

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an application for reconsideration pursuant to Section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113

- by -

Rhonda Bennett
(" Bennett ")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No: 1999/750

DATE OF DECISION: February 18, 2000

DECISION

OVERVIEW

This is an application filed by Rhonda Bennett (“Bennett”) on December 14th, 1999 pursuant to section 116 of the *Employment Standards Act* (the “Act”) for reconsideration of an adjudicator’s decision issued on July 23rd, 1999 (B.C.E.S.T. Decision No. 316/99). The present application appears to have been triggered by an earlier application filed by Bennett’s former employer, Consumer Direct Contact Ltd. (“Consumer Direct”), for reconsideration of the same decision.

On March 4th, 1999 a delegate of the Director of Employment Standards issued a Determination in which she held that Consumer Direct had “just cause” to terminate Bennett on Friday, October 4th, 1996. Further, the delegate also held that Bennett had not provided sufficient evidence to prove her claim for unpaid wages allegedly earned during the period September 24th to October 4th, 1996.

Bennett appealed the Determination on the grounds that the delegate erred in finding that she was discharged for cause and in rejecting her claim for unpaid wages. Bennett’s appeal was heard on July 5th, 1999 and in a written decision issued on July 23rd the adjudicator confirmed the delegate’s finding that Consumer Direct had just cause to terminate Bennett on October 4th, 1996 but overturned the delegate’s finding with respect to Bennett’s unpaid wage claim. Accordingly, the Determination was varied by awarding Bennett the sum of \$880 in unpaid wages (2 weeks x 40 hours per week x \$11 per hour) plus accrued interest payable pursuant to section 88 of the *Act*.

In a decision issued concurrently with these Reasons, I varied the adjudicator’s decision by reducing the unpaid wage award in favour of Ms. Bennett to \$440 plus interest (see B.C.E.S.T. Decision No. 082/00).

THE APPLICATION FOR RECONSIDERATION

Bennett’s application for reconsideration is contained in a letter to the Tribunal dated December 10th, 1999 which was, as noted above, filed on December 14th, 1999. Bennett’s December 10th letter is reproduced below:

“Please consider my Response to [Consumer Direct’s] Request for Reconsideration (Tribunal File #1999/689) also a Request for Reconsideration, on the basis that the standards set by *Kenneth Kruger* for just cause for dismissal were not adequately met.”

In other words, Bennett says that the adjudicator ought not to have confirmed the delegate’s finding that Consumer Direct had just cause for termination.

ANALYSIS

I have reviewed both the original Determination and the adjudicator's decision with respect to the matter of just cause. Clearly, there was ample evidence before both the delegate and the adjudicator to show that Bennett's performance was less than adequate and that her refusal to meet with her employer to discuss her performance deficiencies amounted to insubordination. In such circumstances, I cannot conclude that either the delegate or the adjudicator erred in finding that Consumer Direct had just cause for termination.

ORDER

Bennett's application to vary the adjudicator's decision as to his finding that Consumer Direct had just cause for termination is refused.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal