

An Application for Reconsideration

- by -

Paramjeet Kaur

- 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.: 2020/095

DATE OF DECISION: July 8, 2020

DECISION

SUBMISSIONS

Paramjeet Kaur on her own behalf

OVERVIEW

1. Paramjeet Kaur seeks reconsideration of a decision of the Tribunal, 2020 BCEST 48 (the “original decision”), dated May 22, 2020.
2. The original decision considered an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on November 15, 2019.
3. The Determination was made by the Director on a complaint filed by Paramjeet Kaur, who had alleged her former employer, Tevatia Holdings Ltd. carrying on business as Siddhartha’s Indian Kitchen, had contravened the *ESA* by making unauthorized deductions from her wages and by failing to pay regular and overtime wages, annual vacation pay and statutory holiday pay.
4. The complaint was filed outside of the time period for filing a complaint in section 74 of the *ESA* and the Director, under section 76 of the *ESA*, decided an investigation of the complaint would not proceed.
5. An appeal of the Determination was filed by Paramjeet Kaur 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 of the *ESA*, finding there was “no reasonable prospect” the appeal would succeed.
7. The original decision confirmed the Determination.
8. This application seeks to have the original decision reviewed and changed by a reconsideration panel of the Tribunal.

ISSUE

9. 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 this panel of the Tribunal should cancel the original decision.

ARGUMENT

10. The submission made by Paramjeet Kaur in support of her application for reconsideration contains her explanation for the late filing of the complaint against her former employer. The submission does nothing more than provide additional detail for her failure to file the complaint within the six-month statutory period and express her unhappiness with the original decision.

11. The application does not address the reasoning in the original decision or touch at all on the legal correctness of the decision to deny her appeal.

ANALYSIS

12. I commence my analysis of this application with a review of the statutory provisions and policy considerations that attend an application for reconsideration generally. As a result of amendments to the *ESA* made in the *Administrative Tribunals Statutes Amendment Act, 2015*, parts of which came into effect on May 14, 2015, section 116 reads:

- 116 (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 *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.
16. 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.
17. I find this application does not warrant reconsideration.
18. I view this application as nothing more than an effort by Paramjeet Kaur to have this panel re-visit the appeal, alter the original decision to find the Director ought to have allowed an extension of the complaint period and have her complaint returned to the Director for investigation. It is not the function of a reconsideration panel to change the original decision unless the applicant can demonstrate some manifest error in it that justifies intervention and correction.
19. No error in the original decision, or other circumstance that requires intervention, has been shown and I am completely satisfied the original decision was correct.
20. Having failed to show any error in the original decision, Paramjeet Kaur has failed to show any reason for exercising my discretion in favour of reconsideration.
21. This application is denied.

ORDER

22. Pursuant to section 116 of the *ESA*, the original decision, 2020 BCEST 48, is confirmed.

David B. Stevenson
Member
Employment Standards Tribunal