Employment Standards TRIBUNAL

An Application for Reconsideration

- by -

Peace River Building Products
("Peace River" or the "Employer")

- 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: Ib S. Petersen

FILE No.: 2001/82

DATE OF DECISION: May 23, 2001

DECISION

SUBMISSIONS

Mr. Gerald Giesbrecht	on behalf of the Employer
Ms. Kathy Williams	on behalf of herself
Ms. Debbie Sigurdson	on behalf of the Director

OVERVIEW

This is an application by the Employer pursuant to Section 116 of the *Employment Standards Act* (the "*Act*"), against a Decision of the Employment Standards Tribunal (the "Tribunal") issued on January 16, 2001: *Peace River Building Products Ltd.*, BCEST #D004/01 (the "Decision"). In the Decision the Adjudicator refused to extend the time for filing of an appeal of Determination issued by the Director.

ANALYSIS

Section 116 of the *Act* provides for reconsideration of Tribunal decisions and orders. An application for reconsideration should succeed only where there has been a demonstrable breach of the principles of natural justice, where there is compelling new evidence not available at the original appeal, or where the adjudicator has made fundamental error of law. The Tribunal has emphasized that it will use the power to reconsider with caution in order to ensure finality of the Tribunal's decisions and efficiency and fairness of the system (*Zoltan Kiss* (BCEST #D122/96). Consistent with those principles, the Tribunal has adopted an approach which involves a two stage analysis (*Milan Holdings Inc.*, BCEST D#313/98, reconsideration of BCEST #D559/97). At the first stage, the reconsideration panel decides "whether the matters raised in the application in fact warrant reconsideration" considering such factors as the timeliness of the application together with any valid reason for a delay; whether the primary focus is to have the reconsideration panel "re-weigh" the evidence; whether the application arises out of a preliminary ruling made in the course of an appeal; whether the application raises questions of law, fact, principle or procedure which are so significant that they should be reviewed because of their importance to the parties and/or their implications for future cases; and whether the application raises an arguable case of sufficient merit to warrant reconsideration. The panel in *Milan Holdings* noted:

> "After weighing these and other factors relevant to the matter before it, the panel may determine that the application is not appropriate for reconsideration. If so, it will typically give reasons for its decision not to reconsider the adjudicator's decision. Should the panel determine that

> one or more of the issues raised in the application is appropriate for reconsideration, the panel will then review the matter and make a decision. The focus of the reconsideration panel "on the merits" will in general be the correctness of the decision being reconsidered."

For the reasons set out below, I am of the view that the application for reconsideration has not met the threshold test set out in *Milan Holdings*.

The facts are relatively straight forward. The Determination was issued on September 27, 2000 and properly served on the Employer on September 29, 2000 by registered mail. The Determination stated that an appeal must be delivered no later than October 20, 2000. On or about October 24, 2000, the Employer contacted the delegate and indicated its intent to appeal the Determination. Section 115 of the *Act* provides that an appeal must be delivered within "15 days after the date of service, if the person was served by registered mail." The appeal was not delivered to the Tribunal until October 30, 2000. In the result, the appeal was filed late. The Employer requested an extension. The basis for the application was essentially, as found by the Adjudicator, that the Employer was to busy to read the Determination and, then, to busy to file an appeal. This finding was based on the Employer's correspondence to the Tribunal. After considering the criteria often considered by the Tribunal in making decisions as to whether to exercise its discretion to extend time, the Adjudicator denied the application.

In this application, opposed by the Director and Williams, the Employer states that it is unfamiliar with "this type of proceeding and did not realize the importance of time limits." The Employer also says that it did contact the delegate's office, showing an intention to appeal. The Employer also says that there is "serious prejudice" against it. The delegate, on the other hand, says that there is no evidence of the Employer contacting her office until October 24. The delegate also points to Determination which states that an appeal must be filed with the Tribunal and, as well, attached information on the appeal process. The delegate also says that the issue of prejudice was not put before the Adjudicator in the original Decision.

I largely agree with the delegate and Williams. In my view, the Employer has not shown that the Decision is one that should be reconsidered. In a letter to the Tribunal, dated November 20, 2000, Giesbrech states:

> "The letter of determination was partially read when it was first received. This is an extremely busy time of year for the business and the letter was set aside to be dealt with as soon as possible. Unfortunately, soon did not come soon enough. It was October 19th when the letter was thoroughly read and I immediately phoned Debbie Sigurdson, delegate of the director of Employment Standards, to see if she could extend the time limit for a few days. She was not available at that time and I

> received a message from her office that she would be out until the afternoon on October 24th. This is when I called her again and she said that she could not extend the time limit but possibly the Tribunal could. The person I spoke with at the Tribunal office said to get all my information together and send it as soon as possible. I am extremely busy during the week, particularly at this time of the year, so I prepared the appeal that weekend and faxed it on Monday the 30th. "

In my view, the above quote shows that the basis for the Adjudicator's decision was essentially correct. The Determination was properly served. The Determination is clear on its face both with respect to its legal nature--that it may be filed in the Supreme Court and that collection may be commenced--and with respect to the appeal process. In the context of the information provided, the Employer's claim of lack of familiarity with the process and the importance of time limits is disingenuous. In my view, there is ample basis for the Adjudicator's findings that the Employer simply considered that it was too busy to read the Determination and file an appeal. I agree that the Employer did not indicate its intent to appeal until after the time limit had expired. As well, it would appear from the Employer's submission, quoted above, that even after having been told to "get all [its] information together and send it as soon as possible," the Employer decided to give priority to other matters and did not file the appeal until October 30, 2000. The Employer's decision to give priority to other matters is not a ground for extension of the time limits provided in the *Act*.

In the result, this matter does not warrant reconsideration.

ORDER

Pursuant to Section 116 of the *Act*, the application for reconsideration is dismissed. The Decision of the Adjudicator is confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal