

An Application for Reconsideration

- by -

Eureka Security Services Ltd.
("Eureka")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2010A/124

DATE OF DECISION: November 9, 2010

DECISION

SUBMISSIONS

Harjit Singh Sethi on behalf of Eureka Security Services Ltd.
Mica Nguyen on behalf of the Director of Employment Standards

INTRODUCTION

1. On June 9, 2009, Gian Singh Sunner (“Sunner”) filed an unpaid wage complaint against Eureka Security Services Ltd. (“Eureka”) pursuant to section 74 of the *Employment Standards Act* (the “*Act*”). Eureka provides security services and Mr. Sunner was formerly employed as a security guard with the firm. Eureka’s principal is Harjit Singh Sethi (“Sethi”), the applicant in the present proceedings.
2. Mr. Sunner’s complaint was investigated by a delegate of the Director of Employment Standards (the “delegate”) who ultimately determined that Eureka owed Mr. Sunner the sum of \$2,483.72 on account of unpaid regular wages, overtime pay, vacation pay, statutory holiday pay, compensation for length of service and section 88 interest. In addition, the delegate levied five separate \$500 administrative penalties (see *Act*, section 98) against Eureka. Thus, Eureka’s total obligation under the Determination was \$4,983.72. The delegate’s Determination and accompanying “Reasons for the Determination” were both issued on April 27, 2010.
3. Mr. Sethi and Harmoni Sethi appealed the Determination in their own names, however, the appeal was treated as an appeal by Eureka. The appeal was filed under section 112(1)(b) of the *Act* – the delegate failed to observe the principles of natural justice in making the Determination. In addition, Mr. Sethi applied to have the Determination suspended pending the adjudication of this appeal.
4. On August 11, 2010, Tribunal Member Groves issued written reasons for decision dismissing both the suspension application and the main appeal; he confirmed the Determination (BC EST # D088/10). Although the appeal was grounded on an assertion that the delegate failed to abide by the principles of natural justice in making the Determination, the main ground of attack concerned certain findings of fact and, in addition, Eureka tendered “new evidence” that it said called into question various findings of fact. Member Groves thus proceeded with the appeal on the basis that the delegate may have erred in law (section 112(1)(a)) and on the “new evidence” ground (section 112(1)(c)) but ultimately found that neither ground had been made out.
5. On September 13, 2010, Mr. Sethi filed a “Reconsideration Application Form” (Form 2) asking the Tribunal to reconsider Member Grove’s decision pursuant to section 116 of the *Act*: “On application under subsection (2) or on its own motion, the tribunal may (a) reconsider any order or decision of the tribunal...”. This application is now before me.

THE RECONSIDERATION APPLICATION

6. I have reproduced, in full, the one and only submission that Mr. Sethi filed in support of the reconsideration application, below:

I would like make an application [sic] for reconsideration of Tribunal’s decision in this matter, as we have already paid wages owing in amount of \$2483.72 to the Delegate of Director of Employment Standards.

We would like you to reconsider suspending or reducing administrative penalties in amount of \$2500.00 as this is significant amount and small company like ours and cannot able to pay. [sic]

We had all the intention to pay unpaid wages and were not aware of some of the rules and regulations as we never went through this kind of situation in the past.

Once again, I thank you for your time and consideration.

7. On September 17, 2010, the delegate filed a submission in which she submitted that the reconsideration application should be summarily dismissed. The delegate says, first, that the application is untimely and, second, does not pass the first stage of the *Milan Holding* test that requires the applicant to raise a significant *prima facie* case worthy of further consideration (see *Director of Employment Standards and Milan Holdings Inc.*, BC EST # D313/98). Although invited to do so, Mr. Sethi did not file a response to the delegate's submission. Mr. Sunner was also invited to file a submission in this matter but did not do so.

FINDINGS AND ANALYSIS

8. In my view, this application must be summarily dismissed. Rule 22(3) and Rule 22(4) provide as follows:
22. (3) The applicant should deliver the application for reconsideration as soon as possible after the tribunal decision, but in any event within 30 days after the date of the tribunal decision.
- (4) If the applicant delivers the application for reconsideration more than 30 days after the date of the tribunal decision, the applicant must provide written reasons for the delay.
9. Member Groves' decision was issued on August 11, 2010, and this application was filed on September 13, 2010. There is nothing in the material before me to explain why the application was filed outside the 30-day time limit. That said, the application, even if it were timely, does not pass the first stage of the *Milan Holdings* test and thus I do not propose to rest my decision on timeliness.
10. I will deal with each of the three factual allegations set out in Mr. Sethi's application.
11. First, he says that he has already paid (through the delegate) all of the wages that were found owing to Mr. Sunner under the Determination (\$2,483.72). Assuming that to be true, that simply means that this component of the Determination has now been satisfied. However, payment of the sum due under any sort of judicial order does not render the original order void. If the payment to Mr. Sunner has been made, the Director of Employment Standards will not be able to take any enforcement proceedings against Eureka regarding that aspect of the Determination.
12. Second, administrative penalties are imposed under section 98 of the *Act* and the amount of each penalty is fixed by section 29 of the *Employment Standards Regulation* at \$500 per contravention for a "first offender". Given the fact of Eureka's five contraventions, there is no jurisdiction in the Tribunal to modify or cancel the penalties or to vary the amount imposed for each contravention. A party's "ability to pay" is not a factor that is taken into account when levying section 98 penalties.
13. Mr. Sethi's third point is, essentially, an assertion that he had no intention of violating the *Act*. However, proceedings under the *Act* are civil, not criminal, in nature. While in a criminal case, intention to violate the law is an essential element that must be proved by the Crown, this is not the situation with respect to civil proceedings under the *Act*. The Director need only prove that the *Act* was contravened in which case a penalty is imposed with respect to the particular contravention in question.

14. In light of the fact that there is no presumptive merit to any of the assertions advanced in this reconsideration application, I am of the view that it must be summarily dismissed.

ORDER

15. The application to reconsider BC EST # D088/10 is refused. According, pursuant to section 116 of the *Act*, BC EST # D088/10, is confirmed.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal