

An application for Reconsideration

- by -

Iraj Khabazian-Isfahani
("Khabazian-Isfahani")

- 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: David B. Stevenson

FILE No.: 2006A/132

DATE OF DECISION: January 31, 2007

DECISION

SUBMISSIONS

Iraj Khabazian-Isfahani	on his own behalf
Chris Hatty	on behalf of the University of British Columbia
Rod Bianchini	on behalf of the Director

OVERVIEW

1. Iraj Khabazian-Isfahani (“Khabazian-Isfahani”) seeks reconsideration under Section 116 of the *Employment Standards Act* (the “Act”) of a decision, BC EST #D105/06, made by the Tribunal on October 12, 2006 (the “original decision”). The original decision considered an appeal of a Determination issued by a delegate of the Director of Employment Standards on July 6, 2006. The Determination considered a complaint filed by Khabazian-Isfahani alleging his former employer, the University of British Columbia (“UBC”) had contravened sections of the *Act* in respect of his employment, including Section 17, Section 21, Section 40 and Section 63. The Director found that UBC had contravened Section 17 of the *Act* by failing to pay Khabazian-Isfahani wages for 14 hours of work. The Director ordered UBC to pay Khabazian-Isfahani an amount of \$305.29, including interest, and imposed an administrative penalty under Section 29 of the *Employment Standards Regulation* in the amount of \$500.00.
2. The appeal raised a number of issues, which are outlined in the original decision at page 3:
 - Did the delegate err in finding that Khabazian’s job was not misrepresented, that he was dismissed for cause, and that he was not entitled to overtime wages, vacation pay and travel expenses?
 - Did the delegate fail to observe principles of natural justice in making the Determination?
3. The Tribunal Member making the original decision considered the facts, the arguments made by the respective parties to the Determination and provided an analysis of the issues in the appeal.
4. The substantive issues raised in this application are that the Tribunal Member making the original decision “misunderstood” the grounds of appeal, that the Director was biased against the complainant and the Determination based on fabricated documents and information and credibility was completely ignored. The issues raised here are virtually identical to those made in the appeal.

ISSUE

5. In any application for reconsideration there is a threshold issue of whether the Tribunal will exercise its discretion under Section 116 of the *Act* to reconsider the original decision. If satisfied the case is appropriate for reconsideration, the substantive issue raised in this application, as it was in the appeal, is

whether the Director erred in finding Khabazian-Isfahani's job was not misrepresented, that he was not dismissed for cause and that he was not entitled to overtime wages, vacation pay and travel expenses.

ANALYSIS OF THE PRELIMINARY ISSUE

6. The legislature has conferred an express reconsideration power on the Tribunal in Section 116 of the *Act* which reads as follows:

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 named in a decision or order of the tribunal may make an application under this section*
- (3) *An application may be made only once with respect to the same order or decision.*

7. Section 116 is discretionary. The Tribunal has developed a principled approach to the exercise of this discretion. The rationale for the Tribunal's approach is grounded in the language and the purposes of the *Act*. One of the purposes of the *Act*, found in subsection 2(d), is "*to provide fair and efficient procedures for resolving disputes over the interpretation and application*" of its provisions. Another stated purpose, found in subsection 2(b), is to "*promote the fair treatment of employees and employers*". The general approach to reconsideration is set out in *Milan Holdings Ltd.*, BC EST #D313/98 (Reconsideration of BC EST #D559/97). Briefly stated, the Tribunal exercises the reconsideration power with restraint. In deciding whether to reconsider, the Tribunal considers factors such as timeliness, the nature of the issue and its importance both to the parties and the system generally. An assessment is also made of the merits of the original decision. The focus of a reconsideration application is the original decision.

8. Consistent with the above considerations, the Tribunal has accepted an approach to applications for reconsideration that resolves into a two stage analysis. At the first stage, the reconsideration panel decides whether the matters raised in the application in fact warrant reconsideration. The circumstances where the Tribunal's discretion will be exercised in favour of reconsideration are limited and have been identified by the Tribunal as including:

- failure to comply with the principles of natural justice;
- mistake of law or fact;
- significant new evidence that was not reasonably available to the original panel;
- inconsistency between decisions of the tribunal that are indistinguishable on the critical facts;
- misunderstanding or failure to deal with a serious issue; and
- clerical error.

9. It will weigh against an application if it is determined its primary focus is to have the reconsideration panel effectively re-visit the original decision and come to a different conclusion.

10. If the Tribunal decides the matter is one that warrants reconsideration, the Tribunal proceeds to the second stage, which is an analysis of the substantive issue raised by the reconsideration.
11. After review of the original decision and the submissions of the parties on this application, I have decided this application does not warrant reconsideration.
12. At the root of this application is a continuing disagreement with the Determination and a failure by Khabazian-Isfahani to recognize an appeal to the Tribunal is neither a reinvestigation of the complaint nor an opportunity to seek a review of the factual conclusions and analysis done by the Director's delegate. It is an error correction process. The grounds upon which an appellant may file an appeal are limited to those found in Section 112(1) of the *Act*. This point was made in the original decision.
13. This application does no more than re-visit several aspects of his appeal. That is an inappropriate use of the reconsideration provisions. The focus of a reconsideration application is the original decision of the Tribunal and I can find no error in that decision.
14. It is unnecessary to review the reasons provided in the original decision for dismissing the appeal. They clearly and accurately set out the principles applicable to an appeal based on a dispute with findings of fact, correctly identify of the applicable principles of natural justice and correctly describe the onus on an appellant alleging bias against the person investigating and adjudicating the Determination.
15. The application is denied.

ORDER

16. Pursuant to Section 116 of the *Act*, I order the original decision be confirmed.

David B. Stevenson
Member
Employment Standards Tribunal