

An Application for Reconsideration

- by -

Patara Holdings Ltd. carrying on business as Canadian Lodge  
("Patara")

- 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.:** 2009A/138

**DATE OF DECISION:** December 11, 2009

## DECISION

### SUBMISSIONS

Major Patara	on behalf of Patara Holdings Ltd. carrying on business as Canadian Lodge
Brijesh Ansal	on his own behalf
Mohan Godyal	on his own behalf
William C. Boyte	on behalf of the Director of Employment Standards

### OVERVIEW

1. On May 22, 2009, a delegate of the Director of Employment Standards (the “delegate”) issued, pursuant to section 79 of the *Employment Standards Act* (the “*Act*”), a Determination and accompanying “Reasons for the Determination” concerning unpaid wage complaints filed by two former employees of Patara Holdings Ltd. carrying on business as Canadian Lodge (“Patara”). In a nutshell, the complainants claimed that they had been recruited from their home in India with misleading offers of employment as cooks in the restaurant located in the Valemount (about 300 kilometres southeast of Prince George on Highway 16) hotel operated by Patara. They further claimed that they worked long hours without being paid in accordance with the provisions of the *Act*. The delegate, following a lengthy investigation, awarded the two employees a total of \$31,254 on account of unpaid wages (including regular wages, overtime pay, vacation pay and reimbursement for employment-related expenses) and section 88 interest. In addition, and also by way of the Determination, the delegate levied six separate monetary penalties (see section 98) totalling \$11,000 against Patara (four second contraventions and two first contraventions). Thus, the total amount payable under the Determination was \$42,254.
2. Patara appealed the Determination and in written reasons issued on September 18, 2009, Tribunal Member Stevenson dismissed the appeal and confirmed the Determination as issued (see BC EST # D095/09). Section 116 of the *Act* gives the Tribunal a discretionary authority to reconsider its decisions and Patara now applies to have Member Stevenson’s decision reconsidered.
3. The Tribunal will not reconsider a decision on its merits unless the application, on its face, raises a proper ground for reconsideration such as a serious error regarding the interpretation or application of an applicable statutory provision, a fundamental misapprehension of the relevant facts or a breach of the rules of natural justice. If the application does not raise a serious *prima facie* issue for review, the Tribunal will simply dismiss the application without turning to the merits of the application (see *Re Director of Employment Standards and Milan Holdings Ltd.*, BC EST # D313/98). In my judgment, the instant application for reconsideration must be summarily dismissed. My reasons for so finding now follow.

### PRIOR PROCEEDINGS AND RECONSIDERATION APPLICATION

4. The delegate conducted an investigation into two complainants’ claims for unpaid wages. The delegate was faced with markedly divergent positions with each party (the two former employees and Patara) essentially accusing the other of having fabricated their version of events. The delegate’s investigation appears to have been quite thorough and involved interviewing independent third parties in an effort to locate evidence that

would corroborate either party's story. The delegate's reasons are set out in 36 single-spaced pages and evidence a careful weighing of the conflicting versions of events and the justification for his ultimate conclusion that the complainants' evidence was more credible than that proffered by Patara.

5. Patara appealed the Determination and argued that it should be cancelled on the grounds that the delegate failed to observe the principles of natural justice in making it and because Patara had new and relevant evidence (see sections 112(1)(b) and (c)). Patara provided almost no documentation or other evidence supporting its position – Member Stevenson characterized Patara's submissions as “sparse” (para. 22) and that, in my view, is a generous characterization. Member Stevenson held that, in fact, Patara had presented no “new” evidence since some of the evidence that was tendered was specifically considered by the delegate in his reasons for decision and another document was found to be “neither “new”, relevant or probative” (see para. 30). Member Stevenson held that Patara's allegation the delegate breached the rules of natural justice amounted to nothing more than a simple statement of disagreement with his factual findings (paras. 35 – 36). Thus, the appeal was dismissed and the Determination confirmed.
6. Patara's application for reconsideration is unusual. Patara does not seek reconsideration on the basis that Member Stevenson's decision is fundamentally flawed in some way (for example, a critical error of law). Patara's application consists solely of a completed Reconsideration Application Form (Form 2) to which is attached a one-paragraph note that reads as follows:

The reason for our application for reconsideration is due to recent conversations between the two parties, [the complainants] would like to return the funds that they have received from Patara Holdings on the account that they have already received payment for the services that they provided when working at the Canadian Lodge. The two former employees wanted to drop the case against Patara Holdings but did not know how to and were afraid of the repercussions it might have on them. [The complainants] are returning the funds back to Patara Holdings and are admitting they had already received payment from Patara Holdings.

## FINDINGS

7. On the basis of the material before me, Patara's assertions are demonstrably false. Unfortunately, this is not the first time that a Patara representative has been found to have made a misleading statement. The two complainants, far from agreeing that they wish to “drop” their case, have provided written statements to the Tribunal asserting that they have not been paid the wages that have been determined to be owing and would only be willing to “drop” their case if and when that situation is rectified. I might add that these written statements were provided to Patara and although Patara was invited to file a reply, it failed to do so. If and when the parties reach a *bona fide* settlement regarding the payment of unpaid wages that are due and payable under the Determination, that settlement will end any enforcement proceedings that might otherwise be taken by the Director. It should also be noted that the Determination also includes an \$11,000 obligation on account of six separate monetary penalties and that the Director is solely empowered to enforce or compromise that aspect of the Determination.
8. Since the correctness of Member Stevenson's decision has not been challenged in any fashion, there is absolutely no point in proceeding with a reconsideration of it. Accordingly, I intend to summarily dismiss Patara's application for reconsideration.

**ORDER**

9. The application to reconsider Member Stevenson's decision is refused. It follows that pursuant to section 116(1)(b) of the *Act*, BC EST # D095/09, issued on September 18, 2009, is confirmed.

---

**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**