

EMPLOYMENT STANDARDS TRIBUNAL

An Application for Reconsideration

- by -

Yudhvir Singh
("Mr. Singh")

- 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: Shafik Bhalloo

FILE No.: 2021/098

DATE OF DECISION: December 16, 2021

DECISION

SUBMISSIONS

Yudhvir Singh

on his own behalf

OVERVIEW

1. Pursuant to section 116 of the *Employment Standards Act* (the “ESA”), Yudhvir Singh (“Mr. Singh”) seeks reconsideration of a decision of the Tribunal issued on November 23, 2021 (the “original decision”).
2. The original decision considered an appeal of a Determination issued by the delegate of the Director (the “Director”), on August 26, 2021.
3. The Determination was made by the Director on a complaint filed by Mr. Singh, who alleged that Canada Tent House Ltd. (the “Employer”) owed him regular wages (the “Complaint”). The Determination concluded that the Complaint was not made within the time limit specified in section 74 of the *ESA* and the Director will not proceed with the Complaint pursuant to section 76(1) of the *ESA*.
4. Mr. Singh appealed the Determination on two of the three available grounds of appeal in section 112(1) of the *ESA*, alleging that the Director erred in law and also failed to observe the principles of natural justice in making the Determination. Mr. Singh sought to have the Determination varied.
5. The Tribunal Member making the original decision observed that the burden is on an appellant to demonstrate a basis for the Tribunal to interfere with a determination and, in this case, while Mr. Singh checked off the “error of law and the “natural justice” grounds of appeal in the Appeal Form, he failed to identify or explain in the appeal materials the alleged error of law and breach of natural justice by the Director in making the Determination. Instead, Mr. Singh simply reiterated the reasons he supplied to the delegate during the investigation of the Complaint for why his complaint was late, namely, that he did not understand the applicable employment laws because he was new to Canada. The Member noted that the delegate did not find these reasons compelling and decided to exercise his discretion to not accept Mr. Singh’s late filed Complaint and stop investigating the same. In deciding not to interfere with the delegate’s decision, the Member observed that the Tribunal is generally reluctant to interfere with the exercise of discretion by the Director and will only do so in exceptional and very limited circumstances. Having reviewed the record, the Member concluded that there was no basis for him to interfere with the delegate’s exercise of discretion.
6. The Member also noted that while Mr. Singh did not advance the “new evidence” ground of appeal, his appeal materials included undated text messages between himself and the Employer discussing the money that he was allegedly owed by the Employer that were not in the appeal record. Consistent with the very instructive guidance of the Tribunal in *Triple S Transmission Inc.*, BC EST # D141/03, the Member took a “large and liberal view” of the appeal submissions of Mr. Singh and considered the text message under the new evidence ground of appeal. In deciding that the text messages did not meet the test for admission as new evidence in *Davies et al.*, BC EST # D171/03, the Member reasoned that: (i) they could have been presented to the delegate before the Determination was made; (ii) they did not appear to be

relevant to the issue of why the Complaint was filed late; and (iii) they did not appear to have high potential probative value. For all of the above reasons, the Member dismissed Mr. Singh's appeal and confirmed the Determination.

7. On November 25, 2021, the Tribunal received Mr. Singh's Reconsideration Application Form and written submissions seeking to have the original decision reviewed and varied.

ISSUE

8. 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 vary or cancel the original decision.

SUBMISSIONS OF MR. SINGH

9. In support of his reconsideration application, Mr. Singh submits that:
 - a. After he worked for 14 hours for the Employer, he quit because other employees that worked for the Employer for a month did not receive any payment.
 - b. He requested the Employer to pay him for the 14 hours he worked but the latter told him that he would not be receiving any money and blocked his phone number.
 - c. He submitted the Complaint late because he was "new to Canada" and "did not understand all Canadian employment laws" and did not realize that "what the Employer had done was illegal in Canada" when hiring him "without paperwork".
 - d. He was "harassed" by the Employer because the latter "blocked" his number
 - e. The Employer has done the same to "many employees".
 - f. He will "keep fighting" for his money and will "fight for [his] rights".
10. Mr. Singh also resubmits screenshots of undated text exchanges between himself and the Employer discussing the money that he was allegedly owed by the Employer that were not in the appeal record but submitted in the appeal and rejected as "new evidence" by the Member.
11. Mr. Singh contends that the text messages show harassment on the part of the Employer. The text messages contain profanities and insults levelled by the Employer against Mr. Singh when the latter was attempting to obtain payment of wages allegedly owed to him by the Employer.

ANALYSIS

12. Section 116 of the *ESA* delineates the Tribunal's statutory authority to reconsider any order or decision of the Tribunal:

Reconsideration of orders and decisions

116 (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.
- (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.

13. Reconsideration is not an automatic right of any party who is dissatisfied with an order or a decision of the Tribunal. That said, reconsideration is within the sole discretion of the Tribunal, and the Tribunal must be very cautious and mindful of the objects of the *ESA* in exercising its discretion. (See *Re: Eckman Land Surveying Ltd.*, BC EST # RD413/02)

14. In *Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, BC EST # RD046/01, the Tribunal explained the reasons why it should exercise reconsideration power with 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 best able to fund litigation, and whose applications will necessarily create further delay in the final resolution of a dispute.

15. In *Re: British Columbia (Director of Employment Standards) (sub nom) Milan Holdings Ltd.*, BC EST # D313/98, the Tribunal delineated a two-stage approach for the exercise of its reconsideration power under section 116. In the first stage, the Tribunal must decide whether the matters raised in the application warrant reconsideration. In determining this question, the Tribunal will consider a non-exhaustive list of factors that include:

- (i) whether the reconsideration application was filed in a timely fashion;
- (ii) whether the applicant’s primary focus is to have the reconsideration panel effectively “re-weigh” evidence already provided to the adjudicator;
- (iii) whether the application arises out of a preliminary ruling made in the course of an appeal;
- (iv) 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;

- (v) whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration. If the applicant satisfies the requirements in the first stage, then the Tribunal will proceed to the second stage of the inquiry, which focuses on the merits of the original decision.

16. Having delineated the parameters governing reconsideration applications, both statutory and in the Tribunal's own decisions, I am of the view that Mr. Singh's application does not warrant the exercise of the Tribunal's discretion in favour of a reconsideration of the original decision. More particularly, I find that Mr. Singh's application fails to meet the following requirements in the first stage of the analysis in *Milan Holdings Ltd., supra*: (i) Mr. Singh has failed to make out an arguable case of sufficient merit to warrant a reconsideration; and (ii) he has not raised any important questions of law, fact, principle or procedure of importance to the parties and/or their implications for future cases. He has also not shown any error in the original decision or presented other circumstances that requires this panel to intervene. He has largely reiterated the same submissions he made in the investigation of the Complaint to the delegate, and subsequently to the Member in the appeal, with a view to having this panel re-visit the appeal and vary the original decision.
17. While I sympathize with Mr. Singh's plight and the ill treatment he experienced in his dealings with the Employer as evidenced in his text exchanges with the Employer, I find there is no basis for this panel to interfere with the original decision. I find the Member correctly laid out the law governing when the Tribunal will interfere with the delegate's exercise of discretion and the Member properly acted with restraint in deciding not to interfere with the Determination, particularly when Mr. Singh did not discharge his burden on appeal to demonstrate any basis under section 112(1) of the *ESA* for the Member to interfere with the Determination.
18. I also find the Member's analysis for not admitting the text messages in the appeal compelling and this panel will not interfere with that decision.
19. In the circumstances, this panel will not exercise its discretion in favour of reconsideration. Mr. Singh's application is denied.

ORDER

20. Pursuant to section 116 of the *ESA*, the original decision, 2021 BCEST 93, is confirmed.

Shafik Bhalloo
Member
Employment Standards Tribunal