

An Application for Reconsideration

- by -

Mian Huang

- 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: Carol L. Roberts

FILE No.: 2005A/72

DATE OF DECISION: June 21, 2005

DECISION

SUMBISSIONS

Mian Huang on her own behalf

Simon Wang on behalf of Canada China News (Vancouver) Inc.

OVERVIEW

1. This is an application by Mian Huang under Section 116 (2) of the *Employment Standards Act* (the "Act") for a reconsideration of Decision #D025/05 (the "Original Decision"), issued by the Tribunal on February 15, 2005.
2. Section 116 of the *Act* 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) confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.
3. Ms. Huang filed a complaint with the Employment Standards Branch alleging that Canada China News (Vancouver) Inc. contravened the Act by failing to pay her wages and annual vacation pay. A delegate of the Director of Employment Standards held a hearing into her complaint on February 20, 2004.
4. In a Determination issued June 7, 2004, the delegate concluded that, although Ms. Huang was entitled to wages, her complaint had been filed outside the statutory time limit or was outside the employer's statutory six month "backpay liability". The delegate found no wages owing.
5. Ms. Huang appealed the Determination to the Tribunal alleging that the Director's delegate failed to comply with the principles of natural justice in making the Determination.
6. The adjudicator in the original decision determined that the basis of Ms. Huang's appeal was, in fact, that the delegate had erred in law, and proceeded to consider the appeal on that basis. The Tribunal determined that the delegate had erred in concluding that Ms. Huang's appeal had not been filed within the time period provided in the Act. The Tribunal was unable to determine, on the evidence, whether Ms. Huang was entitled to wages for work performed for a ten day period in August, 2002, and referred the matter back to the Director for further investigation on these two issues.
7. After receiving submissions from the delegate and the parties, and requesting further investigation and submissions, the Tribunal determined that the relationship of the parties was governed by the Act, that Ms. Huang's complaint was not statute barred, and that Ms. Huang was entitled to wages in the amount of \$1,421.85 plus interest.

8. Ms. Huang now contends that the Tribunal erred in determining her wage entitlement. She also claims, for what appears to be the first time, an entitlement to compensation for length of service.
9. Canada China News (Vancouver) Inc.'s participation in the complaint and appeal process was minimal. In his response to Ms. Huang's application for reconsideration, Mr. Wang says simply that he has provided the Director with a bank draft satisfying the award, and that Canada China News (Vancouver) Inc. has closed.

ISSUE

10. There are two issues on reconsideration: Does this request meet the threshold established by the Tribunal for reconsidering a decision. If so, should the decision be cancelled or varied or sent back to the Adjudicator?

ANALYSIS

The Threshold Test

11. The Tribunal reconsiders a Decision only 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 supports the purposes of the *Act* detailed in Section 2 "to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act."
12. In *Milan Holdings (BCEST # D313/98)* the Tribunal set out a two-stage analysis in the reconsideration process. The first stage is for the panel to decide whether the matters raised in the application for reconsideration in fact warrant reconsideration. 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.
13. The Tribunal may agree to reconsider a Decision for a number of reasons, including:
 - 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 a serious clerical error.

(*Zoltan Kiss* BC EST#D122/96)

14. 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 Tribunal will not exercise its reconsideration power where the applicant seeks, in essence, to “reargue” the case.
15. In her application, Ms. Huang repeats arguments she made before the Tribunal on appeal on the nature of her wage entitlement. Those arguments were fully dealt with by the Tribunal. In the original decision, the Tribunal thoroughly considered the contract Ms. Huang had with Canada China News, her arguments, and the relevant provisions of the Act.
16. While it is clear Ms. Huang is not satisfied with the Tribunal’s determination of her wage entitlement, there is nothing in her application that raises significant questions of law, fact, principle or procedure. Further, there is nothing in her application that relates to any of the factors set out in *Zoltan Kiss*. Rather, her application is an attempt to re-argue her claim.
17. I find that the reconsideration power should not be exercised in this case.

ORDER

18. Pursuant to Section 116 of the Act I deny the application for reconsideration.

Carol L. Roberts
Member
Employment Standards Tribunal