



Citation: Central Villa Sand & Gravel Ltd. (Re)
2021 BCEST 12

EMPLOYMENT STANDARDS TRIBUNAL

An Application for Reconsideration

- by -

Central Villa Sand & Gravel Ltd.
("Central Villa")

- 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.: 2021/001

DATE OF DECISION: January 28, 2021

DECISION

SUBMISSIONS

Sarbjit Dult on behalf of Central Villa Sand & Gravel Ltd.

OVERVIEW

1. Central Villa Sand & Gravel Ltd. (“Central Villa”) seeks reconsideration of a decision of the Tribunal, 2020 BCEST 145 (the “original decision”), dated December 9, 2020.
2. The original decision considered an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on August 25, 2020.
3. The Determination was made by the Director on a complaint filed by a former employee, who had alleged Central Villa had contravened the *Employment Standards Act* (the “ESA”) by failing to pay overtime wages and annual vacation pay and had made unauthorized deductions from his wages.
4. The Determination found Central Villa had contravened Part 3, section 21 and Part 7, section 58 of the *ESA* and section 37.3 of the *Employment Standards Regulation* and ordered Central Villa to pay the former employee wages, including interest under section 88 of the *ESA* and concomitant annual vacation pay, in the amount of \$6,017.22 and administrative penalties in the amount of \$1,500.00.
5. An appeal of the Determination was filed by Central Villa alleging the Director had failed to observe principles of natural justice in making the Determination. Central Villa requested the Tribunal “waive” the administrative penalties, submitting the penalties were “unfair” in the circumstances and imposed an undue burden on the business during difficult times.
6. The Tribunal Member making the original decision found there was no basis for the natural justice ground of appeal and that the Tribunal had no authority to “waive” the administrative penalties since there was a basis for finding the contraventions that resulted in the imposition of the administrative penalties and there was no indication of bad faith or abuse in their imposition.
7. The Tribunal Member making the original decision dismissed the appeal under section 114 of the *ESA*, finding there was “no reasonable prospect” the appeal the appeal would succeed.
8. The original decision confirmed the Determination.
9. This application seeks to have the original decision reviewed and changed by a reconsideration panel of the Tribunal.

ISSUE

10. 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

11. The submission made by Central Villa in support of their application for reconsideration reiterates one of the arguments made in the appeal: that the former employee was not paid because he had not returned the company's vehicle. Central Villa has presented material with this application showing the vehicle was now, with the assistance of outside authorities, returned to them.
12. Central Villa says the original decision should be changed. It is unclear from the submission accompanying the application for reconsideration whether the change should only be to "waive" the administrative penalties as requested in the appeal, or whether it should include some parts of the wages portion of the Determination. For the reasons stated below, it makes no difference to the disposition of this application what the objective of the application is.
13. The application does not address the reasoning in the original decision, but merely supplements an argument made in the appeal and found not to be demonstrative of any error under the grounds of appeal set out in section 112(1) of the *ESA*.

ANALYSIS

14. I commence my analysis of this application with a review of the statutory provisions and policy considerations that attend an application for reconsideration generally. 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.
15. 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.

16. 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.
17. 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.
18. 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.
19. I find this application does not warrant reconsideration.
20. I view this application as nothing more than an effort by Central Villa to have this panel re-visit the appeal, alter the original decision, waiving the administrative penalties and, possibly, varying the amounts of wages owed. Central Villa does nothing in this application that advances the merits of the appeal or show there was any mistake in the view of the Tribunal Member in the original decision, that there was “no reasonable prospect” the appeal could succeed.

21. 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.
22. 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.
23. Having failed to show any error in the original decision, Central Villa has failed to show any reason for exercising my discretion in favour of reconsideration.
24. This application is denied.

ORDER

25. Pursuant to section 116 of the *ESA*, the original decision, 2020 BCEST 145, is confirmed.

David B. Stevenson
Member
Employment Standards Tribunal