

EMPLOYMENT STANDARDS TRIBUNAL

In the Matter of a Reconsideration Pursuant to Section 116 of the
Employment Standards Act, R.S.B.C. 1996, c. 113

- by -

Harry Dunn
("Dunn")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

ADJUDICATOR:	Ian Lawson
FILE NO.:	97/754
DATE OF DECISION:	February 19, 1998

DECISION

OVERVIEW

This is a request by Harry Dunn ("Dunn") for reconsideration pursuant to section 116 of the *Act* of the decision of Adjudicator David Stevenson, made on September 5, 1997 (BC EST #D394/97). The decision allowed in part an appeal by Dunn's Automatic Transmission Ltd. ("DAT") from a Determination issued by a delegate of the Director of Employment Standards on March 24, 1997. The Determination found that DAT had contravened sections 17, 57, 58 and 63 of the *Employment Standards Act* (the "*Act*") by failing to pay wages for days worked, failing to allow or pay annual vacation entitlement and failing to pay length service compensation upon termination of Dunn's employment. DAT was ordered to pay \$5,296.12 to Dunn in respect of these contraventions. On appeal, DAT's obligation to pay compensation for length of service was set aside, on the basis that Dunn had quit his employment instead of being terminated by DAT, as found by the Director.

The request for reconsideration was made on September 19, 1997, and the parties were allowed until November 5, 1997 to file written submissions. The request is now decided on the basis of these submissions.

ISSUE TO BE DECIDED

I must decide whether there are sufficient grounds to warrant setting aside or varying the Adjudicator's decision.

ANALYSIS

Dunn makes three arguments in support of his request for reconsideration:

1. He refers to this Tribunal's decision BC EST #D91/96, *Burnaby Select Taxi Ltd. v. Zoltan Kiss*, and argues that he was angry when he said the words "I quit" as found by the Adjudicator. He submits that a witness heard at the appeal confirmed he was angry on that occasion. Although Dunn is not clear in making argument on this point, I presume he is submitting that the Adjudicator erred by concluding Dunn manifested an intention to quit, despite having uttered the words "I quit" as part of an emotional outburst, within the meaning of the *Zoltan Kiss* decision.
2. He argues that the Adjudicator erred in relying on hearsay evidence of the witness Mrs. Dunn, and in relying on her evidence generally despite Dunn's submission that he had proven to the Adjudicator that Mrs. Dunn had "lied under oath about her evidence she gave him a few times." Unfortunately, Dunn does not specify in his submission exactly what evidence given by Mrs. Dunn was allegedly hearsay, and what evidence was proven by Dunn to have been false.
3. He submits there was evidence presented at the appeal hearing which was contrary to the Adjudicator's findings that Dunn had taken two days off in the last week of March, 1996, and that Dunn had not inquired of DAT whether there was work available after he was allegedly terminated. Dunn also makes the following submission, which unfortunately I find to be undecipherable: "Mr. Stevenson never

raised the question of which I said any thing to D.A.T. about my job when I was giving testimony."

With regard to the first point, the Adjudicator did find Dunn had expressed the words "I quit" in anger, but the Adjudicator based his decision on objective conduct by Dunn after these words were expressed. The following passage from the decision, in my view, is a complete answer to Dunn's first argument for reconsideration:

Third, while Dunn's initial intention to quit may have been part of an emotional response to his personal and financial problems, his objective conduct following his request for separation is inconsistent with any intention to continue his employment. There are several aspects of his evidence that support this conclusion.

The Adjudicator then sets out several portions of evidence given by Dunn, some of which are not disputed by Dunn in making the request for reconsideration.

With regard to the second point in Dunn's request, I am afraid I have no basis to impugn the Adjudicator's decision because Dunn provides no detail as to which statements made by the witness Mrs. Dunn were allegedly hearsay or untrue. In making a request for reconsideration, the onus is on Dunn to point out any errors of fact or law made by the Adjudicator. Unfortunately, Dunn simply does not provide me with any details to support his argument that hearsay evidence was relied on by the Adjudicator, or that the Adjudicator relied on facts which were proven to have been untrue.

With regard to the third point, Dunn is arguing that the Adjudicator should have believed Dunn's own evidence in preference to the evidence of others on two points. It is not possible for me to conclude, on the basis of Dunn's written submission alone, that the Adjudicator erred by not believing Dunn's evidence given at the appeal hearing. The Adjudicator heard each witness giving evidence in person, and is in a far better position than I to assess whose evidence was credible and whose evidence was not. In making his submission on this point, Dunn has not raised sufficient doubt as to the Adjudicator's findings on credibility to warrant setting aside the decision on the two points of evidence raised. In any event, even if the Adjudicator was mistaken in the two points raised, I find these points to be peripheral or collateral to the heart of the decision made and this error would not cause me to doubt the Adjudicator's decision as a whole.

This Tribunal has adopted a justifiably conservative approach to section 116 of the *Act*, which allows for reconsideration of its decisions. In dismissing a recent request for reconsideration made by the Director of Employment Standards, the Chair of this Tribunal stated:

The Tribunal has consistently held that applications for reconsideration should succeed only when there has been a demonstrable breach of the rules of natural justice, or where there is compelling new evidence that was not available at the time of the appeal hearing, or where the adjudicator has made a fundamental error in law. The reconsideration provision of the *Act* should not be a second opportunity to challenge findings of fact made by the adjudicator, especially when such findings follow an oral hearing, unless such findings can be shown to be as lacking in evidentiary foundation. [*Re Director of Employment Standards and the Employment Standards Tribunal*, BC EST #D344/96, p. 2]

A heavy onus therefore rests on the party requesting reconsideration to demonstrate that the decision in question was arrived at in a procedurally unfair manner, that it contains a fundamental

BC EST #D064/98

Reconsideration of BC EST #D394/97

error of law, or that there is some compelling new evidence which could now lead to a different decision.

I find that Dunn's request for reconsideration is basically an effort to challenge the Adjudicator's findings of fact, without providing me with any detail as to how or why these findings are unreliable or in error. As such, the request must be denied.

ORDER

Pursuant to section 116(1) of the *Act*, I dismiss Dunn's application for reconsideration.

Ian Lawson
Adjudicator
Employment Standards Tribunal