (Re)
2020 BCEST 77

An Application for Reconsideration

- by -

Raed Eid
(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: Carol L. Roberts

FILE No.: 2020/091

DATE OF DECISION: July 7, 2020

DECISION

SUBMISSIONS

Raed Eid on his own behalf

OVERVIEW

1. This is an application by Raed Eid (the "Applicant") for a reconsideration of Tribunal Decision 2020 BCEST 46 (the "Original Decision"), issued by the Tribunal on May 15, 2020.

2. The Applicant worked as a pharmacist for Seehra Pharmacy Ltd. carrying on business as Shopper's Drug Mart 2231 (the "Employer") for three days in June 2019. The Employer mailed him a cheque for the full amount of his work on June 19, 2019, three days after his period of employment. The Applicant cashed the cheque on July 7, 2019.

3. In November 2019, the Applicant filed a complaint with the Employment Standards Branch alleging that the Employer had contravened the *Employment Standards Act,* R.S.B.C. 1996 c. 113 ("*ESA*") by a) failing to provide a wage statement; b) failing to pay the amounts within the time frame required in the ESA; and c) failing to make legal deductions from the total pay. Although the Appellant sought a monetary award, the amount did not represent a claim for wages.

4. A delegate of the Director of Employment Standards investigated the complaint and determined that the complaint would be resolved if the Employer provided the Applicant with a wage statement. The Employer did so.

5. The Director found there was no provision in the *ESA* requiring the Employer to make statutory withholdings for Canada Pension, employment insurance and income tax, and that the issuance of a pay statement had resolved the statutory requirement found in section 27(1)(g) of the *ESA*.

6. The Director determined that administrative penalties were not intended to be punitive and typically applied to cases where a determination ordered payment of wages an employer had refused to pay. The Director found that the Applicant had received the amount agreed upon for work performed shortly after completion of the work, and that the Applicant had cashed the cheque well before filing his complaint.

7. The Director exercised the discretion provided in section 76(3)(b) and (i) and ceased investigating the complaint.

8. The Applicant appealed the Determination, and at the same time, sought an extension of time in which to file the appeal. The Tribunal Member decided that the appeal was appropriate for consideration under section 114 of the *ESA* and assessed whether the appeal should be dismissed or allowed to proceed.

9. The Member noted that:

> The appeal and the supporting appeal submission contain nothing that is relevant to the grounds of appeal upon which it is based. It is unnecessary to outline all elements of the arguments made by [the Applicant] or to attempt to relate them to the chosen grounds of appeal. Much of the appeal submission is nothing more than a rant against the delegate who investigated and decided his complaint, in which [the Applicant] contends the delegate was "incompetent," acted inappropriately and "supported" the "lies" made by [the Employer].

10. The Member noted that the Applicant sought to have the Employer "fined" for contravening the *ESA*. He further noted that the Applicant sought to blame the Director for his failure to meet the appeal period, asserting that the notice in the Determination setting out the relevant date for filing an appeal was not in compliance with the *ESA*.

11. The Tribunal Member dismissed the appeal under section 114(1) of the *ESA* after concluding that the appeal had no reasonable prospect of succeeding.

12. In dismissing the appeal, the Member stated that the Applicant had not met the test set out in *Metty M. Tang*, BC EST # D211/96, for extending time limits for filing an appeal. He noted that the Applicant had set out no reasons for his delay in filing the appeal other than blaming the Director. The Member also found that the Applicant had not set out a strong *prima facie* case, which militated against extending the statutory appeal period.

13. The Member determined the appeal to be frivolous and an abuse of process. He found no merit to the appeal, as the Applicant had not advanced any arguments or provided any evidence to challenge or controvert the Director's findings. He further noted that the "new evidence" submitted by the Applicant did not meet the Tribunal's test for new evidence (set out in *Merilus Technologies Inc.,* BC EST # D171/03). He determined that some of the material submitted on appeal was available at the time the complaint was filed, some of the material was not evidence, some of the material was not relevant, some did not add anything to the information the Applicant had already provided to the Director, while other material was not probative, or essential to the question before the Director.

14. The Member noted that the Applicant had his rights under the *ESA* addressed by the Director and that he had no right or responsibility to demand that the Director impose administrative penalties.

15. The Member concluded that the Applicant had not demonstrated an error in the Determination and confirmed the Determination.

ISSUE

16. There are two issues on reconsideration:

    1. Does this request meet the threshold established by the Tribunal for reconsidering a decision?
    2. If so, should the decision be cancelled or varied or sent back to the Member?

ARGUMENT

17. In his reconsideration application, the Applicant contends that the Employer misrepresented the position and the wage rate, and seeks to have the matter returned to "the original panel for full investigation to compensate me for my travelling and expenses" and to "assume responsibility and accountability for everything that's mentioned in the website" or "to refer the matter back to the original panel."

THE FACTS AND ANALYSIS

18. The *ESA* confers an express reconsideration power on the Tribunal. Section 116 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.

1. The Threshold Test

19. 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*."

20. In *Milan Holdings*, BC EST # D313/98, the Tribunal set out a two-stage analysis in the reconsideration process. The first stage is for the Tribunal to decide whether the matters raised in the application for reconsideration in fact warrant reconsideration. 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.

21. The reconsideration process is not meant to allow parties another opportunity to re-argue their case.

Analysis and Decision

22. The Applicant has failed to demonstrate that this is an appropriate case for the exercise of the Tribunal's reconsideration power.

23. The Applicant does not raise any significant questions of law, fact or principle. His argument is that the reconsideration Panel should refer the complaint back to the delegate to reassess his claim for expenses and to assess whether or not the Employer misrepresented the type of work and wages. This is an attempt to have the Tribunal address an issue that was never before the delegate at the first instance. That is not the purpose of the reconsideration power.

24. I am not persuaded, in reviewing the Determination, the arguments made on appeal, the Original Decision and the submissions on the application for reconsideration, that the Applicant has raised significant questions of law that should be reviewed because of their importance to the parties or their implications for future cases.

25. Section 114(1) of the *ESA* provides that:

> (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:
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> (a) the appeal is not within the jurisdiction of the tribunal;
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> (b) the appeal was not filed within the applicable time limit;
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> (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
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> (d) the appeal was made in bad faith or filed for an improper purpose or motive;
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> (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
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> (f) there is no reasonable prospect that the appeal will succeed;
>
> (g) the substance of the appeal has been appropriately dealt with in another proceeding;
>
> (h) one or more of the requirements of section 112 (2) have not been met.

26. I agree with the Member that the Applicant's submissions on appeal were "devoid of merit" and frivolous and vexatious. I find that the appeal was properly dismissed without a hearing.

27. There is no basis for the Tribunal to exercise the reconsideration power.

ORDER

28. The request for reconsideration is denied. I order that the Original Decision 2020 BCEST 46, issued May 15, 2020, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal