

An Application for Reconsideration

- by -

Tim Felger
("Felger")

- 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.: 2016A/110

DATE OF DECISION: October 13, 2016

DECISION

SUBMISSIONS

Tim Felger

on his own behalf

OVERVIEW

1. This is an application filed by Tim Felger (“Mr. Felger”) pursuant to section 116 of the *Employment Standards Act* (the “*Act*”). Mr. Felger applies for reconsideration of Tribunal Decision BC EST # D094/16, issued on July 15, 2016, by Tribunal Member Gandhi (the “Appeal Decision”).
2. In my view, this application is wholly devoid of merit and thus must be summarily dismissed. My reasons for so concluding now follow.

FACTUAL BACKGROUND

3. Mr. Felger’s story is indeed a fanciful one. He says his employer’s son (who was then living in the Philippines and whom he met while they were both in prison years ago), hired him to sell a pharmaceutical business in which the son’s father had an ownership interest. Mr. Felger never met or even spoke with his alleged employer (the father). Although Mr. Felger has no education, training or experience in valuing and selling companies, he was apparently hired as a “senior strategist” to value the company and then facilitate its sale. It does not appear that Mr. Felger was ever registered as would have been required by the *Securities Act*. Mr. Felger eventually concluded the company had a fair market value of \$1 million but also conceded that he “just made the numbers up”.
4. Mr. Felger filed an unpaid wage complaint under section 74 of the *Act*. This complaint was the subject of an oral complaint hearing held before a delegate of the Director of Employment Standards (the “delegate”) on October 14, 2015. The alleged employer did not attend the hearing and all efforts to contact him proved wholly unsuccessful. On April 5, 2016, the delegate issued a Determination and accompanying “Reasons for the Determination” (the “delegate’s reasons”) in which the delegate dismissed the complaint. In particular, the delegate held that “there is insufficient evidence to prove Mr. Felger’s complaint as I am not persuaded there is credible evidence to support a finding that Mr. Felger performed work for [the alleged employer]” (delegate’s reasons, page 7). In essence, the delegate found Mr. Felger’s story about having worked for the alleged employer to be implausible, inconsistent, uncorroborated and, ultimately, unworthy of belief.
5. Further, the delegate specifically noted that there was a dearth of evidence showing that the alleged employer had any contact with Mr. Felger or otherwise directed and controlled his work. The many gaps and failings in with respect to Mr. Felger’s evidence are set out, in considerable detail, in the delegate’s reasons.
6. Mr. Felger appealed the Determination on the ground that the delegate “acted on a view of the facts that could not be reasonably entertained”, “misapplied an applicable principle of general law”, “adopted a method of assessment that is fundamentally wrong”, “relied on [an] incorrect analysis”, committed “a breach of natural justice”, erred in finding that Mr. Felger’s evidence lacked credibility, and on the ground that he had new and relevant evidence. Mr. Felger also made various other claims that, in general, criticized the delegate and his ultimate decision.

7. Mr. Felger's numerous allegations were addressed, in detail, in the Appeal Decision. Member Gandhi ultimately concluded that Mr. Felger's appeal had no reasonable prospect of succeeding and, as such, he summarily dismissed the appeal under subsection 114(1)(f) of the *Act*.

THE APPLICATION FOR RECONSIDERATION

8. In his application for reconsideration, Mr. Felger is largely, if not entirely, rehashing the arguments he advanced in his appeal documents. He has also added further allegations that Member Gandhi erred in dismissing the appeal (albeit without advancing any substantive particulars to demonstrate, even on a *prima facie* basis, that the Appeal Decision is tainted by legal error). The reconsideration application also includes various allegations that are not germane to the issues that are properly raised in a section 116 application.
9. Mr. Felger appears to be labouring under a fundamental misapprehension regarding the scope of a Tribunal Member's statutory authority when adjudicating an appeal. For example, Mr. Felger appears to believe that Member Gandhi should have conducted some sort of *de novo* investigation of this entire dispute. He demands that Mr. Gandhi explain "why I am being penalized from being made homeless". Mr. Felger maintains that Member Gandhi should have – as Mr. Felger invited him to do – interviewed a member of the Vancouver Police Department before issuing the Appeal Decision.
10. An application for reconsideration is not a new hearing of the entire dispute. Rather, the purpose of the reconsideration process is to ensure that where there are serious errors in law or in procedure, these may be addressed and corrected. Mr. Felger is obviously unhappy with the Determination and the Appeal Decision (he maintains he has been "screwed over" and that the alleged employer perpetrated a "fraud" against him). Mr. Felger continues to assert that his evidence clearly showed he worked for the alleged employer and is entitled to over \$20,000 in unpaid wages "plus [unspecified] damages". However, having reviewed the record that was before the Tribunal on appeal, I must agree with Member Gandhi that this appeal was entirely without merit (and I fully endorse Member Gandhi's reasons for decision in that regard), as is the instant application for reconsideration.
11. In my judgment, this application does not pass the first stage of the *Milan Holdings* test (see *Director of Employment Standards and Milan Holdings Inc.*, BC EST # D313/98) and, accordingly, it must be summarily dismissed.

ORDER

12. Pursuant to subsection 116(1)(b) of the *Act*, this application for reconsideration is refused and the Appeal Decision is confirmed.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal