

An application for Reconsideration

- by -

Super Sandhu Ent. Ltd. ("Super Sandhu")

- 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.: 2007A/93

DATE OF DECISION:

November 28, 2007





DECISION

SUBMISSIONS

Nash N. S. Gill	on behalf of Super Sandhu Ent. Ltd.
Reena Grewal	on behalf of the Director

OVERVIEW

- ^{1.} Super Sandhu Ent. Ltd. ("Super Sandhu") seeks reconsideration under Section 116 of the *Employment Standards Act* (the "*Act*") of a decision, BC EST #D060/07, made by the Tribunal on July 19, 2007 (the "original decision"). The original decision considered an appeal of a Determination issued by a delegate of the Director of Employment Standards on April 13, 2007.
- ^{2.} The Determination found that Super Sandhu had contravened Section 6 of the *Employment Standards Regulation* (the "*Regulation*") for the second time in the last three years, ordered Super Sandhu to cease contravening the *Regulation* and imposed an administrative penalty on Super Sandhu under Section 29 of the *Employment Standards Regulation* in the amount of \$2500.00.
- ^{3.} The appeal was grounded on an assertion that the Director had fail to observe principles of natural justice in making the Determination.
- ^{4.} The original decision considered the arguments raised in the appeal and found the Director had not failed to observe principles of natural justice and confirmed the Determination.
- ^{5.} Super Sandhu now seeks reconsideration of the original decision, and by inference, the Determination.

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 is appropriate for reconsideration, the substantive issue raised in this application, as it was in the appeal, is whether it was fair for the Director to have imposed the administrative penalty on Super Sandhu.

ANALYSIS OF THE PRELIMINARY ISSUE

- ^{7.} The legislature has conferred a reconsideration power on the Tribunal under Section 116 of the *Act*, which reads as follows:
 - 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.
- ^{8.} Section 116 is discretionary. The Tribunal has developed a principled approach to the exercise of this discretion. The rationale for the Tribunal's 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 general approach to reconsideration is set out 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 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.
- ^{9.} Consistent with the above considerations, 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.
- ^{10.} 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.
- ^{11.} 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.
- ^{12.} After review of the original decision and the submissions of the parties on this application, I have decided this application does not warrant reconsideration.
- ^{13.} This application repeats the submission made in the appeal: that while Super Sandhu admits to noncompliance with the requirement in Section 6 of the *Regulation* to keep a record of the volume or weight of the fruit, vegetable, berry or flower crop picked in each day by each worker, such a requirement is unfair and unjust.



- ^{14.} I can add nothing to the original decision, which found no failure by the Director to observe principles of natural justice in making the Determination and correctly stated the relevant principles relating to administrative penalties imposed pursuant to Section 98 of the *Act* and Section 29 of the *Regulation*.
- ^{15.} The application is denied.

ORDER

^{16.} Pursuant to Section 116 of the *Act*, I order the original decision confirmed.

David B. Stevenson Member Employment Standards Tribunal