

EMPLOYMENT STANDARDS TRIBUNAL

An Application for Reconsideration

- by -

Lakhbir Kaur Dosanjh carrying on business as Grace Painting  
(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:** Carol L. Roberts

**FILE No.:** 2022/092

**DATE OF DECISION:** April 4, 2022

## DECISION

### SUBMISSIONS

Lakhbir Kaur Dosanjh

on her own behalf

### OVERVIEW

1. This is an application by Lakhbir Kaur Dosanjh carrying on business as Grace Painting (the “Employer”) for a reconsideration of 2022 BCEST 8 (the “Original Decision”), issued by the Tribunal on January 26, 2022.
2. The Employer is a sole proprietorship. On October 31, 2019, a former employee filed a complaint with the Employment Standards Branch alleging that the Employer had contravened the *Employment Standards Act* (“ESA”) in failing to pay him wages. A delegate (the “delegate”) of the Director of Employment Standards (the “Director”) investigated the complaint. During the investigation, the delegate issued a Demand for Employer Records (the “Demand”), sending the Demand to the Employer’s registered business address and to a residential address. The delegate also had telephone conversations with the Employer and sent a preliminary investigation report to the Employer by email.
3. Following the investigation, the Director issued a determination (the “Determination”) which found that the Employer had contravened the *ESA* and that the employee was entitled to wages and interest. The Director also imposed administrative penalties on the Employer for the contraventions. The Determination noted that the deadline for filing an appeal of the Determination was June 1, 2021. The Determination was sent to the Employer’s registered business address by registered mail. The Employer did not collect the mail.
4. The Employer filed an appeal of the Determination on October 19, 2021, and sought an extension of time in which to do so. The Employer asserted that the Determination had been sent to an address she had not used for almost 13 years, that her email “had stopped working efficiently,” and that she was unaware of the Determination until after the expiration of the statutory appeal period. Although the Employer indicated that she had not received the Determination until September 1, 2021, she did not provide any information about how she had become aware of it, nor did she provide any information on why she had not filed the appeal for a further six weeks after receiving the Determination.
5. In the Original Decision, the Tribunal Member reviewed the relevant provisions of the *ESA*, noting that the Employer had filed the appeal 20 weeks after the statutory deadline had expired and six weeks after she asserted she had received the Determination.
6. The Tribunal Member then considered the criteria established by the Tribunal in *Niemisto* (BC EST #D099/96) regarding the exercise of discretion to extend the deadline for filing an appeal. The Tribunal Member found that the Employer had provided no explanation for failing to file the appeal within six weeks after having received the Determination and declined to grant the Employer’s application for an extension of time to file the appeal under section 109(1)(b) of the *ESA*.

7. On February 25, 2022, the Employer filed a reconsideration application seeking to have the Original Decision cancelled. The Employer's submissions in support of the application are, in summary, as follows:
- it has "more evidence to provide" which was unavailable ("unachievable") for some time;
  - the employee was paid "their rightful amount;"
  - the Employer has "little understanding of the situation/circumstances," and requires the assistance of her children to comprehend the documents; and
  - further evidence is being obtained.
8. On March 8, 2022, the Tribunal requested that the Employer provide any additional documents in support of the application no later than March 25, 2022, after which the Tribunal would decide the Employer's request for an extension to the statutory reconsideration period.
9. On March 11 and March 23, 2022, the Employer provided the Tribunal with additional submissions, and sought an oral hearing ("in person discussion"). The Employer contends that the employee is not entitled to "severance pay" and addressed issues including the employee's status as a contractor and his job performance as well as documentary evidence. In addition, the Employer suggested for the first time, that the Director's delegate may have been biased.
10. The Employer based her request for an extension of time to the reconsideration period on an assertion that she required additional time to review certain documentation, including Tribunal correspondence, and the assertion that she requires legal counsel to assist her due to the "complicated nature of this case."

## ISSUES

11. 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, varied, or sent back to the Tribunal Member?

## ANALYSIS

12. The *ESA* confers an express reconsideration power on the Tribunal. Section 116 provides that:
- (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.
- ...
- (2.1) The application may not be made more than 30 days after the date of the order or decision.
13. The Employer's application for reconsideration was made 30 days after the issuance of the Tribunal decision.

14. 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 [the *ESA*].”
15. In *Milan Holdings* (BC EST #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.
16. The Tribunal may agree to reconsider a decision for a number of reasons, including:
- The member fails to comply with the principles of natural justice;
  - There is some mistake in stating the facts;
  - The decision is not consistent with other decisions based on similar facts;
  - Some significant and serious new evidence has become available that would have led the member to a different decision;
  - Some serious mistake was made in applying the law;
  - Some significant issue in the appeal was misunderstood or overlooked; and
  - The decision contains a serious clerical error.
- (*Zoltan T. Kiss*, BC EST #D122/96)
17. While this list is not exhaustive, it reflects the practice of the Tribunal to use its power to reconsider only in very exceptional circumstances. The reconsideration process was not meant to allow parties another opportunity to re-argue their case.
18. I find that the Employer has not met the threshold test.
19. There is nothing in the submissions in the reconsideration application that raise 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.
20. The Original Decision addresses the Tribunal’s exercise of discretion to extend the statutory time limit within which an appeal of a determination must be filed. Rather than address the issue of the exercise of discretion, the reconsideration application addresses issues that were raised during the investigation and addressed by the Director’s delegate. The application does not address any of the factors outlined in *Zoltan T. Kiss*.
21. While I acknowledge the Employer’s contention that she is reliant on a teenage daughter to assist her in navigating the appeal and reconsideration process, I am not persuaded that the Tribunal Member

misunderstood or overlooked any of the issues or that he erred in applying the law. There is simply nothing in the appeal or reconsideration application submissions that speak to the Employer's failure to file the appeal in a timely fashion.

22. I am also not persuaded that an oral hearing is necessary to decide this application given that the submissions do not meet the test outlined in *Milan Holdings*.
23. I confirm the Original Decision.

### **ORDER**

24. Pursuant to section 116(1)(b) of the *ESA*, the Original Decision is confirmed.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**