

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



(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. The focus of a reconsideration application is 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 non-compliance 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**