

An Application for Reconsideration

- by -

Kenneth Ross Meiklejohn, a Director or Officer of
Western Outdoor Advertising Inc.

- 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

ADJUDICATOR: John M. Orr

FILE No.: 2001/33

DATE OF DECISION: March 23, 2001

DECISION

OVERVIEW

This is an application by Kenneth Ross Meiklejohn ("Meiklejohn") under Section 116 (2) of *the Employment Standards Act* (the "Act") for a reconsideration of a Decision #D453/00 (the "Original Decision") which was issued by the Tribunal on November 9, 2000.

The original decision was issued in response to an appeal filed by Meiklejohn of a Determination issued by the Director against him as a Director or Officer of Western Outdoor Advertising Inc. ("Western" or "the company"). Meiklejohn and another person were found to be personally liable for the payment of two months wages to a former employee, Phyllis Dunning ("Dunning").

The company had previously been found liable for wages owing to Dunning and the company had failed to appeal in a timely fashion from the corporate determination. An application to extend the time to appeal was denied. Two determinations were issued against directors or officers. One of these was against Meiklejohn.

Meiklejohn and the other director appealed to the Tribunal and written submissions were made by both of the director's with responses from Dunning and the Director. The Tribunal's adjudicator issued a written decision (BCEST #D453/00) on November 9, 2000.

Meiklejohn now applies for a reconsideration of that decision. He claims that there was a denial of natural justice because the company was denied the opportunity to appeal the original corporate determination.

ANALYSIS

The current suggested approach to the exercise of the reconsideration discretion under section 116 of the *Act* was set out by the Tribunal in *Milan Holdings Ltd.*, BCEST #D313/98. In *Milan* the Tribunal sets out a two-stage analysis in the reconsideration process. The first stage is for the panel to decide whether the matters raised in the application for reconsideration in fact warrant reconsideration. In deciding this question the Tribunal should consider and weigh a number of factors such as whether the application is timely, whether it is an interlocutory matter, and whether its primary focus is to have the reconsideration panel effectively "re-weigh" evidence tendered before the adjudicator.

The Tribunal in *Milan* went on to state that the primary factor weighing in favour of reconsideration is whether the applicant has raised significant questions of law, fact, principle or procedure of sufficient merit to warrant the reconsideration. The decision states, "at this stage the panel is assessing the seriousness of the issues to the parties and/or the system in general". Although most decisions would be seen as serious to the parties this latter consideration will not

be used to allow for a "re-weighing" of evidence or the seeking of a "second opinion" when a party simply does not agree with the original decision.

It is one of the defined purposes of the *Act* to provide a fair and efficient procedure for resolving disputes and it is consistent with such purposes that the Tribunal's decisions should not be open to reconsideration unless there are compelling reasons: *Khalsa Diwan Society* BCEST #D199/96.

The circumstances in which an application for reconsideration will be successful will be limited. In a Reconsideration decision dated October 23, 1998, *The Director of Employment Standards*, BCEST #D475/98, the Adjudicator sets out those limits as follows:

- *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*

In my opinion this is not a case that warrants the exercise of the reconsideration discretion. The original decision is focused on the issue as to whether Meiklejohn was a director or officer of the company at the time that the wages were earned. There is nothing in the application for reconsideration that addresses this issue. There is no submission that the adjudicator was wrong in law or in her assessment of the facts. There is really no denial of Meiklejohn's status as a director or officer of the company.

This application for reconsideration raises no significant arguments to refute the director's liability and I conclude that the application does not meet the threshold that would warrant a reconsideration.

ORDER

The Tribunal denies the application for reconsideration.

JOHN M. ORR

John M. Orr
Adjudicator
Employment Standards Tribunal