



An Application for Reconsideration

- by -

R.I.C.H. Management Systems Ltd. operating as Kaien Computer Solutions

Carla J. Hull a.k.a. Carla Hansen, a Director and Officer of  
R.I.C.H. Management operating as Kaien Computer Solutions

Robert Hansen a.k.a. Robert Ingvallsen, a Director and Officer of  
R.I.C.H. Management operating as Kaien Computer Solutions  
("Kaien")

- of a Decision by -

The Employment Standards Tribunal  
(the "Tribunal")

pursuant to Section 116 of the  
*Employment Standards Act R.S.B.C. 1996, C.113*

**ADJUDICATOR:** C. L. Roberts

**FILE No.:** 2000/684, 2000/685 & 2000/686

**DATE OF DECISION:** January 18, 2001

## DECISION

This is a decision based on written submissions by Carla Hansen, on behalf of Kaien, Hansen and Hansen and Bill Woolsey on behalf of the Director of Employment Standards (the "Director").

### OVERVIEW

This is an application by Carla Hansen ("Hansen"), an Officer/Director of R.I.C.H Management Systems Ltd. operating as Kaien Computer Solutions ("Kaien"), pursuant to Section 116(2) of the Employment Standards Act ("the Act"), for a reconsideration of Decision **BCEST #D291/00** (the "Original Decision") which was issued by the Tribunal on July 24, 2000.

The Original Decision confirmed a Determination made by a delegate of the Director on February 18, 2000. The Director's delegate found that Kaien and its directors and officers, Carla Hull a.k.a. Carla Hansen and Robert Hansen a.k.a. Robert Ingvalsen, were liable to Tiffany Purdy ("Purdy") in the amount of \$763.17 in outstanding wages, compensation for length of service and interest.

### ISSUE TO BE DECIDED

Whether the Adjudicator erred by failing to comply with the principles of natural justice and by failing to deal with a significant issue on appeal.

### FACTS

Purdy was employed by Kaien as a clerk from May 1, 1997 to September 2, 1998. On October 6, 1998, Hansen and Robert Hansen entered into an agreement to sell Kaien to Howard Hood. After the documents were signed, the parties had a dispute over the sale and, at the time the Determination was issued, the issue of ownership of Kaien had not been resolved.

There was no dispute that Purdy was dismissed before the sale documents were entered into, and that she received no written notice of termination.

The delegate reviewed the documentation provided by Hood and Purdy, and concluded that Purdy was owed outstanding wages for Kaien's failure to pay her minimum daily pay entitlements.

Purdy's Record of Employment (ROE) indicated that Purdy was laid off due to a shortage of work, although Hansen stated that Purdy was laid off due to unsatisfactory performance. No

evidence was provided to the delegate to substantiate Kaien's position that Purdy was dismissed for just cause.

The adjudicator found that, since Hansen and Robert Hansen were Directors or Officers of Kaien at the time Purdy was employed by the company, which they did not deny, they were personally liable for up to two month's wages whether or not Kaien was sold to Hood, pursuant to section 96(1) of the Act.

On appeal, Kaien argued that Purdy was not an employee, but an informal working arrangement for the benefit of Purdy and her parents. The adjudicator concluded that Purdy fell within the definition of employee under section 1 of the Act, as she performed work normally performed by an employee.

There was no dispute that Purdy was not paid the minimum daily pay on many days, but Kaien argued that Purdy created this situation when she showed up late to work. The adjudicator concluded that Kaien had not met the burden of showing that the Determination was incorrect, since it provided no specific evidence to support its position. The adjudicator stated

On appeal the onus is on the appellant to show the error in the original decision. The employer has not met this burden by providing precise information to support its position. The investigations shows that Tiffany Purdy worked less than 2 hours on several days but there is no evidence to show whether this was due to scheduling, tardiness or some other reason. I find that Ms. Purdy was paid for less than the required daily minimum hours.

Kaien also argued that Purdy had quit her employment, but that the ROE had been filled out incorrectly, and that the delegate was advised of this error. Purdy denied saying she was not available for work or that she quit. The adjudicator was not prepared to accept that the delegate erred in his conclusion on this point, but continued by finding that, even if Purdy had made a statement indicating whether or not she would be coming back to work, Kaien had not satisfied the objective element of a quit set out in *Burnaby Select Taxi Ltd. v British Columbia (Director of Employment Standards)* **BCEST #D091/96**. The adjudicator concluded that Purdy had not quit her employment.

Finally, the adjudicator found no evidence that, even if Kaien had reasons to terminate Purdy's employment for cause, it had not warned her about her actions, or in any way disciplined her for those actions before it terminated her, and could, therefore, not use those actions to substantiate dismissal at a later date.

## ARGUMENT

Hansen seeks a reconsideration of the Original Decision on the grounds that the Tribunal

- failed to comply with the principles of natural justice by "failing to recognize the fact that Ms. Purdy quit without providing Kaien Computers any notice..."; and
- misunderstood or failed to deal with a significant issue on appeal, specifically, section 34 of the Act. Section 34 (1) provides that an employer must pay minimum daily pay if an employee reports for work on any day as required by an employer. Hansen contends that Purdy was not required by her to be working on any day, but chose to come in.

Section 34(2) states that an employee is entitled to be paid for a minimum of a) 4 hours at the regular wage if the employee starts work unless the work is suspended for a reason completely beyond the employer's control, including unsuitable weather conditions.... and b) 2 hours in any other case unless the employee is unfit to work...

Hansen argues that Purdy was unfit to work as she chose not to show up unless it was convenient for her and this was completely out of her control as the employer.

Hansen further contends that the adjudicator found in favor of Purdy because she was unable to provide specific evidence of exact dates Purdy's own actions prevented her from working the minimum required hours. She argues that "all days were a result of Ms. Purdy's own actions".

The Director contends that the application for reconsideration should be dismissed, as it constitutes an attempt to have the Tribunal re-examine the issues that were reviewed at length by the adjudicator on appeal.

## ANALYSIS

The Tribunal has established a two stage analysis for an exercise of the reconsideration power (see *Milan Holdings Ltd.* (BCEST #D313/98). At the first stage, the panel decides whether the matters raised in the application 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.

(*Milan Holdings*, p. 7)

The scope of review on reconsideration is a narrow one (see *Zoltan Kiss BCEST #D122/96*): 1. failure by the adjudicator to comply with the principles of natural justice, 2. mistake in stating the facts, 3. failure to be consistent with other decisions which are not distinguishable on the facts, 4. significant and serious new evidence that would have led the adjudicator to a different decision, 5. misunderstanding or a failure to deal with a significant issue in appeal, and 6, a clerical error in the decision.

In my view, this is not an appropriate case for exercising the reconsideration power.

Hansen alleges that the adjudicator breached of the rules of natural justice by "failing to recognize that Ms. Purdy quit her employment without providing Kaien Computers any notice..". This does not constitute a breach natural justice.

Natural justice includes the requirement that parties have the opportunity to:

- 1) know the case against them
- 2) have the opportunity to dispute, correct, or contradict anything that is prejudicial to their positions; and
- 3) present arguments and evidence supporting their own case.

There is no evidence the Tribunal failed to give the parties a full and fair hearing. The adjudicator allowed the parties to present their evidence as if the Determination had not existed. The parties were made aware of the allegations, and had the opportunity to respond during the investigative process. They had full opportunity to dispute or challenge evidence that was prejudicial to their positions, and to present full argument, both to the delegate and on appeal. They were given a full and fair hearing on appeal, and the adjudicator concluded that they had failed to meet the burden of establishing that the Determination was in error. There is no evidence that the adjudicator failed to comply with rules of natural justice. I deny the application on this ground.

Hansen also argues that the adjudicator misapplied section 34 in light of the evidence of Ms. Purdy's work schedule.

As the Director has accurately noted, a reconsideration application is not an opportunity to have the Tribunal "re-weigh" the evidence.(see *Milan*) The record shows that the adjudicator heard and considered the arguments advanced by Kaien on this matter. He set out section 34 and considered the evidence in light of the law. There is nothing in Kaien's submission that was not presented to the adjudicator. Absent any unreasonableness in the adjudicator's conclusion, I find no basis to exercise the reconsideration power.

**ORDER**

The application for reconsideration is dismissed.

***C. L. ROBERTS***

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**C. L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**