

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an application for reconsideration pursuant to Section 116
of the *Employment Standards Act* S.B.C. 1995, C. 38

- by -

The Khalsa Diwan Society
("The Society")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/122

DATE OF DECISION: July 11, 1996

BC EST # D199/96
(Reconsideration of BC EST #D114/96)

DECISION

INTRODUCTION

This is an application by Khalsa Diwan Society (“the Society”) under Section 116(2) of the *Employment Standards Act* (the “Act”) for a reconsideration of Decision # D114/96 (the “Decision”) which was issued by the Tribunal on May 30, 1996.

The Decision dealt with two separate appeals brought by the Society and by Gian Singh Kotli (“Kotli”) against Determination # CDET 000867. The Determination required the Society to pay vacation pay and severance pay to Kotli. Both appeals were heard at a hearing on May 17, 1996 which addressed the following two issues:

1. Did the Society have just cause to terminate Kotli’s employment; and
2. What were the terms and conditions of Kotli’s employment contract, particularly with respect to the monthly stipend?

The Decision contained an Order that the Determination be varied to show that the Society owes wages to Kotli in the amount of \$7,275.46 plus interest to be calculated in accordance with Section 88 of the *Act*.

The Society’s application for a reconsideration was received by the Tribunal on July 11, 1996.

RECONSIDERATION OF ORDERS AND DECISIONS

The grounds on which the Tribunal will reconsider its orders and decisions were set out in the Decision **Zoltan T. Kiss** [BC EST# D122/96] in the following terms:

Some of the more usual or typical grounds why the Tribunal ought to reconsider an order or a decision are:

- a failure by the Adjudicator to comply with the principles of natural justice;
- there is some mistake in stating the facts;
- a failure to be consistent with other decisions which are not distinguishable on the facts;
- some significant and serious new evidence has become available that would have led to the Adjudicator to a different decision;
- some serious mistake in applying the law;

BC EST # D199/96
(Reconsideration of BC EST #D114/96)

- some misunderstandings of or a failure to deal with a significant issue in the appeal; and
- some clerical error exists in the decision.

This, of course, is not an exhaustive list of the possible grounds for reconsidering a decision or order.

There are also some important reasons why the Tribunal's statutory power to reconsider orders and decisions should be exercised with great caution, such as:

- Section 2(d) of the *Act* establishes one of the purposes of the *Act* as providing fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. Employers and employees should expect that, under normal circumstances, one hearing by the Tribunal will resolve their dispute finally and conclusively. If it were otherwise it would be neither fair nor efficient.
- Section 115 of the *Act* establishes the Tribunal's authority to consider an appeal and limits the Tribunal to confirming, varying or canceling the determination under appeal or referring the matter back to the Director of Employment Standards (presumably, for further investigation or other action). These limited options (confirm vary or cancel a Determination) imply a degree of finality to Tribunal decisions or orders which is desirable. The parties to an appeal, having incurred the expense of preparing for and presenting their case, should not be deprived of the benefits of the Tribunal's decision or order in the absence of some compelling reason.
- It would be both unfair and inefficient if the Tribunal were to allow, in effect, two hearings of each appeal where the appeal hearing becomes nothing more than a discovery process for a reconsideration application.
- In his report, *Rights & Responsibilities in a Changing Workplace*, Professor Mark Thompson offers the following observation at page 134 as one reason for recommending the establishment of Tribunal:

The advice the Commission received from members of the community familiar with appeals system, the staff of

BC EST # D199/96
(Reconsideration of BC EST #D114/96)

the Minister and the Attorney General was almost unanimous. An appeals system should be relatively informal with the minimum possible reliance on lawyers. Cases should be decided quickly at the lowest possible cost to the parties and the Ministry. The process should not only be consistent with principles of natural justice, but be seen to meet those standards.

Professor Thompson also noted that the appeal process should not be protracted because many claimants (employees) “...need the monies in dispute quickly to meet their basic needs.”

ANALYSIS

The Society’s application for reconsideration sets out five reasons why it believes that the Decision should be reconsidered. The reasons given by the Society are:

1. The Decision is incorrect in finding the Kotli’s stipend was \$1,200 per month.
2. The amount of vacation pay found to be owed to Kotli is incorrect because it is based on a salary of \$1,200 per month.
3. The Society does not owe severance pay to Kotli because it had just cause to dismiss him.
4. A \$1,000 loan given to Kotli by the Society should be deducted from the amount of the Determination and Order.
5. Kotli should be required to return a fax machine and photographs to the Society.

None of these reasons bring the Society’s application for reconsideration within any of the grounds on which the Tribunal will reconsider a decision. In reality, the reasons given by the society for its application represent an attempt to re-argue the Society’s appeal under Section 112 of the *Act*. The Decision contains a careful analysis of the evidence and argument presented by the parties at the hearing. I can find no reason to reconsider the Decision.

**BC EST # D199/96
(Reconsideration of BC EST #D114/96)**

ORDER

Pursuant to Section 116 of the *Act*, I decline to vary or cancel the Tribunal Decision BC EST #D114/96.

**Geoffrey Crampton
Chair
Employment Standards Tribunal**

GC:nc