

BC EST #D238/97
(Reconsideration of BC EST #D105/97)

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an Application for Reconsideration pursuant to Section 116
of the *Employment Standards Act*, R.S.B.C. 1996, c. 113

- by -

John David Aubin
Operating As Super Dave's Enterprises

- of a Decision issued by -

The Employment Standards Tribunal

ADJUDICATOR:	Ian Lawson
FILE No.:	97/325
DATE OF DECISION:	June 5, 1997

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DECISION

OVERVIEW

This is a request for reconsideration of the decision of Adjudicator Richard S. Longpre made on March 3, 1997 (BC EST #D105/97). The decision approved Determination CDET #04286 issued by the Director of Employment Standards (the "Director") on October 10, 1996. This Determination required John David Aubin operating as Super Dave's Enterprises to pay compensation to two individuals who were deemed by the Director to have been his employees.

Mr. Aubin requested a reconsideration on March 19, 1997, and the parties were allowed until April 11, 1997 to file written submissions. This decision is based on those submissions.

ISSUE TO BE DECIDED

I must decide whether there are sufficient grounds to set aside or vary the Adjudicator's decision.

ANALYSIS

This Tribunal has adopted a justifiably conservative approach to section 116 of the *Act*, which allows for reconsideration of its decisions. In dismissing a recent request for reconsideration made by the Director of Employment Standards, the Chair of this Tribunal stated:

The Tribunal has consistently held that applications for reconsideration should succeed 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 in law. The reconsideration provision of the *Act* should not be a second opportunity to challenge findings of fact made by the adjudicator, especially when such findings follow an oral hearing, unless such findings can be shown to be as lacking in evidentiary foundation. [*Re Director of Employment Standards and the Employment Standards Tribunal*, BC EST #D344/96, p. 2.]

A heavy onus therefore rests on the party requesting reconsideration to demonstrate that the decision in question was arrived at in a procedurally unfair manner, that it contains a fundamental error of law, or that there is some compelling new evidence which could now lead to a different decision.

I have carefully reviewed Mr. Aubin's submission in support of the request for reconsideration. I have also considered the Adjudicator's decision and the material filed in support of the appeal. I find that Mr. Aubin is simply re-arguing the points which were at the heart of the Adjudicator's decision. He raises no fundamental error of law that the Adjudicator may have made, no lack of procedural fairness in the conduct of the appeal hearing, and presents no new evidence. Mr. Aubin

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bases his request on two points, which in summary are: the two individuals in question had entered into personal service contracts with him, and were not employees; and in any event, if the *Act* has not been complied with, the parties had waived the *Act's* provisions in entering into their employment contracts.

These points were adequately addressed in the Adjudicator's decision and undoubtedly were the focus of evidence and arguments presented at the appeal hearing. As the requirements of the *Act* are minimum requirements in every employment contract and cannot be waived, the conclusion reached by the Adjudicator on Mr. Aubin's second point is correct. As to whether the individuals were contractors or employees, Mr. Aubin has presented no compelling new evidence or argument which would lead me to doubt the Adjudicator's decision in any way. The decision was made after an oral hearing, and I am not prepared to question the Adjudicator's findings of fact in the absence of any fact or argument that casts doubt on those findings.

Mr. Aubin has therefore failed to meet the onus that rests upon him and I see no reason to disturb the Adjudicator's decision.

ORDER

Pursuant to section 116(1) of the *Act*, I dismiss Mr. Aubin's application for reconsideration.

Ian Lawson
Adjudicator
Employment Standards Tribunal