An Application for Reconsideration

- by -

Park Lane Furniture Mfg. Ltd., aka Parklane Furniture Mfg. Ltd., aka Parklane Hotels-Motels Furniture Mfg. Ltd.
("Park Lane")

- 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: Fern Jeffries

FILE No.: 2001/817

DATE OF DECISION: January 22, 2002

DECISION

This is a request to reconsider a decision pursuant to Section 116 of the *Employment Standards Act* (the *"Act"*) that provides:

(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) cancel or vary the order or decision or refer the matter back to the original panel.

OVERVIEW:

Park Lane Furniture Mfg. Ltd. aka Parklane Furnity Mfg. Ltd. aka Parklane Hotels-Motels Furniture Mfg. Ltd. ("Park Lane") was issued a penalty determination on August 17, 2001, as a result of non- compliance with the Demand for Records issued pursuant to a wage complaint by an employee. This determination was appealed to the Tribunal. The adjudicator considered the explanation offered by the employer, the facts of this case, and the Tribunal jurisprudence and decided to confirm the determination.

Park Lane requests that the Tribunal reconsider this decision. However, the Tribunal does not reconsider decisions unless there is a serious error in law or a violation of the principles of natural justice. The Tribunal's reconsideration power is discretionary. This is not a case suitable for the exercise of this discretion as the applicant is simply re-arguing the case made at appeal.

ISSUE:

Does this application for reconsideration meet the threshold test established by the Tribunal? Should the penalty determination be cancelled?

FACTS:

The delegate issued the Demand for Records on July 18, 2001 following numerous attempts to gain access to the employer's payroll records. On August 17, 2001 another delegate to the director issued a penalty determination. The employer appealed this determination arguing that his injury on July 18th prevented him from producing the payroll records and that he had not received the previous requests from the delegate because his fax was broken and his answering machine messages disappeared.

The adjudicator decided to confirm the determination:

> "Based on the evidence presented I conclude that the appellant has not shown that Parklane complied with the requirements of the Act or that the Director misdirected herself in imposing a penalty."

ARGUMENT:

In this application for reconsideration, the employer argues that the Tribunal should reconsider the decision because he could not provide the records due to his injury and further that his fax was broken and his answering machine was not functioning properly. The delegate argues that this application is not suitable for reconsideration as the employer is simply re-arguing the case that he made at appeal.

ANALYSIS:

The *Employment Standards Act* intends that the adjudicator's Appeal Decision be "final and binding". Therefore, the Tribunal only agrees to reconsider a Decision in exceptional circumstances. The Tribunal uses its discretion to reconsider decisions with caution in order to ensure finality of its decisions and to promote efficiency and fairness of the appeal system to both employers and employees. This reflects the purposes of the *Act* detailed in Section 2.

As established in *Milan Holdings* (BCEST # D313/98) the Tribunal has developed a principled approach in determining when to exercise its discretion to reconsider. The primary factor weighing in favor 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.

Reasons the Tribunal may agree to reconsider a Decision are detailed in previous Tribunal cases. For example, BC EST#D122/96 describes these as:

- The adjudicator fails to comply with the principles of natural justice;
- There is some mistake in stating the facts;
- The Decision is not consistent with other Decisions based on similar facts;
- Some significant and serious new evidence has become available that would have led the adjudicator to a different decision;
- Some serious mistake was made in applying the law;
- Some significant issue in the appeal was misunderstood or overlooked; and
- The Decision contains some serious clerical error.

While this list is not exhaustive, it reflects the practice of the Tribunal to use its power to reconsider only in very exceptional circumstances. The Reconsideration process was not meant to allow parties another opportunity to re-argue their case. As outlined in the above-cited case:

> It would be both unfair and inefficient if the Tribunal were to allow, in effect, two hearings of each appeal where the appeal hearing becomes nothing more than a discovery process for a reconsideration application.

In my analysis, this request for reconsideration is simply an attempt to re-argue the case. The employer has submitted additional 'proof' of his injury and additional 'clarification' of why he was unable to comply with the numerous requests for payroll information. This is not new information. Rather, this information was carefully considered at appeal and is fully document in the written appeal decision. Park Lane's application to have the penalty reconsidered by the Tribunal does not meet the threshold test.

ORDER:

The request for reconsideration is denied and the original decision is confirmed.

Fern Jeffries
Adjudicator
Employment Standards Tribunal