

An application for Reconsideration

- by -

Greenwood Product Distribution (Canada) Ltd.

- 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)

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE No.:** 2005A/198

**DATE OF DECISION:** January 9, 2006

## DECISION

### SUBMISSIONS

Song Chiu-Wah        on behalf of Greenwood Product Distribution (Canada) Ltd.  
Ian MacNeill         on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an application by Greenwood Product Distribution (Canada) Ltd. (“Greenwood”) under Section 116 (2) of the *Employment Standards Act* (the “*Act*”) for a reconsideration of Decision #D157/05 (the “Original Decision”), issued by the Tribunal on October 12, 2005.
2. Section 116 of the *Act* provides:
  - (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.
3. Guang Sheng Wan filed a complaint with the Employment Standards Branch alleging that Greenwood contravened the Act by failing to pay wages, annual vacation pay, overtime wages, and had required him to pay the company’s business costs. A delegate of the Director of Employment Standards held a hearing into Mr. Wan’s complaint on May 5, 2005. Greenwood was unrepresented at the hearing although it had knowledge of the opportunity to appear.
4. In his Determination issued July 20, 2005, the delegate found that Mr. Wan was entitled to wages, vacation pay, overtime and business costs.
5. Greenwood appealed the Determination to the Tribunal alleging that evidence had become available that was not available at the time the Determination was made. It submitted that Greenwood was not Mr. Wan’s employer; rather, it said that Mr. Wan was employed by Allen Wu. It attempted to introduce certain documents that purported to support this position. The delegate’s reply noted that Mr. Wu, who was a director of both Greenwood Products and Greenwood International, had interviewed and hired Mr. Wan, and that the name of the employer had never been raised in connection with the adjudication.
6. The Tribunal member in the original decision determined that the new evidence did not meet the Tribunal’s test for the introduction of new evidence, as it existed at the time the hearing was held. The member also noted that Greenwood did not appear at the hearing, at which time the evidence could have been presented. She further noted that Greenwood had failed to comply with the Demand for Employer records.
7. The member declined to consider post-Determination documents submitted by Greenwood on the basis that it did not constitute “new evidence”.

8. Greenwood requests a reconsideration of the Decision on the basis that Mr. Wan “is not an employee of Greenwood”. In a letter to a delegate of the Employment Standards Branch which accompanied the reconsideration request, Mr. Song writes

...we do not accept the outcome of our appeal of the Determination and your current decision...The Determination was unfair and injustice (sic) to our company...A further complains (sic) will be filed against the determination and your division...

9. In a subsequent letter to the Tribunal’s Vice Chair, Mr. Song states that Greenwood and Greenwood International are two separate bodies.
10. The delegate submits that Greenwood’s grounds for reconsideration are the same as the position it took on appeal of the Determination. He contends that the reconsideration process is not to be used as an attempt to re-argue the same issue that was made on appeal, and that the reconsideration application should be denied.

## ISSUE

11. There are two issues on reconsideration: Does this request meet the threshold established by the Tribunal for reconsidering a decision. If so, should the decision be cancelled or varied or sent back to the Adjudicator?

## ANALYSIS

### *The Threshold Test*

12. 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 *Act* detailed in Section 2 “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.”
13. In *Milan Holdings (BCEST # D313/98)* the Tribunal set out a two-stage analysis in the reconsideration process. The first stage is for the panel 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.
14. The Tribunal may agree to reconsider a Decision for a number of reasons, including:
- The adjudicator 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 Adjudicator 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)*

15. 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 Tribunal will not exercise its reconsideration power where the applicant seeks, in essence, to “reargue” the case.
16. In its application, Greenwood repeats arguments it made before the Tribunal on appeal. The argument that Mr. Wan was employed by Mr. Wu, not Greenwood, was fully dealt with by the Tribunal in the original decision.
17. While it is clear Greenwood is not satisfied with the Tribunal’s decision, there is nothing in its application that raises significant questions of law, fact, principle or procedure. Further, there is nothing in the application that relates to any of the factors set out in *Zoltan Kiss*. Rather, its application is an attempt to re-argue the same issue raised on appeal.
18. I find that the reconsideration power should not be exercised in this case.

## **ORDER**

19. Pursuant to Section 116 of the Act I deny the application for reconsideration.

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