

An application for Reconsideration

- by -

Sunny Jaura carrying on business as Jaura Enterprises

- 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: John M. Orr

FILE No.: 2006A/143

DATE OF DECISION: March 7, 2007

DECISION

OVERVIEW

1. This decision responds to an application by Sunny Jaura (“Jaura”) pursuant to Section 116 (2) of the *Employment Standards Act* (the “*Act*”) for reconsideration of a Tribunal decision #D124/06 (the “Original Decision”) issued by the Tribunal on December 19, 2006.
2. Jaura employed in his business a Mr. Christos Feretos (“Feretos”), who subsequently filed a complaint alleging that Jaura had failed to pay him wages as required by the *Act*.
3. Following an investigation, a delegate of the Director of Employment Standards (“the Director”) issued a Determination (“the Determination”) in which she determined that Jaura was in contravention of the *Act* in failing to pay wages and ordered Jaura to pay Feretos a total of \$1,857.23 including interest to that date. The Director also imposed two administrative penalties of \$500.00 each.
4. Jaura appealed the Determination on the sole ground that the Director failed to observe the principles of natural justice. Jaura filed his appeal after the expiry of the time allowed by the legislation. Accordingly, a preliminary issue on the appeal was whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* to extend the time period for Jaura’s appeal. The Tribunal decided that an oral hearing was not necessary in order to decide the preliminary issue and therefore the Original Decision was determined based on the parties’ written submissions as well as the Section 112(5) “Record”.
5. The Member considering Jaura’s appeal noted that if Jaura failed to obtain an extension of time to file his appeal then the substantial appeal itself would be moot, that is it would not be determined. The Member considered the relevant provisions of the *Act* and the Tribunal’s jurisprudence setting out the factors that should be considered in determining whether compelling reasons existed for extending the time for filing an appeal. The Member was not satisfied that an extension of time ought to be granted and ordered that the appeal be dismissed on the basis that the request for an appeal was not made within the time permitted. The Determination, including the administrative penalties, was confirmed.
6. Jaura has applied for reconsideration of the Original Decision made by the Tribunal in which an extension of time for filing his appeal was denied.

ANALYSIS

7. The Tribunal reconsiders a decision only in exceptional circumstances 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* provided in Section 2, “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.”
8. In the application for reconsideration Jaura asserts a number of complaints about the manner in which the Director’s delegate handled the investigation. He complains that the delegate did not inform him she was going on holidays and failed to adequately communicate with him. He felt he was mistreated and misled by the delegate. He states that he feels that due to his young age, sex and race, the delegate treated him differently from others.

9. However, Jaura does not address the primary and fundamental issue for this reconsideration, which is the lateness of his original appeal and why he thinks there was any error in the Original Decision, which declined to grant an extension of time for filing his appeal.
10. The test used by the Tribunal for the exercise of the reconsideration power under section 116 of the *Act* is set out in *Milan Holdings Ltd.*, BCEST #D313/98. The Tribunal has 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 Tribunal in *Milan* went on to state that the primary factor weighing in favour of reconsideration is whether the applicant has raised significant questions of law, fact, principle or procedure of sufficient merit to warrant the reconsideration.
11. The problem in this application is that Jaura has not alleged any errors of law, fact, principle or procedure made by the Tribunal Member in determining his original appeal. He continues to assert that he was mistreated by the Director's delegate during the investigation but he does not explain why he thinks that the original decision was wrongly decided. The Original Decision considered carefully all of the relevant factors and applicable sections of the *Act* in considering whether to extend the time allowed for filing the appeal and there is really nothing in the appellant's submissions that would warrant any serious reconsideration of that decision.
12. The Tribunal uses its discretion to reconsider decisions with caution in order to ensure finality of its decisions and in this case Jaura has had a fair opportunity to present his case to the Director and to explain to the Tribunal while his appeal was filed later than allowed by the legislation. Although he was not successful in his efforts, it is unlikely that a re-hearing of his application to extend time would result in a different decision. I am not persuaded that there is any substantial reason for me to vary or cancel the Original Decision or to refer the matter back for further consideration. Accordingly the application for reconsideration is dismissed.

ORDER

13. The application to reconsider the decision of the Tribunal Member in this matter is dismissed and the original decision is confirmed.

John M. Orr
Member
Employment Standards Tribunal