

BC EST #D229/97
Reconsideration of BC EST #D073/97

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of a reconsideration pursuant to Section 116 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Frank Hudon
("Hudon")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

ADJUDICATOR: Richard S. Longpre

FILE NO.: 97/275

DATE OF DECISION: June 2, 1997

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DECISION

OVERVIEW

This is an application pursuant to Section 116 of the *Employment Standards Act* (the “*Act*”) seeking a reconsideration of a decision of the Employment Standards Tribunal BC EST #D073/97. The Tribunal’s decision (the “Decision”) cancelled Determination No. CDET 004837 (the “Determination”). The Determination found that Harding Fork Lift Services Ltd. (the “Employer”) owed Hudon termination pay of \$7,475.27.

Hudon requests that the Decision be set aside and the Employer's original appeal proceed to an oral hearing.

ISSUE TO BE DECIDED

Hudon argues that he was denied natural justice in the appeal of the Determination. He also argues that the Decision had a “fundamental misunderstanding of or a failure to deal with a significant issue in the appeal.”

FACTS

Hudon worked for the Employer from November 1987 to May 1996. On May 13, 1996 Hudon was given two weeks notice of lay off. The Determination found that Hudon had not been offered reasonable alternative employment. The Determination also found that the Employer had not given Hudon proper notice of termination. Those findings lead to the conclusion that Hudon was owed termination pay equivalent to eight weeks’ wages.

The Decision dealt with the Employer's appeal of the Determination’s conclusion. The Decision was based on uncontested evidence that the Employer had offered Hudon reasonable alternative employment before the lay off. On this evidence, the Determination was cancelled.

ANALYSIS

Hudon argues that he did challenge the Employer's appeal on whether he had been offered reasonable alternative employment when he was laid-off work in May 1996.

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I have reviewed the submissions. The reason why the original Adjudicator found that the evidence was not challenged becomes apparent. I agree with Hudon, however, that there had been an issue of whether Hudon was offered reasonable alternate employment. The Decision should be cancelled and the Employer's original appeal should proceed to an oral hearing. The hearing is scheduled for June 23, 1997. The parties have a clear idea of the issue to be addressed.

ORDER

I order, pursuant to Section 115 of the *Act* that BC EST #D073/97 be cancelled. An oral hearing on June 23, 1997 will proceed with Harding Fork Lift Services' appeal application dated December 18, 1997.

Richard S. Longpre
Adjudicator
Employment Standards Tribunal