An Application for Reconsideration

- by -

Canada and USA Immigration Services Ltd. and Surinder Trehan carrying on business as Savvy Pros and Savvy Consultants Inc.

- 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.: 2011A/96

DATE OF DECISION: September 13, 2011

DECISION

SUBMISSIONS

Surinder Singh Trehan	on behalf of Canada and USA Immigration Services Ltd. and Surinder Trehan carrying on business as Savvy Pros and Savvy Consultants Inc.
Mary Walsh	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an application by Canada and USA Immigration Services Ltd. ("CUIS") and Surinder Trehan carrying on business as Savvy Pros ("Savvy Pro") and Savvy Consultants Inc. ("SCI") (collectively, the "Employer") for a reconsideration of BC EST # D058/11 (the "Original Decision"), issued by the Tribunal on June 21, 2011.

2. Harwinder Singh filed a complaint alleging that CUIS had contravened the *Employment Standards Act* (the "*Act*"). During the investigation, the Director identified three issues. The issues before the Director were whether or not CUIS had charged Mr. Singh a fee for obtaining employment and/or providing information about employers seeking employees contrary to Section 10 of the *Act*; whether or not CUIS and Savvy Pro operated as an employment agency without a valid employment agency licence contrary to Section 12 of the *Act*; and whether CUIS, Savvy Pro and/or SCI should be associated pursuant to Section 95 of the *Act*. Following the investigation, a delegate of the Director of Employment Standards ultimately concluded in the affirmative on all three issues and ordered the Employer to pay Mr. Singh wages and accrued interest in the amount of $12,430.77. The Director also imposed two administrative penalties in the amount of $500 each for contravening Sections 10 and 12 of the *Act*.

3. The Employer appealed the Determination on the grounds that new evidence had become available that was not available at the time the Determination was made and requested a suspension of the effect of the Determination under s. 113 of the *Act*.

4. The Employer filed its appeal on April 27, 2011, which was over three months after the time for filing an appeal had passed. The Member reviewed the submissions of the parties and found no basis on which to extend the time for filing an appeal. Noting that the filing of the appeal coincided with proceedings by the Director to enforce the Determination, the Member found no compelling reasons that warranted extending the time period for requesting an appeal. The Member considered Mr. Trehan's submissions that he had sustained severe injuries in "numerous accidents" between 2002 and 2010 which left him with memory problems and further, that he had "severe personal and family issues". The Member reviewed the medical evidence submitted with the extension application and concluded that none of that evidence explained or justified the late filing of the appeal.

5. The Member also found that the Employer had not shown any genuine intention to appeal the determination during the appeal period. The Member also concluded that further delay would be unduly prejudicial to Mr. Singh, particularly since Mr. Trehan had evidenced an indication to declare bankruptcy.

6. The Member further found that neither Mr. Singh nor the Director was made aware of the Employer's intention to appeal the Determination.

7. The Member concluded that the Employer had not demonstrated a strong *prima facie* case, observing, in particular, that there was no evidence that would qualify as "new" under the Tribunal's test for new evidence. The Member also agreed with the Director's submission that a large part of the Employers' submission constituted a re-argument of the case on its merits.

8. The Member denied the Employer's application for an extension of time as well as a suspension of the Determination.

ISSUES

9. There are two issues on reconsideration:

1. Does this request meet the threshold established by the Tribunal for reconsidering a decision?
2. If so, should the decision be cancelled or varied or sent back to the Member?

ARGUMENT

10. Mr. Trehan's submission is, in essence, a repetition of the arguments he sought to advance on appeal. There is nothing in Mr. Trehan's lengthy submission that relates to the Tribunal's decision to deny the Employer's application for an extension of time in which to file an appeal.

11. The Director opposes the application. The Director's delegate contends that the reconsideration application fails to satisfy the Tribunal's two stage analysis about whether or not it should exercise its discretionary reconsideration power. The Director submits that the entire submission is a re-argument of the case made upon the initial appeal and that there is nothing in that submission that demonstrates an error in the Member's decision such as to warrant reconsideration.

12. The Director submits that the reconsideration application should be dismissed as being without merit.

ANALYSIS

13. The *Employment Standards Act*, R.S.B.C. 1996 c. 113 ("*Act*") confers an express reconsideration power on the Tribunal. Section 116 provides

> (1) On application under subsection (2) or on its own motion, the tribunal may
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> (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.

1. The Threshold Test

14. 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."

15. In *Milan Holdings* (BC EST # D313/98) the Tribunal set out a two-stage analysis in the reconsideration process. The first stage is for the Tribunal 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. The reconsideration panel will also consider whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration.

16. The Tribunal may agree to reconsider a Decision for a number of reasons, including:

- the Member 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 Member 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*)*

17. 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.

18. After weighing these and other factors, the Tribunal may determine that the application is not appropriate for reconsideration. Should the Tribunal determine that one or more of the issues raised in the application is appropriate for reconsideration, the Tribunal will then review the matter and make a decision. The focus of the reconsideration will be with the correctness of the decision being reconsidered.

19. In *Director of Employment Standards* (*re Valoroso*, BC EST # RD046/01), the Tribunal emphasized that restraint is necessary in the exercise of the reconsideration power:

> ... the Act creates the legislative expectation that, in general, one Tribunal hearing will finally and conclusively resolve an employment standards dispute…

20. There are compelling reasons to exercise the reconsideration power with restraint. One is to preserve the integrity of the process at first instance. Another is to ensure that, in an adjudicative process subject to a strong privative clause and a presumption of regularity, the "winner" is not deprived of the benefit of an adjudicator's decision without good reason. A third is to avoid the spectre of a tribunal process skewed in favor of persons with greater resources, who are best able to fund litigation, and whose applications will necessarily create further delay in the final resolution of a dispute.

21. I find that the Employer has not met the threshold test.

22. The application for reconsideration consists, very simply, of nothing more than arguments that were made in his appeal submissions. There is nothing in the Employer's submission that addresses the Member's decision

to deny the Employer's request for an extension of the appeal period. There is no basis for me to conclude that the member failed to comply with the principles of natural justice, made some mistake in stating the facts, made a decision inconsistent with other decisions based on similar facts, made some serious mistake in applying the law, misunderstood or overlooked a significant issue or made a clerical error.

23. In my view, the Employer's reconsideration request has not raised questions of law, fact, principle or procedure that are so significant that they ought to be reviewed. I am not persuaded that the Employer has made out an arguable case of sufficient merit to warrant the exercise of the reconsideration power.

ORDER

24. The request for reconsideration is denied.

Carol L. Roberts
Member
Employment Standards Tribunal