

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



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.

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**Ib S. Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**