

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 -

SGS Farm Contractors Ltd.
("SGS")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

ADJUDICATOR: John McConchie

FILE NO.: 96/114

DATE OF DECISION: September 3, 1996

DECISION

OVERVIEW

This is an application by SGS Farm Contractors Ltd. under Section 116 of the *Employment Standards Act* (the “Act”) for a reconsideration of Decision # D104/96 (the “Decision”) which was issued by the Tribunal on June 12, 1996.

The Decision addressed an appeal by SGS of Determination No. CDET 000810 issued by the Director of Employment Standards (the “Director”) on January 18, 1996. The Director determined that SGS, the employer, had contravened the Act as set out in a claim filed by Surjit K. Chahal (“Chahal”). The Decision ordered under Section 115 of the *Act* that Determination No. CDET 000810 be varied by increasing the amount owed by SGS for unpaid wages by \$41.70 for a new total of \$2,497.69 to be paid by SGS to Chahal. This was merely to increase the amount in the Determination by an amount of interest erroneously omitted.

RECONSIDERATION OF ORDERS AND DECISIONS

The grounds on which the Tribunal will reconsider its decisions were set out in **Zoltan T. Kiss**, Decision No. #D122/96. There, the Tribunal described the reconsideration issue 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;
- 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 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.

BC EST #D239/96
(Reconsideration of BC EST # D104/96)

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.

" (at pages 3-4)

ANALYSIS

SGS alleges that the Adjudicator in the Decision ignored its representations and the evidence in favour of the claimant's position. It submits that the evidence clearly showed that the employee had signed a contract for a fixed sum of money and that the piece work arrangement found by the Adjudicator to be in place was non-existent.

It is my decision that this application must fail as the appellant has not advanced reasons for reconsideration within any of the grounds on which the Tribunal will reconsider a decision.

Its application is in the nature of a re-argument of the matters dealt with by the Adjudicator.

On review of the Decision, it is my finding that the Adjudicator did not ignore the representations of SGS but rather examined them and then rejected them. As the Adjudicator put it, he found the evidence brought forward by the appellant to be "not persuasive or helpful."

ORDER

Pursuant to Section 116, I decline to vary or cancel the Tribunal Decision BC EST #104/96.

John McConchie
Adjudicator
Employment Standards Tribunal

JLM;jel