



Citation: Raed Eid (Re)
2020 BCEST 83

An appeal

- by -

Raed Eid
(the “Applicant”)

- 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.: 2020/096

DATE OF DECISION: July 9, 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 59 (the “Original Decision”), issued by the Tribunal on June 2, 2020.
2. The Applicant worked as a pharmacist for N. Darjii Pharmacy Ltd. carrying on business as Shoppers Drug Mart 2225 (the “Employer”) for nine hours on December 13, 2018, at a rate of \$40 per hour and was paid \$360. He also worked for the Employer for 13 hours over two days in January 2019 and was paid \$560 on January 22, 2019.
3. On June 27, 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 failing to make statutory deductions from the total pay and failing to issue wage statements. During the complaint process, the Employer submitted pay statements to the Director. Those were provided to the Applicant and the Director determined that, having done so, the statutory requirement outlined in section 27(1)(g) of the *ESA* had been satisfied and that this aspect of the complaint had been resolved.
4. The Employer also paid the Applicant an amount for overtime wages and for vacation pay, even though the Applicant was not entitled to it.
5. A delegate of the Director of Employment Standards determined that the matters to which the *ESA* applied – failing to pay wages within the time provided in the *ESA* and failing to provide a wage statement had been resolved and that no further action would be taken.
6. The Director found there was no provision in the *ESA* requiring an employer to make statutory withholdings for Canada Pension, Employment Insurance and Income Tax, and that no further action would be taken with respect to this aspect of his complaint.
7. The Director determined that the *ESA* was remedial, that administrative penalties were not intended to be punitive and were 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 and a cheque for overtime and vacation pay during the investigation. The delegate also determined that the Applicant had received a wage statement during the investigation of the complaint.
8. The Director exercised the discretion provided in section 76(3)(b) and (i) and ceased investigating the complaint.

9. The Applicant appealed the Determination on the grounds that the Director had erred in law and had failed to comply with principles of natural justice.
10. 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. He concluded that the appeal had no merit, was frivolous and an abuse of process, and that it had no reasonable prospect of succeeding.
11. The Member found the appeal to be “entirely devoid of merit”. He concluded that the Applicant had not made any argument nor given any evidence to challenge or controvert the findings made in the Determination.
12. The Member noted that the Applicant advanced, for the first time on appeal, a claim for travel time and expenses that were not included in his initial complaint or advanced during the complaint process.
13. The Member stated:

The sum and substance of the Determination is that those aspects of the complaint which were governed by provisions in the *ESA* were resolved through the complaint process, that no contravention of the *ESA* had been found and no requirement had been imposed, that the purposes of the *ESA* did not justify administrative penalties as a punitive measure on matters which had been resolved without a determination and the imposition of a requirement under section 79 of the *ESA*, that the Director had discretion in the circumstances to not find a contravention and had discretion to cease investigation of the complaint. (para. 29)

[The Applicant] has failed to meaningfully address any of the above matters and has failed to show there was an error of law by the Director on any of them. [the Applicant] contends that the Director failed to properly investigate his complaint but has done nothing in the appeal that relates that contention to any part of the definition of ‘error of law’.” (para. 30)
14. The Member concluded that the Applicant had not demonstrated an error in the Determination or established that the Director had failed to observe the principles of natural justice.
15. The Member 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 seeks to have the matter “referred back to the original panel, which is the employment standards branch for full investigation to compensate me for my travel time and out of town expenses and business cost and for the vacation entitlement...”. The Applicant also sought an increase in his hourly rate of pay as well as compensation for deductions made from his pay.

The Applicant contends that the Member did not “fairly address my appeal” and does not believe that his “minimum rights were preserved when [the Member] made his decision.”

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*, BCEST # 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, either before the Director or the Tribunal at first instance.

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. He does not identify any errors in the Tribunal’s decision or raise an arguable case that the decision should be reconsidered. The Applicant also seeks to have additional matters considered for the first time on reconsideration. The reconsideration process is meant as an error-correction review, not as an analysis of a claim which has never before been raised.
23. I am not persuaded, in reviewing the Determination, the arguments made on appeal and the Original Decision, 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. An assertion that the Applicant does not believe that the Member “did not fairly address his appeal,” without more, does not address the Tribunal’s test.

24. I agree with the Member that the Applicant’s submissions on appeal were “devoid of merit” and were frivolous and an abuse of process. In my view, the reconsideration application is also devoid of merit and constitutes an abuse of process.
25. There is no basis for the Tribunal to exercise the reconsideration power.

ORDER

26. The request for reconsideration is denied. I order that the Original Decision 2020 BCEST 59, issued June 2, 2020, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal