

EMPLOYMENT STANDARDS TRIBUNAL

An Application for Reconsideration

- by -

Inderpal 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: Carol L. Roberts

FILE No.: 2021/102

DATE OF DECISION: January 13, 2022

DECISION

SUBMISSIONS

Inderpal Singh

on his own behalf

OVERVIEW

1. Mr. Singh seeks a reconsideration of 2021 BCEST 94 (the "Original Decision"), issued by the Tribunal on November 25, 2021. The Tribunal Member (the "Member") dismissed Mr. Singh's appeal of a Determination of the Director of Employment Standards (the "Director").
2. In the Determination, the Director's delegate (the "Delegate") found that the complaint was not filed within the six-month statutory limit for filing a complaint and exercised her discretion to stop investigating the complaint pursuant to what was then Section 76(3)(a) of the *Employment Standards Act* (the "ESA").
3. In his appeal to the Tribunal, Mr. Singh identified a failure to observe principles of natural justice as the basis for the appeal. The Member nevertheless considered all of the statutory grounds of appeal in evaluating the matter. The Member also considered the ESA Section 112(5) record, the Reasons for the Determination, and the submissions by Mr. Singh in support of his appeal as well as of those of the Delegate and the Employer.
4. The Member determined that Mr. Singh's appeal was, in essence, a challenge of the Delegate's exercise of discretion and considered whether or not the Delegate erred in law. The Member ultimately concluded that Mr. Singh had not demonstrated any basis for interfering with the Determination, and dismissed the appeal.
5. There was no dispute that Mr. Singh began working for the Employer in the fall of 2018 and that his last day of employment was sometime in 2019. Mr. Singh filed his complaint with the Employment Standards Branch on November 22, 2019. The parties disagreed about Mr. Singh's last day of work.
6. Although the parties disagreed on Mr. Singh's last day of work, there was no dispute that it was no later than February 15, 2019.
7. On April 7, 2021, the Delegate wrote to Mr. Singh's Representative regarding the timeliness of Mr. Singh's complaint and invited submissions regarding Mr. Singh's failure to file his complaint within the six-month statutory time period.
8. Mr. Singh asserted that the Employer terminated his employment "in such a way to make the actual date upon which his employment was terminated uncertain," and which delayed his pursuit of a remedy. He further asserted that it was not until he spoke with an advocate in September 2019 that he became aware of "the appropriate legal channels."

9. After noting that there had been a substantial delay in filing his complaint, the Delegate considered Mr. Singh's explanation for doing so. She ultimately found no compelling reason to continue an investigation into his complaint and exercised her discretion to stop investigating.
10. Mr. Singh appealed the decision, contending that the Delegate had "misused ... her discretionary power."
11. The Member considered Tribunal decisions *Li Zheng (Re)*, 2020 BCEST 142, *Mark Bridge* (BC EST #RD044/09) and *Joda M. Takarabe et. al.* (BC EST #D160/98) which outlined the Tribunal's threshold for interfering with the Delegate's exercise of discretion. The Member found no error of law in the Delegate's interpretation of the limits of her discretionary authority under Section 76 of the *ESA*.
12. The Member also found that the Delegate's discretionary decision was reasonable. The Member noted that the delegate considered Mr. Singh's explanation for his failure to file his complaint within a six-month period as well as the purposes of the *ESA*. The Member found that the Delegate's decision was logical, supportable and was not based on irrelevant considerations.
13. The Member further noted that the "Delegate was not satisfied that [Mr. Singh's] foreign worker status amounted to a compelling reason" to continue her investigation. The Member concluded that Mr. Singh had not established that the Delegate exercised her discretion "in a way that was wrong in principle."
14. Finally, the Member noted that while Mr. Singh considered the Determination unfair and unjust, he had not demonstrated that the Delegate failed to comply with the principles of natural justice. The Member noted that, in largely repeating arguments he advanced before the Delegate, Mr. Singh had not demonstrated any basis for an appeal on this ground. The Member concluded that Mr. Singh had been given the opportunity to present his case to the Delegate, including his explanation for the untimeliness of his complaint.

ISSUE(S)

15. The two issues before me on this reconsideration application are:
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?

ARGUMENTS

16. In his reconsideration application, Mr. Singh argues that:
- a) as a temporary foreign worker, he was not aware of the employment standards process, which led to a late filing of his complaint;
 - b) his former employer did not provide him with a termination letter and that he worked on an on-call basis until mid-April 2019; and
 - c) his former employer gave him "false hope" that he would be recalled for work.

ANALYSIS

17. The *ESA* confers an express reconsideration power on the Tribunal. Section 116(1) provides that:

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

18. 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.”

19. 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.

20. 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 Kiss*, BC EST # D122/96)

21. 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.

22. After weighing these and other factors, the Tribunal may determine that the application is not appropriate for reconsideration. Should the Tribunal determine that one or more of the issues raised in the application is appropriate for reconsideration, the Tribunal will then review the matter and make a decision. The focus of the reconsideration member will in general be with the correctness of the decision being reconsidered.
23. In *Voloroso* (BC EST # RD046/01), the Tribunal emphasized that restraint is necessary in the exercise of the reconsideration power:
- .. the Act creates the legislative expectation that, in general, one Tribunal hearing will finally and conclusively resolve an employment standards dispute...
24. 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” is not 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.
- Has the Applicant met the first stage of the Milan reconsideration test?*
25. Mr. Singh has not raised significant questions of law, principle or procedure. His reconsideration submissions are largely a repetition of the arguments made to the Member on appeal as well as before the Delegate.
26. The Delegate considered the inconsistent evidence in the parties’ submissions regarding Mr. Singh’s last day of work. I note that in his reconsideration application, Mr. Singh asserts that he worked until mid-April. This conflicts with the information provided in his complaint form, in which he asserted that he worked until November 18, 2019, and with subsequent submissions in which he asserted his employment ended in March 2019. However, even if the Delegate had determined Mr. Singh’s last day of work to be mid-April, his complaint would have still been filed beyond the six-month statutory deadline.
27. Mr. Singh’s application does not identify any errors on behalf of the Member in misstating the facts or in his application of the law, and I am not able to find any in my review of the Decision. The question of whether or not the Delegate properly exercised her discretion in deciding not to continue investigating Mr. Singh’s complaint was fully analyzed by the Member. I agree with his conclusion.
28. Absent any error on the Member’s part, there is no basis to exercise the reconsideration power.
29. I find that the reconsideration application is an attempt to re-argue the case advanced before both the Delegate and the Tribunal member on appeal. I conclude that it does not raise issues of serious importance to the parties or have implications for future cases.

ORDER

30. The application for reconsideration is dismissed.

Carol L. Roberts
Member
Employment Standards Tribunal