



An Application for Reconsideration

- by -

Rhonda Bennett  
("Bennett" or "employee")

- 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:** Paul E. Love

**FILE No.:** 2001/012

**DATE OF DECISION:** May 16, 2001

## DECISION

### OVERVIEW

This is an application for reconsideration, made by Rhonda Bennett (“employee”) of a reconsideration decision of the Employment Standards Tribunal (“Tribunal”) dated February 18, 2000. The issues arise out of a Determination issued March 4, 1999 which found Consumer Direct Contact Ltd. (“employer”) just cause for the dismissal of the employment and that the employee had proven no entitlement to wages for a period before the dismissal. The Original Decision upheld the dismissal for just cause, but awarded wages in the amount of \$880.00. In a reconsideration application filed by the employee, the Adjudicator issued a Decision confirming the dismissal for just cause. In a reconsideration application by the employer, the Adjudicator issued a Decision reducing the employee’s wage entitlement to \$440.00. This application for reconsideration, by the employee sought to restore the wage entitlement to \$880.00. Section 116(3) of the Employment Standards Act (the “Act”) provides for only one reconsideration application for an issue. The earlier reconsideration applications disposed of all the issues in the Decision, and therefore there was an issue estoppel with regard to this application to reconsider a reconsideration.

### ISSUES TO BE DECIDED

As a threshold issue, is this a proper case for the exercise of the Tribunal’s discretion to reconsider under s. 116 of the Act?

### FACTS

This reconsideration application is decided upon written submissions of the employer, employee and Delegate. I propose to deal with this matter on a procedural basis, and therefore have not set out in detail the facts, and the arguments of the parties on the merits of the application.

Rhonda Bennett (“employee”) was employed by Consumer Direct Contact Ltd. (“employer”). Ms. Bennett filed a complaint complaining that she was dismissed without compensation for length or service, and claimed an entitlement to wages for a period before the date of the dismissal. The Determination in this matter was issued on March 4, 1999 and dealt with a wage claim by the employee for the period September 24, 1996 to October 4, 1996, in the amount of \$880.00, and a claim that she was terminated without notice or pay in lieu of notice. The Delegate determined that the employer had just cause to dismiss the employee. The Delegate also determined that the employee had not proved any claim for wages. The employee appealed the Determination.

The original decision in this matter was issued by Adjudicator Longpre on July 13, 1999 ( #D 316/99) after an oral hearing . He confirmed that the employee had been dismissed with just cause. He, however, found that the employee was entitled to wages in the amount of \$880.00. Both the employee and employer applied to reconsider the decision. In Decision #D081/00 issued on February 18, 2000, dealing with the employee's application, Adjudicator Thornicroft reconsidered and confirmed Ms. Bennett's dismissal for just cause. In Decision D#082/00 issued on the same date, Adjudicator Thornicroft varied the original decision by reducing the wage entitlement of the employee to \$440.00.

On December 12, 2000 the Tribunal's Registrar responded to letters from Ms. Bennett dated November 23, and 27, 2000. Ms. Bennett had also written to the Registrar with regard on February 23, 2000. That letter indicates in part

... I am prepared to accept your request for a reconsideration of Decision BCEST #D082/00 regarding the amount of wages owed to you by CDC. Please submit your request for a reconsideration to the Tribunal no later than January 2, 2001.

On January 1, 2001, the employee now applies to reconsider the Reconsideration Decision (#D082/00) dealing with wages. She alleges that the application for reconsideration should not have been considered by the Tribunal. She does not say what she is seeking. I assume that she is seeking a reinstatement of amounts found to be due and owing by Adjudicator Longpre.

In effect, the employee has applied to reconsider a reconsideration decision of the Tribunal.

## **ANALYSIS**

I note that the Registrar accepted the request for reconsideration for the purpose of filing the material, and referring that material to an adjudicator for decision. The adjudicator must decide, however, whether this is a proper case for reconsideration: Milan Holdings Ltd., BCEST #D186/97. A significant factor for refusing a reconsideration application, is where the appellant seeks to have the adjudicator "re-weigh" the evidence before another adjudicator.

In an application for reconsideration, the burden rests with the appellant, in this case the employee to show that this is a proper case for reconsideration. The Tribunal has reconsidered the quantum of wages owing to Ms. Bennett. In my view there is an issue estoppel, as Adjudicator Thornicroft ruled on whether Adjudicator Longpre erred in the wage entitlement of Ms. Bennett. This is an undisguised attempt to reargue the same issue. The doctrine of issue estoppel applies where the very issue has been argued by the parties or their privies, and a final decision has been made: Scott, BCEST #D052/87 (Thornicroft). Ms.

Bennett should have raised any concerns with the wage entitlement in submissions to Adjudicator Thornicroft.

The Act clearly contemplates an appeal, and the possibility of a reconsideration of Decision. The legislature did not provide a remedy for reconsideration of a reconsideration to the Tribunal. Section 116(3) provides that an application may be made only once with respect to the same order or decision. The issue of wage entitlement is final as it concerns the Tribunal's process. It was of course open to the employee to apply for judicial review of decision D082/00.

I note that in reviewing the material in this case, I was somewhat surprised that Adjudicator Longpre found that Ms. Bennett had any wage entitlement. His reasons did not clearly set out the evidence on which he relied, or a factual basis for the Decision to reverse the Delegate on the issue of wage entitlement. There was no discussion of how the Delegate erred in dealing with wages. I note that the Delegate found that the employee had not proven any wage entitlement. In my view, if I were to reconsider the merits, I would have restored the Determination that Ms. Bennett was not entitled to any wages.

## **ORDER**

Pursuant to section 116(3) of the Act, I dismiss the application for reconsideration made January 1, 2001.

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**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**