

An Application for Reconsideration

- by -

Dhillon Labour Contractors Ltd.

- 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

TRIBUNAL MEMBER: Ian Lawson

FILE No.: 2004A/167

DATE OF DECISION: November 3, 2004

DECISION

SUBMISSIONS

Dalbir Singh Dhillon

On behalf of Dhillon Labour Contractors Ltd.

Sharn Kaila

On behalf of the Director of Employment Standards

OVERVIEW

This is a request for reconsideration under s. 116 of the *Employment Standards Act* (“*Act*”) filed by Dhillon Labour Contractors Ltd. (“Dhillon”) on September 4, 2004. It relates to the decision of Adjudicator Kenneth Wm. Thornicroft made on August 31, 2004 (“Original Decision”). That decision dismissed Dhillon’s appeal from a Determination issued on June 8, 2004. The request for reconsideration is now decided without a hearing, on the basis of written submissions.

FACTS

Dhillon is a licensed farm labour contractor. On April 7, 2004, Sharn Kaila, as a delegate of the Director, issued a Demand for Records to Dhillon pursuant to section 85(1)(f) of the *Act*. It was discovered that no records were kept of the volume or weight of a blueberry crop that had been picked by Dhillon’s workers. These records are required by section 6(4) of the *Employment Standards Regulation* (“*Regulation*”). A Determination was issued on June 8, 2004, finding that Dhillon had contravened section 6 of the *Regulation* and imposing an administrative penalty of \$500.00.

Dhillon filed an appeal from this Determination on July 2, 2004. The appeal was decided by Adjudicator Thornicroft on the basis of written submissions. The Original Decision is expressed succinctly as follows:

Dhillon submits that the Determination should be cancelled since it was denied natural justice. However, there is not a single assertion in its materials that would suggest that the principles of natural justice were offended in this case. Indeed, in its very brief submission, Dhillon acknowledges that it did not keep the proper records but says that it thought it did not have to keep such records because its employees were paid hourly rather than on a piecework basis. However, a farm labour contractor’s section 6 duties (including the obligation to keep and maintain records) apply regardless of the method of payment utilized for its employees.

Dhillon asks that the penalty be “waived” and says that it will comply with its record-keeping obligations from now on. However, in the face of a clear contravention, and in the absence of any lawful defence, the \$500 penalty was quite properly levied and this Tribunal has no jurisdiction to cancel it simply because Dhillon has promised not to contravene the *Regulation* in the future.

This appeal is entirely without merit.

The Reconsideration Application Form filed by Dhillon contains the following statement in the section, “Reasons for Requesting a Reconsideration,” which I reproduce *verbatim*:

We are requesting for reconsideration because tribunal and Labour Standard have not understood our point so we want you to explain our point again. So please provide us another chance to explain our point. We have talk to one of employee handling our case her name is Simran and she is satisfied with our and she advice us to request for reconsideration.

The complete written submission filed by Dhillon in support of this request is as follows:

Sir I want to give you information that its lack of understanding about information because representative of our company was unable to explain his view due to lack of speaking English.

Now I want to explain that employment standards are asking for weight of berry picked by our employees but in our case it’s not possible to give information of berry picking. The reason is the berry was not picked by workers but it’s collected from the field and collecting of berry is not piece work job. All the employees are paid by hours and we don’t have any weight picking information about it.

We have already explain our reason to one of employment standard employee and she was quite satisfied and she advice us to apply for reconsideration her name is Simran. If you didn’t understand our information we can directly talk to you. We can explain better verbally.

ISSUE

In any request for reconsideration there is a threshold issue whether the Tribunal will exercise its discretion to reconsider the Original Decision. If satisfied the case is appropriate for reconsideration, the substantive issue raised in this application is whether Dhillon contravened section 6 of the *Regulation*.

ANALYSIS

The Tribunal’s power to reconsider its decisions discretionary. A principled approach to the exercise of this discretion has been developed. The rationale for the Tribunal’s approach is grounded in the language and the purposes of the Act. One of the purposes of the Act, found in subsection 2(d), is “to provide fair and efficient procedures for resolving disputes over the interpretation and application” of its provisions. Another stated purpose, found in subsection 2(b), is to “promote the fair treatment of employees and employers.” The general approach to reconsideration is set out in *Milan Holdings Ltd.*, BC EST #D313/98, which can be usefully summarized as follows:

1. Any party exercising its right to request the Tribunal to reconsider must first pass the threshold of persuading the Tribunal that it is appropriate to enter upon a reconsideration of the adjudicator’s decision. The obligation to satisfy the Tribunal that it ought to embark on a reconsideration may be seen as roughly analogous to the obligation, in some statutory contexts, to obtain leave to appeal before a Tribunal decision may be appealed to the Courts.
2. In recognition of the importance of preserving the finality of adjudicator’s decisions, the Tribunal will agree to reconsider those decisions only to the extent that it is first satisfied that one or more of the issues raised in the reconsideration application is important in the context of the *Act*.

3. The Tribunal tends not to be favourably disposed to entering upon a reconsideration where the reconsideration application is untimely, where it asks the panel to re-weigh evidence, and where it seeks what is in essence interlocutory relief.
4. Where the Tribunal agrees to enter upon a reconsideration of a decision, the Tribunal moves, at the second stage, directly to the merits. The standard of review at this stage is the correctness of the decision.
5. Unlike the process for seeking leave to appeal in the Courts, the party requesting the Tribunal to reconsider must address in one submission both the test for reconsideration and the merits of the decision.

It seems clear to me that language problems may be at the heart of Dhillon's current difficulty, and may explain Dhillon's belief that neither the Director nor the Tribunal understood its point. However, Dhillon is incorporated under the laws of British Columbia and must operate in accordance with the *Employment Standards Act* and *Regulation*. Its principals would have had to have passed a written examination on the *Act* and *Regulation* as a condition of licensing. The company knew or ought to have known that an understanding of this legislation is essential to its continued operation, and it would have to promptly resolve any language barriers its principals might face. Meeting the minimum requirements of this legislation, appealing a Determination and making a Request for Reconsideration are all steps which require more than elementary knowledge of English to carry out successfully.

Applying the test for reconsideration set out above, I am unable to see any issue here that could be described as important in the context of the *Act*. Until the legislature or Parliament enacts otherwise, there are only two official languages in Canada and anyone carrying on business in British Columbia must be familiar with our laws, which are written in English only. An inability to understand English in and of itself cannot be grounds for reconsideration (or appeal), and it would be inappropriate for me to enter upon a reconsideration of the Original Decision. The request is therefore denied.

ORDER

Dhillon's request for reconsideration of the Original Decision pursuant to s. 116 of the Act is denied.

Ian Lawson
Member
Employment Standards Tribunal