

An Application for Reconsideration

- by -

Trozzo Holdings Ltd.
("Trozzo")

- 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: John M. Orr

FILE No.: 2000/712

DATE OF DECISION: January 18, 2001

DECISION

OVERVIEW

This is an application by Trozzo Holdings Ltd. ("Trozzo") under Section 116 (2) of *the Employment Standards Act* (the "Act") for a reconsideration of a Decision #D294/00 (the "Original Decision") which was issued by the Tribunal on July 20, 2000.

The original decision was issued in response to an appeal by Trozzo of a penalty determination issued by the Director. The penalty was alleged to be the second issued against Trozzo. Trozzo claimed that the first penalty determination had been withdrawn and that therefore this should have been treated as a first penalty. The adjudicator in the original decision found that the first penalty had not been withdrawn and that this penalty was properly treated as a second penalty. The Determination was confirmed.

Trozzo now requests that the Tribunal exercise its discretion pursuant to section 116 to reconsider the adjudicator's decision. Trozzo again alleges that the first penalty was reversed because the originating issue had been an honest mistake and had been settled.

ANALYSIS

The current suggested approach to the exercise of the reconsideration discretion under section 116 of the *Act* was set out by the Tribunal in *Milan Holdings Ltd.*, BCEST #D313/98 (applied in decisions BCEST #D497/98, #D498/98, et al). In *Milan* the Tribunal sets 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. 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.

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. The decision states, "at this stage the panel is assessing the seriousness of the issues to the parties and/or the system in general". Although most decisions would be seen as serious to the parties this latter consideration will not be used to allow for a "re-weighing" of evidence or the seeking of a "second opinion" when a party simply does not agree with the original decision.

It is one of the defined purposes of the *Act* to provide a fair and efficient procedure for resolving disputes and it is consistent with such purposes that the Tribunal's decisions should

not be open to reconsideration unless there are compelling reasons: *Khalsa Diwan Society* BCEST #D199/96.

The circumstances in which an application for reconsideration will be successful will be limited. In a Reconsideration decision dated October 23, 1998, *The Director of Employment Standards*, BCEST #D475/98, the Adjudicator sets out those limits as follows:

Those circumstances have been identified in several decisions of the Tribunal, commencing with Zoltan Kiss, BCEST #D122/96, and include:

- *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*

In my opinion this is not a case that warrants the exercise of the reconsideration discretion. There is no submission that the adjudicator in the original decision made any mistake of fact or law or that his decision was inconsistent with other decisions of the Tribunal. There is no significant new evidence presented that was not available to be presented at the earlier stages of this matter. There is no submission that the adjudicator misunderstood or failed to deal with any serious issue.

In essence Trozzo is simply seeking to have a third opinion on this matter. It would be inconsistent with the fundamental purposes of the *Act* to allow parties to seek reconsideration simply to attempt to get a more favourable ruling.

The grounds set out by Trozzo do not provide any reasonable basis upon which a review would likely be successful. It is clear that Trozzo has been an active participant in this matter and has had ample opportunity to be heard.

ORDER

This Tribunal declines to reconsider the original decision BC EST #D294/00 and it is hereby confirmed.

JOHN M. ORR

John M. Orr
Adjudicator
Employment Standards Tribunal