

An Application for Reconsideration

- by -

Stephen D. Lee and Chris Okey, operating as Pinpoint Timber Ventures

- 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.: 2003/8

DATE OF DECISION: May 6, 2003

DECISION

OVERVIEW

This is an application by Chris Okey (“Okey”) operating in partnership with Stephen D. Lee (“Lee”) as Pinpoint Timber Ventures (“Pinpoint”) pursuant to Section 116 (2) of the *Employment Standards Act* (the “Act”) for a reconsideration of a Tribunal decision #D521/02 (the “Original Decision”) which was issued by the Tribunal on December 2, 2002.

Pinpoint had a contract with the Ministry of Forests to harvest trees infected with mountain pine beetle. Pinpoint employed Ronald Klassen as a forestry technician supervisor but failed to pay his wages in compliance with the *Act*. A delegate of the Director of Employment Standards (“the delegate”) determined on September 5, 2002 that Pinpoint owed wages to Klassen in the amount of \$7,501.16

Pinpoint appealed to the Employment Standards Tribunal (“the Tribunal”) but an adjudicator appointed by the Tribunal found, in the original decision, that there had been no error in fact or the application of the law and dismissed the appeal.

Okey now applies to the Tribunal for a reconsideration of the original decision claiming that the adjudicator dismissed some of his grounds for appeal on the basis that they had not been previously raised with the delegate. Okey claims that the reason for the failure to address some of the issues was because the delegate had not complied with Section 77 of the Act that required the delegate to make reasonable efforts to give a person under investigation an opportunity to respond.

Okey claims that he did not receive correspondence from the delegate until December, some three months after the determination was issued. He says that because of this he did not have a reasonable opportunity to present his case to the delegate. In fact he claims that the correspondence was not received until after the original appeal decision was issued by the Tribunal. He claims that he was “a little shocked” when he discovered that the mail had not been addressed to him but rather to his partner and to his accountant.

ISSUE

The issue in this application is whether the applicant has raised sufficient concern that the delegate did not comply with section 77 or that the proceedings on appeal were contrary to the principles of natural justice to justify the Tribunal in making an order pursuant to section 116 of the *Act*.

ANALYSIS

The test for the exercise of the reconsideration power under section 116 of the *Act* is set out in *Milan Holdings Ltd.*, BCEST #D313/98. 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 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.

In my opinion this is not a case that warrants the exercise of the reconsideration discretion. The submissions made by Okey were carefully considered and analysed by the adjudicator in the original decision.

The argument by Okey that correspondence was sent to Lee, his partner in the business, only confirms that reasonable notice was given to the business. Section 7 of the *Partnership Act* provides that each partner is an agent of the firm and the other partners for the purpose of the business partnership and Section 18 of the same Act provides that notice to any partner operates as notice to the business.

It is evident from Okey's submissions on file that he had reasonable contact with his bookkeeper and his partner. It is disingenuous to now suggest that he was unaware of the opportunity to actively communicate with the delegate and to present fully his version of events and to make submissions.

I am satisfied that the business through its partners had more than a reasonable opportunity to respond to the investigation both during the investigation and in the course of the original appeal. Accordingly the application for reconsideration is dismissed.

ORDER

The application to reconsider the original decision in this matter is dismissed.

John M. Orr
Adjudicator
Employment Standards Tribunal