

An Application for Reconsideration

- by -

Baldeep Singh Hehar
("Mr. Hehar")

- 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: David B. Stevenson

FILE No.: 2011A/91

DATE OF DECISION: October 5, 2011

DECISION

SUBMISSIONS

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| Baldeep Singh Hehar | on his own behalf |
| Jaspreet S. Malik | counsel for Satnam Education Society of British Columbia |
| Michelle J. Alman | counsel for the Director of Employment Standards |

OVERVIEW

1. Baldeep Singh Hehar (“Mr. Hehar”) seeks reconsideration under Section 116 of the *Employment Standards Act* (the “*Act*”) of a decision, BC EST # D052/11, made by the Tribunal on June 10, 2011 (the “original decision”). The original decision considered an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on February 8, 2011. The Determination considered a complaint filed by Mr. Hehar alleging his former employer, Satnam Education Society carrying on business as Khalsa School (“Satnam”), had contravened requirements of the *Act* in respect of his employment by failing to pay all wages owing.
2. The Determination found Satnam had contravened sections 17 and 58 of the *Act* by failing to pay wages and vacation pay. The Director ordered the payment of wages and interest under section 88 of the *Act* in the amount of \$6,793.50 and imposed an administrative penalty on Satnam for contraventions of the *Act* in the amount of \$500.00.
3. Satnam appealed the Determination on all three of the statutory grounds set out in section 112 of the *Act*.
4. The Tribunal Member of the original decision found the Director had erred in law in interpreting the employment contract between Satnam and Mr. Hehar, had misinterpreted and misapplied the effect of section 27 of the *Act* and had taken an unreasonable view of the evidentiary record. In result, the Tribunal Member allowed the appeal and cancelled the Determination.
5. In this application for reconsideration, Mr. Hehar seeks to have the Tribunal review letters that were apparently submitted and rejected at some stage of the proceedings. He seeks to have the Tribunal accept the assertions made in the letters – that employees at Satnam were routinely intimidated into not providing evidence or filing complaints against Satnam – and on the basis of those assertions, review whether or not employees were expected to receive compensation for excess hours worked.

ISSUE

6. In any application for reconsideration there is a threshold issue of whether the Tribunal will exercise its discretion under Section 116 of the *Act* to reconsider the original decision. If satisfied the case warrants reconsideration, the substantive issue raised in this application is whether the Tribunal should once again scrutinize the evidentiary record.

ARGUMENT

7. The application for reconsideration contains little in the way of argument. It comprises two paragraphs: the first describing the basis for the reconsideration as being evidence, in the form of two letters, that allegedly were submitted but not accepted; and the second says these letters show employees at Satnam were routinely intimidated from providing evidence or making complaints against Satnam.
8. In a letter to the Tribunal filed subsequent to the request for reconsideration, Mr. Hehar has added “a few points regarding this reconsideration”. The letter lists eight allegations of fact, including: an allegation of conflict of interest against counsel for Satnam; assertions that employees who wrote affidavits on behalf of Satnam did so under pressure to save their jobs; that he did not lie in the complaint proceedings; that most employees have not filed complaints against Satnam because they are afraid for their jobs; that the person who wrote one of the letters is not under any pressure because he no longer works at Satnam; that the other letter refers to hours that were not counted; an allegation that the principal’s notes, which were introduced by Satnam at the complaint hearing, and the accountant’s record of working hours are contradictory; and submissions on the evidence in the file.
9. Counsel for Satnam submits the application is without merit. He argues that Mr. Hehar has asked the Tribunal to re-weigh evidence, based on evidence that is attempted to be introduced as fresh evidence, and that the Tribunal should not accede to his request. Counsel also denies the allegations made by Mr. Hehar in his subsequent letter and submits the arguments made by Mr. Hehar on both the new evidence submitted and the evidence that was in the file do not show an error in the original decision.
10. The Director takes no position on the application for reconsideration.

ANALYSIS OF THE PRELIMINARY ISSUE

11. Section 116 states:
 - 116 (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.*
 - (2) *The director or a person named in a decision or order of the tribunal may make an application under this section*
 - (3) *An application may be made only once with respect to the same order or decision.*
12. The authority of the Tribunal under section 116 is discretionary. A principled approach to the exercise of this discretion has been developed. The rationale for this approach is grounded in the language and the purposes of the *Act*. One of the purposes of the *Act*, found in subsection 2(d), is “to provide fair and efficient procedures for resolving disputes over the interpretation and application” of its provisions. Another stated purpose, found in subsection 2(b), is to “promote the fair treatment of employees and employers”. The approach is fully described in *Milan Holdings Ltd.*, BC EST # D313/98 (Reconsideration of BC EST # D559/97). Briefly stated, the Tribunal exercises the reconsideration power with restraint. In *The Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, BC EST # RD046/01, the Tribunal explained the reasons for restraint:

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

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.

13. In deciding whether to reconsider, the Tribunal considers factors such as timeliness, the nature of the issue and its importance both to the parties and the system generally. An assessment is also made of the merits of the original decision. The focus of a reconsideration application is, generally, the correctness of the original decision.
14. The Tribunal has accepted an approach to applications for reconsideration that resolves into a two stage analysis. At the first stage, the reconsideration panel decides whether the matters raised in the application in fact warrant reconsideration. The circumstances where the Tribunal’s discretion will be exercised in favour of reconsideration are limited and have been identified by the Tribunal as including:
 - failure to comply with the principles of natural justice;
 - mistake of law or fact;
 - significant new evidence that was not reasonably available to the original panel;
 - inconsistency between decisions of the tribunal that are indistinguishable on the critical facts;
 - misunderstanding or failure to deal with a serious issue; and
 - clerical error.
15. It will weigh against an application if it is determined its primary focus is to have the reconsideration panel effectively re-visit the original decision and come to a different conclusion.
16. If the Tribunal decides the matter is one that warrants reconsideration, the Tribunal proceeds to the second stage, which is an analysis of the substantive issue raised by the reconsideration.

ANALYSIS

17. Having reviewed the original decision, the material in the appeal file, the submission of Mr. Hehar and counsel for Satnam, I am not persuaded this matter warrants reconsideration.
18. In submitting the same letters that were first introduced into this matter in Mr. Hehar’s appeal submission and focusing this request for reconsideration on how many hours he worked in any given week, Mr. Hehar has seemingly missed the basis on which the original decision was made, which was that the Director had erred in interpreting the parties’ employment contract as containing a provision that Mr. Hehar would be paid “extra wages” for all hours in excess of 40 in a week. The original decision found the employment contract, properly interpreted, did not contemplate Mr. Hehar receiving extra pay for working extra hours and that Mr. Hehar was properly paid under his employment contract for all the hours he worked.
19. There is nothing in this application that addresses the correctness of that finding in the original decision.
20. The Tribunal Member in the original decision did not find it necessary to address the “new evidence” grounds. The new evidence provided by Mr. Hehar does not speak to the proper interpretation of the

contract, but to the hours worked. As such it is irrelevant to the central question decided in the original decision and the Tribunal Member made no error in not dealing with it.

21. The application is denied.

ORDER

22. Pursuant to section 116 of the *Act*, the original decision is confirmed. The funds being held by the Director in trust may now be released to Satnam.

David B. Stevenson
Member
Employment Standards Tribunal