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-

Lawrence Robert

("Robert")

-of a Decision issued by-

The Employment Standards Tribunal

(the "Tribunal")

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE No.:	File No. 96/129
DATE OF DECISION:	August 16th, 1996

DECISION

OVERVIEW

Lawrence Robert ("Robert") has filed an application, pursuant to section 116 of the Employment Standards Act (the "Act"), for reconsideration of an adjudicator's decision to confirm Determination No. CDET 000866 issued by the Director of Employment Standards on January 29th, 1996 (the "Determination"). The adjudicator, in a written decision issued June 6th, 1996, held, following an oral hearing, that Robert was not entitled to any compensation under the Act as there was no employment relationship between himself and Interior Ceramic Supplies ("ICS"). The present application for reconsideration is founded, primarily, upon various grounds set out in Robert's solicitor's letter to the Tribunal dated July 2nd, 1996. In particular, Robert's solicitor alleges that:

> i) the adjudicator "failed to consider all of the evidence in reaching [his] decision";
>
> ii) the adjudicator "erred by not giving due weight to the affidavit evidence presented"'; and
>
> iii) the adjudicator "gave undue weight to character evidence of other parties that incited bias against [Robert]".

ANALYSIS

The adjudicator heard conflicting testimony as to the nature of the "employment relationship" between Robert and ICS. In the end result, the adjudicator did not find Robert to be a credible witness and, accordingly, was not able to accept Robert's submission that an employment relationship had existed between himself and ICS. I might note that the Employment Standards Officer was similarly disinclined to accept Robert's evidence at face value and specifically referred to Robert's lack of credibility in the Reason Schedule appended to the Determination.

It is a well-accepted legal principle that credibility assessments are best made by the decision-maker before whom the parties appear. It is also well-established that a decision-maker cannot simply conclude that a particular witness is not credible without setting out, in some detail, the objective bases for arriving at that conclusion.

I have carefully reviewed the Reasons of the adjudicator in this matter. Having done so, I am entirely satisfied that the adjudicator relied on several objective criteria in making his assessment that Robert's testimony was not credible including:

a) the lack of corroborating documentary evidence to support his position;
b) demonstrated impossibilities in his narrative;
c) fabrication of evidence; and
d) evasive responses to direct questions.

In essence, the thrust of Robert's submission in support of his application for reconsideration is that he does not agree with the findings of fact and credibility determinations made by the adjudicator. However, in my view, the reconsideration provision in the Act was not enacted so as to allow parties an unfettered opportunity to reargue their case. I agree with the principles set out in earlier reconsideration decisions issued by the Tribunal Chair (e.g., Kiss, Decision No. D122/96 and Khalsa Diwan Society, Decision No. D199/96), namely, that the reconsideration provision should be used sparingly and only when there has been a demonstrable breach of the rules of natural justice, or where there is compelling new evidence that was not available at the time of the appeal hearing, or where the adjudicator has made a fundamental error of law.

In my opinion, if the reconsideration provision is interpreted so as to give any dissatisfied party an automatic right of review, the Tribunal will soon be inundated with such requests. In fairly short order, one of the statutory purposes of the Act, namely, the fair and efficient resolution of disputes, will be frustrated. I would also note that other administrative bodies that have a statutory reconsideration power have also adopted a restrictive approach (e.g., the B.C. Labour Relations

Board) and thus the position espoused by the Tribunal is consistent with that adopted by other adjudicative bodies.

In light of the following circumstances:

- Robert had a full and fair opportunity to present his case before the adjudicator;

- the findings made by the adjudicator were amply supported by the evidence; and

- in the absence of any compelling new evidence,

I can see no basis for disturbing the decision of the adjudicator in this matter.

There is one further issue that I do not wish to let pass without comment. In his letter to the Tribunal, Robert's solicitor asks that the matter be remitted to a "less biased adjudicator" for rehearing. There is absolutely nothing in the material before me that even remotely suggests that the adjudicator was biased as that term is generally understood in administrative law. As a member of the bar, surely this solicitor is aware of the legal tests for bias and one would expect at least some evidence to be put forward in support of such a serious allegation. It is one thing to disagree with the findings of fact made by a decision-maker; it is quite another to suggest that such findings resulted from a bias against one of the parties.

ORDER

The application to vary or cancel the decision of the adjudicator in this matter is refused.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal