An Application for Reconsideration

- by -

Wiremix Media Inc. A Division of NextLevel.Com Inc.
("Wiremix")

- 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, Chair

**FILE No.:** 2001/888

**DATE OF DECISION:** February 12, 2002

# DECISION

## OVERVIEW

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.

The employer requests reconsideration of the Decision that confirms the Determination requiring the company to pay wages owing in the amount of $12,544.08 plus interest. At appeal, the employer raised a number of issues. In an additional submission to the appeal, the employer claimed that the determination names the wrong company. This allegation is pursued as the sole basis for requesting reconsideration of the original decision. The employer alleges an "error in facts" in naming the company as "Wiremix Media Inc. a division of NextLevel.Com Inc.". However no new evidence is provided.

In order to meet the objectives of the *Act*, the Tribunal exercises its discretion to reconsider with considerable restraint. After careful consideration, I conclude that this application fails to meet the threshold established for reconsideration in that this application merely resubmits information that was before the original adjudicator.

## ISSUE

Has Wiremax Media Inc. met the threshold established by the Tribunal to reconsider its decisions? Has there been a serious error of law?

## FACTS

The employees were laid off and not provided with any notice of termination, or compensation in lieu of notice. The Determination issued on October 15, 2001 ordered the company to pay compensation for length of service and vacation pay.

In the determination, the delegate found that Wiremix Media Inc merged operations with NextLevel.Com Inc in February 2001 and operated as the Canadian division of NextLevel. The employees were laid off in April. One employee has tendered as evidence the unsigned letter from NextLevel advising of the layoff.

On October 22, 2001 an appeal was filed by Wiremix Media Inc. on the Tribunal's form. An e-mail name of the responsible party filing the appeal was provided as "partrick@wiremix.com". I am not able to assume a name from the signature on this form. The detailed appeal submission from the employer is made on behalf of "Wiremix Media Inc., a Division of NextLevel.com Inc." As an additional submission to the appeal, the employer filed a letter dated November 22, 2001 in which the employer states that "Wiremix Media Inc. is no longer affiliated with NextLevel.com." Again, the signature on this letter is the same as that on the appeal form.

This appeal was not successful and the Tribunal Decision issued December 13, 2001 confirms the Determination.

The request for reconsideration is filed under the same signature as the appeal on December 19, 2001. In this request, the employer resubmits an unsigned copy of the November 22 letter and advises that "There was a 'Letter of Intent' to merge the companies in February 2001, but this was rescinded in November 2001 due to certain conditions not being met". The request for reconsideration goes on to say that "there was never any ownership of NextLevel by Wiremix or visa (sic.) versa".

**ANALYSIS**

The *Act* intends that the Adjudicator's Appeal Decision be "final and conclusive". 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 favour 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.

At appeal, in October 2001, the employer writes on behalf of "Wiremix Media Inc. a Division of NextLevel.com Inc". In December 2001, the same author writes " There seems to be some failure in your understanding that there was never any ownership of NextLevel by Wiremix or visa (sic) versa. A simple search of corporate records will indicate this, and therefore you have applied a Decision on a company that does not exist." .

The Tribunal does not conduct investigations as part of its reconsideration process. This is made clear in all Tribunal Decisions and in all public information provided to assist parties in their dealings with the Tribunal. In my view the employer's re-statement of claims made before the original adjudicator does not qualify as "new evidence". If the employer believes that there is key evidence to be found in various corporate records, it should have submitted that evidence to the Tribunal

The submissions from former employees support the findings of the original adjudicator that employees originally hired by Wiremix, were then apparently managed by NextLevel, the entity that, given the stationery of their notice of layoff, they assumed was responsible for termination.

The employer has not provided any evidence or argument to support its claim that the Tribunal has made a serious error in applying the law.

**ORDER:**

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

**Fern Jeffries, Chair**
**Adjudicator**
**Employment Standards Tribunal**