

An Application for Reconsideration

- by -

Klaus Orleans operating as Porpoise Harbour Cedar Products
("Orleans" 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.: 2001/98

DATE OF DECISION: May 23, 2001





DECISION

SUBMISSIONS

Mr. Klaus Orleans on behalf of the Employer

Mr. Bill Woolsey 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: Klaus Orleans operating as Porpoise Harbour Cedar Products, BCEST #D016/01 (the "Decision"). In the Decision the Adjudicator confirmed a Determination issued by a delegate of the Director on July 26, 2000. In the Determination, the delegate found that Laurent Prevost was an employee of Orleans during the month of July 1999 and was owed \$3,087.12 on account of wages and interest.

The original Decision was the result of a hearing held on December 6, 2000. In the Decision, the Adjudicator reviewed the delegate's findings and conclusions and the evidence presented by the parties. As I understand it, the issues before the Adjudicator were largely of a factual nature. Orleans contended that Prevost was hired on a percentage basis by another person, Goupil, who apparently also testified to that effect at the hearing. In the circumstances, the Adjudicator did not find Goupil's evidence "convincing" and "on a review of the evidence in its entirety ... the delegate's findings of fact are supported by the evidence". In the result, the appellant Orleans had not met the burden on appeal and it was dismissed.

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 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). 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. Should the panel determine that one or more of the issues raised in the application warrant reconsideration, the panel will review the matter and make a decision. The focus of the reconsideration panel "on the merits"--the second stage--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* and that the matters raised do not warrant reconsideration.

The appeal, in its entirety, states:

"I found some misunderstandings and a failure to deal with a significant issue in the appeal.

I have been in business for 20 years and have never had a problem with the labour Board.

The individual who leased my boat came to the adjudication as witness. He told the adjudicator that he hired Prevost."

First, the application does not make clear what "misunderstandings" the Employer found in the Decision. It is also unclear to me what the "significant issue" was. There are no particulars of the alleged errors. Given that the burden is on applicant Employer, it is not for me to guess or speculate as to these alleged errors. Moreover, it is inconsistent with the impartial nature of the Tribunal to make a general and vague application for reconsideration and leave it to the Tribunal to scour the file to see if the Adjudicator erred such that reconsideration is warranted. It is for the applicant Employer to set out in sufficient detail the alleged errors. In the result, in my view, the Employer has failed to meet the burden upon it to show that the Decision warrants reconsideration.

Second, the facts alleged in the third paragraph, above, of the application were dealt with by the Adjudicator. She reviewed the file, including the Determination, and heard the testimony of the respective witnesses. She is, therefore, in a better position than the reconsideration panel to make decisions with respect to credibility. It is clear from her decision that she found the testimony of the witness brought to the hearing by the Employer less than "convincing." She is entitled to make that judgement. Essentially, the applicant Employer is seeking a re-weighing of the factual findings without even providing the basis for doing so. I am not going to do that. I am not convinced that there is any issue raised by the application that is so significant, or at all, that it requires reconsideration.

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