

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 -

Pacific Ice Company Inc.
("Pacific")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

ADJUDICATOR:	John McConchie
FILE NO.:	96/357
DATE OF DECISION:	September 3, 1996

DECISION

OVERVIEW

This is an application by Pacific Ice Company Inc. under Section 116 of the *Employment Standards Act* (the “Act”) for a reconsideration of Decision #D174/96 (the “Decision”) which was issued by the Tribunal on July 15, 1996.

The Decision addressed an appeal by Pacific of Determination No. CDET 002334 issued by a delegate of the Director of Employment Standards (the “Director”) on Ma 24, 1996. The Director determined that Pacific owed wages to the complainant Samuel Mitchell Harnett as a result of making an unauthorized deduction from his wages.

The appeal did not challenge any of the facts or reasoning behind the Determination. Instead, it requested a “personal meeting”, which the Adjudicator interpreted as a request for an oral hearing. Although the appellant said that it had “additional information” on the matter to be provided at such a hearing, it did not reveal what the information was.

The Decision rejected the request for an oral hearing, observing that there was no controversy of fact and no issue of credibility. The Decision observed that Section 21 (2) of the *Act* prohibited Pacific from withholding wages owed to pay for any part of the employer’s business costs. The Determination was therefore confirmed.

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;

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- 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:

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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.

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

The application for reconsideration asks the Tribunal to "take a second look at this case, and reconsider to have a personal interview." The appellant advises that it wishes to provide pictures and a section of the *Highway Act*. The application enclosed photocopies of a van which was allegedly damaged by the employee, Mr. Harnett.

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.

The appellant continues to argue about the merits of its decision to withhold wages as a consequence of an accident involving the complainant. However, even were the Tribunal to consider and accept every allegation of fact made by the appellant in its application for reconsideration, the application for reconsideration would be dismissed. Section 21 of the *Act* is clear in its intent and application and prohibits Pacific's action in withholding wages from the complainant.

ORDER

Pursuant to Section 116, I decline to vary or cancel the Tribunal Decision BC EST # D174/96.

John McConchie
Adjudicator
Employment Standards Tribunal
JLM:jel