

An Application for Reconsideration

- by -

Santokh Phangura
(“Mr. Phangura”)

- 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: Shafik Bhalloo

FILE No.: 2011A/147

DATE OF DECISION: November 17, 2011

DECISION

SUBMISSIONS

Santokh Phangura	on his own behalf
Martin Ellefson	on behalf of West Fraser Mills Ltd.
Emily K. Yao	on behalf of the Director of Employment Standards

OVERVIEW AND SUBMISSIONS OF THE PARTIES

1. This is an application filed by Santokh Phangura (“Mr. Phangura”) pursuant to section 116 of the *Employment Standards Act* (the “*Act*”) for reconsideration of a Tribunal Member’s decision issued on November 15, 2010, (BC EST # D121/10) (“Original Decision”). The Tribunal Member confirmed a Determination that was issued by a Delegate of the Director of Employment Standards (the “delegate”) on July 27, 2010, pursuant to which the delegate dismissed Mr. Phangura’s complaint that his former employer, West Fraser Mills Ltd. (the “Employer”) or (“West Fraser”), contravened the *Act* by terminating his employment without notice or compensation in lieu of notice. More specifically, in the Determination, the delegate found that the Employer sufficiently demonstrated that it had just cause to terminate Mr. Phangura’s employment and, therefore, the *Act* had not been contravened by the Employer, and that no wages were outstanding or due to Mr. Phangura.
2. I note that Mr. Phangura’s application for reconsideration is dated September 23, 2011, and stamped received by the Tribunal on September 28, 2011. Pursuant to Rule 22(3) and (4) of the Tribunal’s *Rules of Practice and Procedure* (the “*Rules*”), the applicant, in a reconsideration application, should deliver the application as soon as possible after the Tribunal’s decision. Where the applicant delivers his application for reconsideration more than 30 days after the date of the Tribunal’s decision, the applicant must provide written reasons for the delay. In this case, Mr. Phangura should have filed his application for reconsideration of the Original Decision by December 15, 2010. By filing his application for reconsideration on September 28, 2011, he is in excess of nine (9) months past the deadline in the *Rules* for filing his reconsideration application.
3. I note that the Tribunal, in its correspondence dated September 8, 2011, referenced a conversation with Mr. Phangura the previous day, September 7, 2011, and sent him a Reconsideration Application Form, as well as a Guide to the Application for Reconsideration Process. The Tribunal also informed him that when he returns his Reconsideration Form, he should include not only his detailed reasons for applying for a reconsideration, but also his written reasons for filing an application for reconsideration more than 30 days after the date of the Tribunal’s Original Decision.
4. In his reconsideration application, Mr. Phangura attaches a single page of handwritten submissions that are rather sparse. With respect to the matter of the out-of-time reconsideration application, Mr. Phangura simply states that he “lost the paperwork with the move” and nothing further. With respect to the merits of the application, he simply states that he wants his benefits and particularly his “8 wks pay”. In his further, or Reply, submissions, he goes on to state that if the Employer were unionized, he would not have been fired. He also alleges that the Employer is lying in order to get him “in trouble” because he lacks facility with the English language. He also submits that the Employer has mustered employees to be witnesses against him, and his co-workers are refusing his request to be his witnesses against the Employer because they are concerned that they will lose their jobs. He concludes by stating that after his employment was terminated,

he became very “depressed” and “stressed out” and his “family members were affected” by his termination. He repeats that he should receive eight (8) weeks of pay.

5. The Director, in response, states that Mr. Phangura’s application for reconsideration should be dismissed as it lacks merit and “does not raise a serious question of law, fact or principle”. The Director also notes the often-quoted decision of the Tribunal in *Milan Holdings*, BC EST # D313/98, and the two-stage analysis in that decision for considering reconsideration applications. Based on the first stage of the test in *Milan Holdings*, the Director submits where, as in this case, the applicant has simply tried to re-argue issues addressed in the Original Decision, the reconsideration application should be summarily dismissed.
6. The Director also submits that Mr. Phangura’s application for reconsideration is filed over ten (10) months after the Original Decision was issued, and Mr. Phangura has not provided a reason to explain his lengthy delay except to state that “he lost his documents in a move”. According to the Director, allowing Mr. Phangura’s reconsideration application to proceed would be inconsistent with the purposes enumerated in section 2 of the *Act* and particularly with the efficient resolution of complaints under the *Act*. In the circumstances, the Director asks the Tribunal to dismiss Mr. Phangura’s application for reconsideration.
7. The Employer submits that Mr. Phangura’s reconsideration application should also be dismissed and agrees with the submissions of the Director.

ISSUES

8. In all applications for reconsideration there is a preliminary or threshold issue of whether the Tribunal will exercise its discretion under section 116 of the *Act* to reconsider the original decision and if satisfied the application is appropriate for reconsideration, the Tribunal will then proceed with consideration of the substantive issues raised in the reconsideration application. In this case, at the preliminary stage, there is the additional matter for the Tribunal to consider, namely, the delay on the part of Mr. Phangura in bringing his application, at least over 9 months, past the deadline for filing his reconsideration application. Accordingly, the matter of the timeliness (or lack thereof) of Mr. Phangura’s application will be considered first. Pending determination of the matter of the timeliness of Mr. Phangura’s application, the Tribunal will consider whether it will exercise its discretion under section 116 of the *Act* to reconsider the Original Decision.

THE TIMELINESS OF THE APPLICATION

9. As indicated previously, under Rule 22(3), the applicant for a reconsideration should deliver his application as soon as possible after the Tribunal’s Original Decision but, in any event, within thirty (30) days after the date of the Tribunal’s Original Decision. In this case, as indicated, Mr. Phangura did not file his reconsideration application until over nine (9) months after the expiry of the deadline for filing his application. His reason for filing his application late is that he “lost the paperwork with the move”. In my view, while there is an inordinate delay on the part of Mr. Phangura in filing his reconsideration application, that alone is not determinative of whether the Tribunal should consider or reject his application. If good cause can be shown by Mr. Phangura to explain his long or inordinate delay to file his application, the Tribunal may exercise its discretion to reconsider his application. Having said this, I do not find Mr. Phangura’s explanation sufficient or compelling, and I am not persuaded that this is a case where the Tribunal should exercise its discretion to consider a very late-filed reconsideration application. More specifically, Mr. Phangura does not explain with any details when he was making “the move” and what relevant “paperwork” he lost in “the move” or why it took him in excess of nine (9) months after the expiry of the deadline for filing a reconsideration application to file his application. I also agree with the Director that to consider Mr. Phangura’s late reconsideration application is inconsistent with the stated purpose of the *Act* in section 2(d), namely, “to provide fair and

efficient procedures for resolving disputes over the application and interpretation of this Act”. In these circumstances, Mr. Phangura’s application for reconsideration of the Original Decision is refused.

10. As an aside, even if I were to consider Mr. Phangura’s late application (which I am not), I would be very strongly inclined to reject it on the basis of other considerations in the first of the two-stage process or analysis set out in *Milan Holdings, supra*. I note that in the first of the two-stage analysis, the Tribunal must decide whether the matters raised in the application warrant reconsideration. In determining this question, in addition to considering the timeliness of the applicant’s reconsideration application, the Tribunal will consider such other non-exhaustive factors as: (i) whether the applicant’s primary focus is to have the reconsideration panel effectively “re-weigh” evidence already provided to the adjudicator; (ii) whether the application arises out of a preliminary ruling made in the course of an appeal; (iii) whether the applicant has raised questions of law, fact, principle or procedure which are so significant that they should be reviewed because of their importance to the parties and/or their implications for future cases; and (iv) whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration.
11. In my view, the written submissions of Mr. Phangura in the reconsideration application do not raise any questions of law, fact, principle or procedure that warrant a review because of their importance to the parties or their implications for future cases. The submissions also do not point out any errors whatsoever on the part of the adjudicator in the Original Decision. Instead, it is abundantly apparent from his sparse written submissions that Mr. Phangura is dissatisfied with the Determination and its subsequent confirmation by the Original Decision and therefore, he is seeking the reconsideration panel effectively to re-weigh the evidence he previously provided to the delegate and subsequently to the Member. Accordingly, I refuse Mr. Phangura’s application for reconsideration of the Original Decision.

ORDER

12. Pursuant to section 116 of the *Act*, I order the Original Decision, BC EST # D121/10, be confirmed.

Shafik Bhalloo
Member
Employment Standards Tribunal