

An Application for Reconsideration

- by -

Doris Merrill Nelson

- 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.: 2001/35

DATE OF DECISION: May 1, 2001

DECISION

OVERVIEW

This is an application made on behalf of Doris Merrill Nelson (“the appellant”) by a self proclaimed advocate, who entitles himself “The Honourable Robert H. Nelson, Founder and President of Public Defenders for Himself and All Those Improperly denied Benefits” and describes himself as the head of the “Public Defenders Party International Court of Truth”, under Section 116 (2) of the *Employment Standards Act* (the “Act”) for a reconsideration of a Decision #D550/00 (the “Original Decision”) which was issued by the Tribunal on December 19, 2000.

The original decision was issued in response to an appeal filed by the same person, herein after referred to as “Nelson”, on behalf of the appellant in regard to a Determination issued by the Director of Employment Standards (“the Director”) on October 03, 2000 in which the Director dismissed a claim by Doris Nelson for wages owing in regard to work performed for Shao Hsiung Enterprises Ltd. operating as Best Western Kings Inn (“the Kings Inn”). The Director found that Ms Nelson was not employed by the Kings Inn but rather by a separate company contracted to provide services to the Kings Inn.

Nelson submitted the appeal on behalf of Ms Nelson and it was considered, based on written submissions without a hearing, by an adjudicator for the Tribunal who rendered a decision dated December 19, 2000. In that decision, the original decision, the adjudicator considered the extensive written submissions provided by Nelson and concluded that he was not persuaded that the determination was wrong. He dismissed the appeal and confirmed the determination.

Nelson has now requested that the Tribunal reconsider the adjudicator’s decision.

ANALYSIS

In this case there is a serious issue of “standing”. It is very questionable that Nelson has any standing to pursue this matter. However, as those parties with legitimate standing have not raised this point, I will proceed on the basis that Nelson is some sort of representative for the appellant.

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 this case Nelson has provided hundreds of pages of submissions, many of which are repetitive, and makes extremely serious allegations of theft, fraud, and forgery. Most of these materials relate to an ongoing dispute between Mr. Nelson and the Canada Customs and Revenue Agency – at one time more simply known as Revenue Canada. In these materials Nelson makes submissions that are at times extravagant, absurd, fanciful, frivolous, vexatious, scandalous, and probably defamatory. Despite the bizarre nature of the submissions it behoves the Tribunal to assess whether or not they contain any rational basis upon which the Tribunal should exercise the discretion to reconsider the original decision.

The one and only rational argument that emerges from the vast amount of mostly irrelevant material filed by Nelson is that Revenue Canada had attached money payable to Ms Nelson

by the Kings Inn. It is submitted that the implication of the attachment is that the attachment was of “wages” owing by the Kings Inn to Ms Nelson and therefore she must have been an employee as she originally claimed. Of course, Nelson still continues to allege that Ms Nelson was an employee but there is no other new or substantial evidence to support that allegation.

The mere alleging of errors of law or fact may not be sufficient to warrant reconsideration. It is an important principle established by this Tribunal that the adjudicator’s decisions should generally be considered final unless such errors of fact or law have some substantial *prima facie* merit to them. I have read carefully all of the submissions received from Nelson within the time allowed for submissions and can find no rational argument to suggest that either the original decision or the determination were wrong.

Both the Director’s delegate and the adjudicator of the original decision carefully considered the submissions made by Nelson on behalf of Ms Nelson and could find no merit to his arguments. They both considered the argument in relation to the actions of Revenue Canada and rejected them. I see no rational basis to disagree with either of those findings.

As noted above, the purpose of the reconsideration discretion is not to allow a party to simply seek a second opinion. In my opinion that is what Nelson is seeking. This is not a case that warrants the exercise of the reconsideration discretion.

ORDER

The application for reconsideration herein is denied.

JOHN M. ORR

**John M. Orr
Adjudicator
Employment Standards Tribunal**