

An Application for Reconsideration

- by -

Patricia A. Ridley

- 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

ADJUDICATOR: Carol L. Roberts

FILE No.: 2001/816

DATE OF DECISION: January 15, 2002

DECISION

This is a decision based on written submissions by Patricia A. Ridley.

OVERVIEW

This is an application by Patricia A. Ridley, under Section 116(2) of the Employment Standards Act ("the Act"), for a reconsideration of Decision BC EST # D595/01 (the "Original Decision") which was issued by the Tribunal on November 2, 2001.

The Original Decision varied a Determination made by a delegate of the Director of Employment Standards on July 5, 2001. The Director's delegate found that Ms. Ridley was owed compensation for length of service and wages for weekend work in the amount of \$4,090.84. The delegate dismissed Ms. Ridley's claim for commission earning and regular wages.

Ms. Ridley's employer appealed the Determination, and, on appeal, the adjudicator concluded that, although he was "generally not persuaded" that delegate had erred, he was prepared to vary the amount awarded. The adjudicator concluded that the delegate made a clerical error in the calculation schedule, and varied the determination, reducing the amount owed by the employer by four days pay, plus adjustments for vacation pay and interest.

GROUND FOR REVIEW

Ms. Ridley contends that the adjudicator made factual errors interpreting the record of the days worked. She argues that the adjudicator misunderstood her calendar notations, and denied her compensation for days that her employer did not contest that she worked. She submitted her calendars for those days, as well as her employer's calendar, an airplane ticket stub and a Canadian Plus statement showing that she travelled on one of the days denied by the adjudicator.

ANALYSIS

The Tribunal has established a two stage analysis for an exercise of the reconsideration power (Milan Holdings Ltd. (BCEST #D313/98). At the first stage, the Tribunal decides whether the matters raised in the application in fact warrant reconsideration. In deciding this question, the Tribunal should consider and weigh a number of factors such as whether the application is timely, whether it is an interlocutory matter, and whether its primary focus is to have the reconsideration panel effectively "re-weigh" evidence tendered before the adjudicator at first instance. However, 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 Tribunal has held that a reconsideration will only be granted in circumstances demonstrate that there has been a breach of the rules of natural justice, where there is compelling new evidence that was not available at the new hearing, or where the adjudicator made a fundamental error of law (Bicchieri Enterprises Ltd. (BCEST #D335/96).

The scope of review on reconsideration is a narrow one (see Kiss BC EST #D122/96), and include * failure by the adjudicator to comply with the principles of natural justice,

- mistake in stating the facts,
- failure to be consistent with other decisions which are not distinguishable on the facts,
- significant and serious new evidence that would have led the adjudicator to a different decision,
- misunderstanding or a failure to deal with a significant issue in appeal, and
- a clerical error in the decision.

In the absence of any submissions by Ms. Ridley's employer or the delegate, and in light of the documentation provided in support of the application, I accept that the adjudicator erred in interpreting her calendar, and concluding that the delegate had made a simple calculation error. On that basis, I find that the adjudicator incorrectly varied the calculation of wages.

Although Ms. Ridley has not established a basis for which a reconsideration will normally be granted, in light of the absence of any opposition to the application, it is allowed.

ORDER

I Order, under Section 116(1) of the Act, that the application for reconsideration is granted. The decision of the delegate, issued July 5, 2001, is confirmed.

Carol L. Roberts
Adjudicator
Employment Standards Tribunal