

An Application for Reconsideration

- by -

Orbit Security Inc.  
("Orbit")

- 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:** Elena Miller

**FILE No.:** 2015A/69

**DATE OF DECISION:** June 9, 2015

## DECISION

### SUBMISSIONS

Jagsir Singh Gill

on behalf of Orbit Security Inc.

### OVERVIEW

1. Orbit Security Inc. (“Orbit”) applies pursuant to section 116 of the *Employment Standards Act* (the “Act”) for reconsideration of a Tribunal decision by Member Stevenson (the “Member”) issued on April 23, 2015, BC EST # D040/15 (the “Appeal Decision”). The Appeal Decision confirmed a determination (the “Determination”) issued January 16, 2015, by a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”), which ordered Orbit to pay a former employee, Baljinder Singh Sohi (“Mr. Sohi”), wages of \$554.94 and to pay administrative penalties of \$1,000.00.

### BACKGROUND

2. The factual background to this matter is set out in the Determination and summarized in the Appeal Decision. In essence, Mr. Sohi filed a complaint against Orbit, which is a security company, alleging it had failed to pay him all wages owed for work he performed. Orbit agreed he had worked for it on November 26, 2013, and December 1, 2013, but disputed his claim that he had also worked for it on December 2, 8, 9 and 10, 2013. The Delegate held a hearing with respect to this dispute at which several witnesses testified, including Mr. Sohi and Jagsir Singh Gill (“Mr. Gill”), a director of Orbit. The Delegate explained in the Determination why she preferred the evidence of Mr. Sohi to that of Mr. Gill on the question of whether he worked on the disputed four days. She also stated that “...in absence of any Employer records, I find Mr. Sohi’s notebook to be the best evidence available regarding his work between December 2 and 10, 2013” (Determination, p. R6). She accepted that he had worked on those days and ordered that wages be paid for the work.
3. In appealing the Determination, Orbit submitted documents which detailed “work done for Orbit by other security employees over the disputed period of time at the work site where Mr. Sohi said his work was performed and copies of invoices presented to the party that contracted Orbit’s services at the site” (Appeal Decision, para. 16). However, the Member found these documents did not meet the Tribunal’s test for the admission of new evidence on appeal. After summarizing the test (Appeal Decision, para. 25), the Member stated:

... the evidence submitted is not “new”; it existed at the time the Determination was being made and could have been provided to the Director at any time during the complaint process. On this basis alone it will does [sic] not satisfy the principle criteria for allowing additional evidence on an appeal. As well, I am not persuaded the proposed evidence is relevant, credible or probative. The information in the documents is both incomplete and internally inconsistent. The invoice records 497 hours worked by Orbit security guards at the work site; the sheets purporting to detail that work add up to considerably less than that. (Appeal Decision, 26)
4. The Member found the appeal “simply challenges findings of fact” (Appeal Decision, para. 27) and failed to show any error in the findings of fact made by the Delegate:

The findings and the conclusion of the Director are rationally grounded in an analysis of the evidence, which taken as a whole, showed the [sic] Mr. Sohi worked on the days for which he claimed wages. Orbit

was given a fair opportunity to present its evidence and argument in response to Mr. Sohi's claim.  
(Appeal Decision, para. 28)

5. In the result, Orbit's appeal was dismissed and the Determination was confirmed.

## ARGUMENT

6. In seeking reconsideration of the Appeal Decision, Mr. Gill on behalf of Orbit states: "I strongly affirm and assure that Mr. ... Sohi did not work on December 2, 8, 9, 10". He submits he has a witness who was "out of the country when the hearing was done" and who "worked on those days which [Mr. Sohi] is claiming". He further submits that five guards were working on those days: two on day shift and two on night shift and a fifth guard whom he says worked when one of the four guards were off. He attaches documents which he says are log sheets for those guards. He submits other documents which he says are proof of hours sent to the client for payment and proof of payment received from the client. He also subsequently submitted a document which he says shows the list of tenants/owners of the building which was the work site.

## ANALYSIS

7. Section 116 of the *Act* provides that the Tribunal "may" reconsider a decision. The Tribunal exercises this discretionary power in a manner consistent with the purposes of the *Act* as set out in section 2. These include providing "fair and efficient" dispute resolution procedures. It would be neither fair nor efficient if the Tribunal were to permit a party whose appeal has been dismissed an opportunity to re-argue their appeal before a different panel in hopes of a different outcome. Accordingly, the Tribunal requires that an application for reconsideration raise a matter which warrants exercise of the power to reconsider: *Milan Holdings Inc.*, BC EST# D313/98 (Reconsideration of BC EST # D559/97).
8. In the present case, the application for reconsideration does not challenge the finding of the Member in the Appeal Decision that the evidence Orbit wishes the Tribunal to consider is not, as required by section 112(1)(c) of the *Act*, evidence which has "become available *that was not available at the time the determination was being made*" (emphasis added). The application does not dispute the Member's finding in that regard. In these circumstances, there is no error in the Member's conclusion that the evidence fails to meet the Tribunal's established test for admitting evidence for purposes of appeal under section 112(1)(c).
9. I further agree with the Member that, even if the evidence were to be considered, it would not establish a reviewable error by the Delegate. Individual records showing that other people worked on the days when Mr. Sohi claimed to have work do not establish he did not also work on those days. Orbit did not provide, for example, a payroll record listing all employees who worked on the dates in issue. Orbit has also not challenged the Member's observation that the proposed evidence is not "relevant, credible or probative" because the information in the documents is "incomplete and internally inconsistent" (Appeal Decision, para. 26).
10. Orbit provides no other basis for reconsidering the Appeal Decision beyond asserting its position that Mr. Sohi did not work the dates in issue and asking the Tribunal to consider evidence which could have been, but was not, presented at the hearing before the Delegate. As the Tribunal has noted in numerous decisions, an appeal under section 112 is not intended to provide a party dissatisfied with the result of a determination the opportunity to submit to the Tribunal evidence that should have been provided to the Director before a determination was made: see, for example, *Szabo Fishing Ltd.*, BC EST # D009/15 at para. 32.

11. In these circumstances, I find the reconsideration application does not raise a matter which warrants exercise of the Tribunal's power of reconsideration under section 116 of the *Act*.

**ORDER**

12. For the reasons given, the application for reconsideration is dismissed. The Appeal Decision is confirmed.

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**Elena Miller**  
**Member**  
**Employment Standards Tribunal**