Employment Standards TRIBUNAL

Citation: John Curry (Re)
2022 BCEST 2

EMPLOYMENT STANDARDS TRIBUNAL

An Application for Reconsideration

- by -

John Curry carrying on business as Garden City Autobody
("Mr. Curry" or the "Employer")

- 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.: 2021/101

DATE OF DECISION: January 07, 2022

DECISION

SUBMISSIONS

John Curry — on his own behalf

OVERVIEW

1. Pursuant to section 116 of the Employment Standards Act (the "*ESA*"), John Curry carrying on business as Garden City Autobody ("Mr. Curry" or the "Employer") 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 June 9, 2021.

3. The Determination was made by the Director on a complaint filed by Jaime Page (the "Employee"), who alleged that they were "fired [by the Employer] for … reasons you can't fire someone without notice." The Employee further alleged that they had "never received a real pay stub" or been paid overtime, and they had "missed lunch breaks – as well as lots of other things." They further alleged that they were owed regular wages, overtime wages, pay for working through lunch breaks, and compensation for length of service (the "Complaint).

4. The delegate investigated the Complaint and, in the Determination, found the Employer contravened Part 3, sections 17, 27 and 28; Part 7, section 58; and Part 8, section 63 of the *ESA* in respect of the employment of the Employee. The Director ordered the Employer to pay the employee wages, including interest under section 88 of the *ESA*, and concomitant annual vacation pay totalling $5,465.87. The Director also ordered administrative penalties in the amount of $2,500. The total of the Determination is $7,965.87.

5. The Employer filed an appeal of the Determination on July 19, 2021, the final day for filing the appeal, alleging the Director had erred in law and failed to observe principles of natural justice in making the Determination and that there was new evidence that has become available that was not available at the time the Determination was being made. The Employer also requested an extension to the statutory appeal period from July 19, 2021 to August 25, 2021, stating that he had another witness who would be available by that time.

6. The Tribunal Member making the original decision reviewed the Employer's submissions delivered to the Tribunal within the appeal period deadline and observed that while section 109(b) of the *ESA* empowers the Tribunal to grant the Employer's extension request, the Tribunal does not grant extension requests as a matter of course. The Tribunal Member also noted that there must be "compelling reasons" for the extension request, and the onus is on the appellant to show the Tribunal that an extension is warranted (see *Patara Holdings Ltd. carrying on business as Best Western Canadian Lodge and/or Canadian Lodge*, BC EST #RD053/08). He then considered the non-exhaustive list of factors delineated in *Re Niemisto*, BC EST #D099/96 for deciding whether to grant an extension request. While finding that the Employer had an ongoing, genuine intention to appeal the Determination because the appeal submissions were

delivered on July 19, 2021, the Tribunal Member denied the Employer's request for an extension for the following reasons:

> First, I find that there is no reasonable explanation for the Employer's failure to meet the appeal period deadline. As I discuss below, I have no reason to conclude that the Additional Witness Statements could not, with the exercise of due diligence, have been put forward during the Complaint process, let alone in advance of the appeal period deadline. Second, under the circumstances, the Employer's stated mobility limitations, in and of themselves, are not compelling reasons for granting his extension request. In addition, while the Employer's stated concerns regarding the fairness of the Complaint process and the Delegate's conduct, analysis and reasoning are grounds for his appeal, they are not compelling reasons for extending the appeal period deadline. Finally, based on my examination below of the merits of the appeal, the "strong case" consideration listed above does not factor in favour of the Employer's extension request.
>
> The appeal period deadline under section 112 of the *ESA* furthers a key purpose of the *ESA*; namely, the goal of providing fair and efficient procedures for resolving employment standards disputes: see *ESA*, s. 2(d). It is "in the interest of all parties to have complaints and appeals dealt with promptly": *Tang*, BC EST #D211/96. On the other hand, the *ESA* has several additional purposes, including the promotion of fair treatment of employees and employers: *ESA*, s. 2(b). In this case, on balance, and considering the factors discussed above, I conclude that the purposes of the *ESA* are best served by not granting the Employer's extension request. The Employer has not provided compelling reasons for his request, and he has not shown me that an extension is warranted.

7. Having dismissed the Employer's request for an extension of the appeal period deadline, the Tribunal Member went on to consider the merits of the appeal starting with the error of law ground of appeal of the Employer. The Tribunal Member set out the definition of error of law in *Britco Structures Ltd.*, BC EST # D260/03, and identified two arguments of the Employer that engage the error of law ground of appeal, namely: (i) the Employer's contention that the Determination imposed fines for "items" the Employer previously paid, and (ii) the Employer's challenge of the delegate's "just cause" analysis in the Reasons for the Determination. In dismissing the first argument, the Tribunal Member reasoned as follows:

> The Employer's appeal submissions suggest that the Determination imposed fines for "items" the Employer previously paid. I disagree.
>
> Section 98 of the *ESA* makes a person who contravenes the *ESA* "subject to a monetary penalty prescribed by the regulations." Section 29(1)(a) of the *Regulation* prescribes a fine of $500.00 if a delegate of the Director of Employment Standards "determines that a person has contravened a requirement under the Act." Under these provisions of the *ESA* and the *Regulation,* a monetary penalty must be imposed if a contravention of the *ESA* is found.
>
> In the present case, the Delegate concluded that the Employer contravened five *ESA* requirements and, in turn, ordered the Employer to pay five fines of $500.00. This was not a misinterpretation or misapplication of the monetary penalties' provisions under the *ESA* and the *Regulation*. Nor was it an imposition of fines for items the Employer previously paid.
>
> The Employer delivered a voluntary compliance payment to the Branch before the Determination was issued. The payment comprised two amounts: a small amount for a slight shortfall in wages

> paid, and a larger amount for the vacation pay owed for the period between September 2018 and September 2019. The Delegate accounted for both these amounts in the Reasons for the Determination. Partially on the basis of the former amount, the Delegate concluded (in the Employer's favour) that the Employee was paid all wages owed to him, including overtime wages. On the basis of the latter amount, the Delegate found (in the Employer's favour) that the Employer paid the vacation pay owed for the period of the Employee's employment between September 2018 and September 2019. On the other hand, however, the Delegate found that the Employer failed to pay the required rate of vacation pay for at least one other period of the Employee's employment, which was a contravention of section 58 of the *ESA* and accordingly gave rise to a fine of $500.00.

8. With respect to the Employer's challenge to the "just cause" analysis - whether the delegate erred in law in determining that the Employer failed to establish the Employee was dismissed for just cause within the meaning of section 63 of the *ESA* - the Tribunal Member set out the following considerations applicable to this question at page 18 of the original decision:

> The Tribunal gives a sympathetic reading to a delegate's reasons for determination. For instance, in examining the reasons for a delegate's determination, the Tribunal will assume (unless there is a good reason not to) that the delegate considered and weighed all the evidence and – based on that evidence – found every findable fact necessary to support the conclusions they reached: see *Budget Rent-a-Car of Victoria Ltd.*, BC EST # D021/12. In their reasons for determination, a delegate "need not explain every finding and conclusion" and need not "expound on each piece of evidence or controverted fact," as long as their "findings linking the evidence to the result can logically be discerned": *Michael L. Hook*, 2019 BCEST 120 at para. 40 [***Hook***]. Like those of other administrative decision-makers, a delegate's written reasons are not assessed against a standard of perfection: see *1170017 B.C. Ltd.*, 2021 BCEST 23.
>
> …
>
> Two categories of questions come up in cases where a delegate is determining whether an employee was dismissed for just cause. First, there are questions of fact: What happened? Why was the employee dismissed? What actually took place between the employer and the employee? Second, there are questions of law: What is the legal test for proving just cause? How is the legal test applied? What are the relevant legal principles? Because both categories of questions come up in just cause cases, the issue of whether an employee was dismissed for just cause is said to be a question of "mixed law and fact": Do the facts of the dismissal satisfy the legal test for proving just cause? A determination by a delegate on this type of question is given deference by the Tribunal: *Hook* at para. 31.
>
> Thus, in considering the Employer's challenge to the Delegate's just cause analysis, I have taken a deferential approach and given a sympathetic reading to the Reasons for the Determination, to decide whether the Delegate erred in law.

9. In concluding that the that the delegate did not err in law or misinterpret or misapply section 63 of the *ESA* or any applicable principle of law in his "just cause" analysis, the Tribunal Member noted that the delegate properly observed that the burden of proof was on the Employer to prove just cause and distinguished between how an employer may prove just cause on the basis of an act of serious misconduct or ongoing instances of minor misconduct. The Tribunal Member also noted that the delegate touched on a central consideration in the just cause analysis, namely, whether the conduct of the employee

undermined or was inconsistent with the continuation of the employment relationship in coming to the decision he did. In the result, the Tribunal Member found that there was nothing wrong, in principle, with the method of analysis adopted by the delegate.

10. The Tribunal Member also found that the delegate's decision was based on the evidence and submissions provided by the parties, and not on an unreasonable view of the facts. He particularly noted that the delegate considered the well-established principles that have been consistently applied to establish just cause on the basis of inadequate performance or ongoing instances of minor misconduct set out in *Re: Hook* in concluding that the Employer did not meet the onus of proof to establish just cause for the Employee's termination:

> In particular, there were no documents or other cogent, sufficiently particularized evidence before the Delegate to show that, during the Employee's seven-year term of employment, the Employer established reasonable performance standards (regarding, for example, appropriate workplace communication, professionalism, attendance and punctuality, conflict management) and clearly communicated those standards to the Employee. As the Tribunal has explained before, an employer's "dissatisfaction with an employee's performance, no matter how strenuously or repeatedly communicated, is not enough" to establish just cause. Unless the employer's dissatisfaction "flows from the employee's failure to achieve objective, reasonable and achievable … performance criteria, that dissatisfaction does not give the employer a right to summarily dismiss the employee without having to pay compensation or give written notice in lieu of compensation" under section 63 of the *ESA*: *565682 B.C.*

11. Having found that the delegate did not err in law in determining that the Employer failed to prove he had just cause to dismiss the Employee for inadequate performance or ongoing instances of minor misconduct, the Tribunal Member, next, considered whether the delegate erred in law in concluding that the Employer failed to prove just cause based on an act of serious misconduct. Here, the Tribunal Member noted that, to establish just cause on the basis of an act of serious misconduct, the burden of proof is on the Employer to show that "the Employee's act of misconduct amounted to 'a fundamental failure … to meet their employment obligations' or that it was 'impossible to reconcile' the act of misconduct with the Employee's 'obligations under the employment contract'". In concluding, again, that the delegate did not err in law, the Tribunal Member reasoned as follows:

> The Reasons for the Determination indicate that the Delegate gave full consideration to the Employer's stated reasons for summarily dismissing the Employee, but found they lacked strong, credible evidentiary support. For instance, the Delegate observed that the Employer equivocated regarding the trigger for the Employee's dismissal; he found the Employer's evidence regarding the alleged 'violent altercation' lacking; and he found that the Police Report appeared to relate to conduct that took place following the Employee's dismissal. I see no reviewable error in these findings and observations.
>
> In addition, the Reasons for the Determination indicate that the Delegate was not compelled by the Employer's description of a single conversation with the Employee, involving 'toxic language and threats,' which the Employer, in the Video and Text Messages and in his February 26, 2021 submission, suggested was the deciding factor in the Employee's dismissal. It was reasonable that the Delegate's just cause determination did not turn on this alleged conversation, given that the Employer's overall evidence indicated that these types of exchanges occurred routinely throughout the Employee's seven year tenure. This indication in the Employer's evidence would

> have undercut the credibility of the Employer's submission regarding the seriousness and significance of the alleged conversation.

12. Having rejected both arguments of the Employer under the error of law ground of appeal, the Tribunal Member, went on to consider the Employer's natural justice ground of appeal. Under this ground of appeal, the Tribunal Member noted that the Employer advanced three arguments:

> First, the Employer challenges the timing of the Delegate's process, asserting that the Delegate should have contacted him sooner following the initiation of the Complaint. The Employer says that, had he been contacted more promptly, he "would have been better equipped to deal with this case." Second, the Employer takes issue with the Delegate's treatment of his requests for additional time during the investigation process. Third, the Employer argues that the Delegate provided him with incomplete information regarding the appeal process.

13. With respect to the first argument, the Tribunal Member notes that the delegate contacted the Employer over 15 months after the Employee filed the Complaint. However, according to the Tribunal Member, this delay, in and of itself, does not offend the principles of natural justice unless the appellant is able to prove both of the elements delineated in *Blencoe v. B.C. (Human Rights Commission)*, 2000 SCC 44 (CanLII), [2000] 2 SCR 307: (1)the delay was unacceptable or inordinate, determined in the context of the proceedings; and (2) the delay caused prejudice of a magnitude that affects the fairness of the hearing or the community's sense of decency and fairness. In concluding that the delay did not prejudice the Employer within the meaning of *Blencoe*, the Tribunal Member state:

> … even if I were to find that the delay in this case was unacceptable or inordinate, I would still conclude that it does not run afoul of the principles of natural justice, on the basis that the Employer has not established that the delay resulted in significant prejudice to the Complaint investigation process or to the Employer himself.
>
> …
>
> I am sympathetic to the Employer's frustration with the initial timing of the Delegate's process in this case. In general, a 15-month gap between the filing of an *ESA* complaint and first contact with the respondent is too much and is inconsistent with the *ESA* goal of providing fair and efficient procedures for resolving employment standards disputes. I also appreciate that the Employer feels that, but for this delay, he "would have been better equipped to deal with this case," owing to the fact that he is "now retired and more handicapped" and on "a fixed income." However, the Employer has not established that the delay deprived him of the ability to fully respond to the Complaint. On the contrary, despite the delay, the Employer was actually able, for example, to provide information and submissions to the Delegate, as well as witness and other documentary evidence in answer to the case against him. Moreover, given the *ESA* requirement to maintain the Employee's payroll records for four years after their creation, the delay should not have impaired the Employer's ability to make all such records available to the Delegate in response to the Complaint.

14. With respect to the second argument of the Employer concerning the delegate's treatment of his requests for additional time during the course of the Complaint investigation, the Tribunal Member observed that under section 77 of the *ESA*, the delegate is required to 'make reasonable efforts to give a person under

investigation an opportunity to respond.' In this case, the Tribunal Member found that there was no evidence that the delegate contravened this requirement. To the contrary, according to the Tribunal Member, the materials before him in the appeal showed that during the investigation of the Complaint:

> …the Delegate responded promptly and reasonably to the Employer's various requests for additional time, information and clarification. The Delegate was in frequent contact with the Employer during the investigation process; he was responsive to the Employer's inquiries; he repeatedly encouraged the Employer to provide additional information and submissions in response to the Complaint; and he kept the Employer apprised of the evidence and arguments submitted by the Employee. Accordingly, I find no error or unfairness in the Delegate's treatment of the Employer's requests for additional time during the course of the Complaint investigation.

15. With respect to the final argument under the natural justice ground of appeal, namely, the suggestion in the Employer's appeal submissions that the delegate provided him with incomplete information regarding the appeal process, the Tribunal Member outright dismissed this argument stating:

> First, I am not convinced that the principles of natural justice required the Delegate to specifically advise the Employer regarding the Tribunal's appeal process. Second, and in any event, the Employer's assertion that the Delegate 'didn't tell [him] that [he] would have to pay the determination amount up front' is simply not true. The Delegate, in fact, advised the Employer in writing regarding this matter.

16. In the result, the Tribunal Member dismissed the Employer's natural justice ground of appeal.

17. With respect to the final ground of appeal, namely, new evidence has become available that was not available at the time the Determination was being made, the Tribunal Member noted that the Employer presented two witness statements in the appeal, on August 23, 2021. The witness statements were from a long-time customer of the Employer's and from a co-worker of the Employee. The Tribunal Member noted that the witness statements spoke to the Employee's substandard work performance, attendance problems, and aggressive behaviour and they were similar in nature and substance to the information and evidence that was already before the delegate during the Complaint investigation process. In rejecting both witness statements, the Tribunal Member noted that they did not meet two of the four conjunctive criteria for admitting new evidence in appeals set out in *Merilus Technologies Inc.*, BC EST # D171/03. More particularly, the Tribunal Member was *not* persuaded that the statements could not, with the exercise of due diligence, have been put forward during the Complaint investigation process. He was also *not* persuaded that, if the witness statements had been provided to and believed by the delegate, they would have led the delegate to reach a different conclusion on any material issue in the Complaint.

18. In the result, the Tribunal Member, in the original decision, dismissed the Employer's appeal and confirmed the Determination under section 115(1) of the *ESA*.

19. On December 22, 2021, the Employer delivered the Reconsideration Application with handwritten submissions that primarily request an extension of the statutory period for filing a reconsideration application, found in section 116(2.1) of the *ESA*, to August 2022. The statutory reconsideration period expired on December 23, 2021.

ISSUE(S)

20. 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. Included in a consideration of that question, in this case, is the matter of the timeliness of the application for reconsideration, which I must consider first.

EMPLOYER'S SUBMISSIONS

21. The Employer's handwritten submissions are brief and set out verbatim below:

> TO WHOM IT MAY CONCERN
>
> I AM REQUESTING MORE TIME TO ADDRESS THIS FILE, [sic] I AM CURRENTLY DISABLED, I SPENT MOST OF MY TIME AT DR.s [sic] VISITS,[sic] I AM ON THE ROAD TO RECOVERY BUT I NEED TIME. I AM AWAITING MORE WITNESS STATEMENTS AT THIS TIME AND I AM SEEKING LEGAL ADVICE ON WHAT I CONSIDER AN UNJUST DECISION BY YOUR BOARD. IT WAS VERY UNFAIR OF KEN THE OFFICER ACTING ON JAIME PAIGE'S COMPLAINT TO WANT TO WAIT ALMOST 2 YEARS TO CONTACT ME, AFTER I SOLD MY BUSINESS, AND BECAME MORE DISABLED.
>
> MY REQUEST FOR EXTENSION FOR RECONSIDERATION. I AM SEEKING A 100% REVERSE [sic] OF THE DECISION BY JONATHAN CHAPNICK #2021/003
>
> (1) THE OFFICER (KEN) BY HIS OWN ADMISSION "DROPPED THE BALL". HE SAT ON THE FILE FOR ALMOST 2 YEARS BEFORE CONTACTING ME, VERY UNFAIR TO ME.
> (2) I FEEL THE BOARD DID NOT FULLY UNDERSTAND THE SERIOUS NATURE OF MR. PAGE'S ACTIONS. I [sic] CERTAIN YOU WOULD NOT ALLOW SUCH ACTIONS IN YOUR WORK PLACE.
> (3) I WOULD LIKE TO MEET WITH THE BOARD OR AT LEAST (SIC) A VIDEO CALL TO MORE FULLY EXPLAIN MY SIDE OF THE SITUATION. IN MY 40 PLUS YEARS IN AUTOMOTIVE MANAGEMENT I HAVE NEVER ENCOUNTERED AN EMPLOYEE WITH SUCH A BAD ATTITUDE AND WORK HABITS.
> (4) I AM WORKING TO SECURE A COUPLE OF ADDITTIONAL WITNESS'S [sic], BUT WITH MY CURRENT SITUATION COVID ETC. IT'S PROVING A BIT CHALLENGING.
> (5) JAIMIE WAS WARNED SEVERAL TIMES ABOUT HIS WORKMANSHIP, HIS ATTITUDE & HIS ACTIONS, TO THE POINT THAT I AM WONDERING IF THE BOARD EVEN READ THE REPORTS OR SPOKE TO WITNESS'S [sic].
> (6) THERE WERE A COUPLE OF OCCASSIONS WHERE JAIME WAS CONDUCTING ILLEGAL THINGS ON OUR PROPERTY, I AM SECURING THIS OTHER PARTY INVOLVED AS WE SPEAK TO COME FORWARD.
> (7) JAIME MISSED DAYS AT A TIME WHILE ARRESTED AND IN JAIL, LEAVING US SHORT STAFFED. AGAIN IS THAT AT ALL REASONABLE?

ANALYSIS

22. 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.

23. 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).

24. *In Director of Employment Standards (Re Giovanno (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.

25. In *Re: British Columbia (Director of Employment Standards) (sub nom) Milan Holdings Ltd.),* BC EST #D313/98, 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.

26. 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.

27. In this case, while the Employer filed the Reconsideration Application form within the statutory reconsideration period, the Employer's submissions primarily focus on his application for an extension of the statutory reconsideration period.

28. In *Inderjit Aulakh* 2021 BCEST 19, the Tribunal considered the decision in *Serendipity Winery Ltd.*, BC EST #RD108/15, and stated that the Tribunal approaches requests for extensions of the reconsideration time period consistent with the approach taken to extensions of time in appeals:

> In *Serendipity Winery Ltd.*, … the Tribunal stated:
>
> > I see no reason to deviate from the criteria [set out in *Re Niemisto*, BC EST # D099/96] when considering requests for an extension of the time period for filing reconsideration applications. However, the question of whether there is a strong *prima facie* case must take into account that the Tribunal's discretionary authority to reconsider under section 116 of the *Act* is exercised with restraint – see *The Director of Employment Standards (Re Giovanni (John) and Carment Valaroso* [*sic*]), BC EST # RD046/01 – and must remain consistent with the approach taken by the Tribunal in deciding whether reconsideration is warranted. (at para. 21)

29. As in *Inderjit Aulakh*, the central considerations in the Employer's request for an extension of time in this case are whether there is a reasonable and credible explanation for the delay and whether there is a strong *prima facie* case for reconsideration. As in *Inderjit Aulakh*, in this case, the substance of the Employer's explanation provided is that time is required to allow the Employer to gather "more witness statements" and, additionally, to "seek[] legal advice". The Employer does not explain why, if the witness statements are considered important and relevant, they were not provided to the delegate during the Complaint investigation. The Employer also does not explain what, if any efforts, were made by him, at any time before the expiry of the statutory reconsideration period, to obtain legal advice. I do not find the Employer's explanations for seeking an extension of the statutory reconsideration period reasonable or persuasive. I also find that the Employer has failed to show a strong *prima facie* case in favour of reconsideration and, therefore, I deny the Employer's application for an extension of the statutory reconsideration period.

30. Having said this, even if I were to grant the Employer an extension, I would deny the reconsideration application as I do not find there was any error made in the original decision such as to warrant a reconsideration. More particularly, there is nothing in the reconsideration submissions of the Employer (set out at paragraph 21 above), that identifies any error in the original decision. I also find the Tribunal Member's reasons for dismissing the Employer's appeal in the original decision, as set out above in paragraphs 6 to 17 inclusive, well supported in evidence and persuasive.

ORDER

31. Pursuant to section 116 of the *ESA*, the original decision, 2021 BCEST 92, is confirmed.

Shafik Bhalloo
Member
Employment Standards Tribunal