Citation: Shane Parker (Re)
2023 BCEST 26

EMPLOYMENT STANDARDS TRIBUNAL

An application for reconsideration
pursuant to section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

- by -

Shane Parker

- of a Decision issued by -

The Employment Standards Tribunal

PANEL: Kenneth Wm. Thornicroft

FILE NO.: 2023/050

DATE OF DECISION: May 5, 2023

DECISION

SUBMISSIONS

Shane Parker — on his own behalf

INTRODUCTION

1. Shane Parker (the "applicant") applies for reconsideration of 2023 BCEST 13 (the "Appeal Decision"), issued on March 15, 2023. This application is filed pursuant to section 116 of the *Employment Standards Act* (the "*ESA*").

2. In my view, this application does not pass the first stage of the two-stage *Milan Holdings* test (see *Director of Employment Standards*, BC EST # D313/98) and, therefore, must be dismissed.

PRIOR PROCEEDINGS

3. Following the termination of his employment on March 18, 2022, the applicant filed a complaint seeking section 63 compensation for length of service ("CLS"). The applicant's former employer maintained that the applicant was not entitled to any CLS because it had just cause for terminating his employment (see section 63(3)(c) of the *ESA*).

4. The applicant's complaint was the subject of an investigation which, in turn, resulted in an extensive (105 pages) "investigation report". This report was provided to both the applicant and his former employer for their further comment (and both parties filed submissions regarding the contents of the report). On November 14, 2022, a delegate of the Director of Employment Standards (the "delegate") – who was not the same delegate who issued the investigation report – issued a Determination and his accompanying "Reasons for the Determination". The delegate noted in his reasons that prior to issuing the Determination, he reviewed the investigation report and all of the written evidence and argument that the parties had previously submitted to the Employment Standards Branch.

5. The delegate determined that the applicant's former employer had just cause to dismiss the applicant and, that being the case, the applicant was not entitled to any CLS.

6. The applicant appealed the Determination, arguing that the delegate erred in law (section 112(1)(a) of the *ESA*). Although the applicant's Appeal Form was filed with the Tribunal within the statutory appeal period (it was filed on November 29, 2022), the applicant sought an extension to October 1, 2023, so that he might gather further evidence. The Tribunal subsequently set a deadline of February 13, 2023, by which date the applicant was required to submit all further evidence he wished the Tribunal to consider.

7. The Appeal Decision was issued on March 15, 2023. By way of the Appeal Decision, Tribunal Member Roberts rejected the applicant's request to have the adjudication of his appeal delayed until October 1, 2023, so that he would have additional time to gather further evidence and argument. Member Roberts, in rejecting this request, stated (at paras. 35-37):

> The Employee has requested the appeal period be extended to October 1, 2023, an additional period of just under 10 months, so that he can provide additional documentation to show that he was unfairly treated, including bus videos. With more time, the Employee asserts, he "can think and write out more interactions showing [he] was unfairly treated. [He] need[s] to be sure [he is] looking at the correct dates and knowing [he has] a set time, allows the comfort for [him] to proceed. … [He] has more information [he] need[s] to find."
>
> I have reviewed the Employee's submissions and I find he does not have a strong *prima facie* case to appeal the Determination. It is contrary to the purposes of the *ESA* for efficient and timely resolution of appeals to prolong cases with little merit (see *0388025 B.C. Ltd. (cob as Edgewater Inn)*, BC EST # D019/12, and *U.C. Glass Ltd.*, BC EST # D107/08).
>
> The Employee continues to argue, as he did before the Director, that he was treated unfairly. The *ESA* prescribes minimum standards respecting such things as payment, compensation and working conditions. It does not oblige an employer to treat an employee according to that employee's perception of what is fair. I am not persuaded that granting the Employee additional time to gather documentation regarding "fair treatment" is a basis for extending the appeal period.

8. Although the applicant indicated on his Appeal Form that he was basing his appeal on the "error of law" ground of appeal, Member Roberts also addressed the appeal with respect to the other two statutory grounds of appeal – "breach of natural justice" and "new evidence" (see sections 112(1)(b) and (c) of the *ESA*).

9. Member Roberts determined that, apart from the appellant's unjustified request for a further extension to file additional evidence and argument, the appeal was bound to fail on its merits. Accordingly, she dismissed the appeal as having no reasonable prospect of succeeding (see section 114(1)(f) of the *ESA*).

10. The applicant's "new evidence" was available and could have been submitted to the Employment Standards Branch prior to the Determination being issued. Further, this evidence was neither relevant nor probative to the central issue, namely, whether the applicant was dismissed for just cause (Appeal Decision, paras. 47-48).

11. With respect to the "natural justice" ground of appeal, Member Roberts noted that the applicant's material did not raise any suggestion that he was denied a reasonable opportunity to be heard, or to respond to his former employer's evidence.

12. As for the "error of law" ground of appeal, the applicant was essentially arguing that the delegate misapprehended or otherwise ignored relevant evidence, and that his decision regarding just cause was not supported by the available evidence. The evidence proffered in support of the employer's just cause argument is set out at pages R3 to R4 of the delegate's reasons, and at paras. 21, 61 and 62 of the Appeal Decision. Briefly, this evidence showed that the applicant, during his less than 4-year tenure, persistently had problematic interactions with his fellow employees and, more generally, did not act in a mature and professional manner. The applicant's former employer met with the applicant on multiple occasions regarding his inappropriate workplace behaviour, which culminated in a 3-day suspension in August 2021 – at that time, the applicant was advised that further misconduct could result in his termination. He was

terminated following an incident that occurred in March 2022. I wholly endorse Member Roberts' finding that the delegate did not err in law in finding that there was just cause for dismissal.

THE APPLICATION FOR RECONSIDERATION

13. Although the applicant filed a timely Reconsideration Application Form (filed on April 14, 2023), he did not provide any cogent evidence or argument with respect to why the Appeal Decision should be varied or cancelled. He requested "an extension because there is more information to sort through and verify". There is absolutely nothing in the scant material the applicant has provided along with his Reconsideration Application Form that would call into question the correctness of the Appeal Decision.

14. Reconsideration applications are not intended to serve as a fresh opportunity for a party to present the case that should have been presented in prior proceedings. The focus on a section 116 reconsideration application is narrow – as discussed in *Milan Holdings*, cited above, the Tribunal's reconsideration power should be exercised with restraint, and only where there is a clear error in the appeal decision, or where the adjudicative process preceding the appeal decision was manifestly unfair.

15. In this case, in my view, the Appeal Decision is entirely legally and factually unassailable, and there is nothing in the record that persuades me the applicant has been unfairly treated. The documents that the applicant has submitted in support of his reconsideration application are neither relevant nor probative. Further, these documents, even if they could be characterized as relevant, should have been provided to the Employment Standards Branch during the initial investigation of the complaint. In short, this application does not raise, as required by *Milan Holdings*, "a question of law, fact, principle or procedure which [is] so significant that [it] should be reviewed because of [its] importance to the parties and/or their implications for future cases."

ORDER

16. The applicant's application for reconsideration is dismissed. Pursuant to section 116(1)(b) of the *ESA*, the Appeal Decision is confirmed.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal