

An Application for Reconsideration

- by -

Treasures Of The Nile Imports Ltd.

- 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: Fern Jeffries

FILE No.: 2002/212

DATE OF DECISION: June 25, 2002

DECISION

OVERVIEW

This is a request to reconsider a decision pursuant to Section 116 of the Employment Standards Act (the “Act”) that provides:

“(1) On application under subsection (2) or on its own motion, the tribunal may (a) reconsider any order or decision of the tribunal, and

(b) cancel or vary the order or decision or refer the matter back to the original panel.”

The Determination, issued December 11, 2001 awarded the complainant (“Zhao”) wages, compensation for length of service, and interest accrued for a total amount of \$3882.62. The employer appealed on the basis that all wages were paid with the exception of \$300.00 deducted on the allegation that this was the value of an item stolen by Zhao. The appeal decision, issued on March 21, 2002, dismissed the appeal and confirmed the Determination.

ISSUE

The request for reconsideration reiterates the case heard at appeal, i.e. that Zhao stole from the employer, that she was not thorough and honest, and that she has been paid in full for her work. The first issue to consider at this point of a request for reconsideration is: Does this request meet the threshold established by the Tribunal for reconsidering its decisions?

ANALYSIS

The *Act* intends that the Adjudicator’s Appeal Decision be “final and conclusive”. Therefore, the Tribunal only agrees to reconsider a Decision in exceptional circumstances. The Tribunal uses its discretion to reconsider decisions with caution in order to ensure finality of its decisions and to promote efficiency and fairness of the appeal system to both employers and employees. This reflects the purposes of the *Act* detailed in Section 2.

As established in *Milan Holdings* (BC EST # D313/98) the Tribunal has developed a principled approach in determining when to exercise its discretion to reconsider. The primary factor weighing in favour of reconsideration is whether the applicant has raised 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.

Reasons the Tribunal may agree to reconsider a Decision are detailed in previous Tribunal cases. For example, BC EST #D122/96 describes these as:

- The adjudicator fails to comply with the principles of natural justice;
- There is some mistake in stating the facts;
- The Decision is not consistent with other Decisions based on similar facts;

- Some significant and serious new evidence has become available that would have led the Adjudicator to a different decision;
- Some serious mistake was made in applying the law;
- Some significant issue in the appeal was misunderstood or overlooked; and
- The Decision contains some serious clerical error.

While this list is not exhaustive, it reflects the practice of the Tribunal to use its power to reconsider only in very exceptional circumstances. The reconsideration process was not meant to allow parties another opportunity to re-argue their case. As outlined in the above-cited case:

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.

I find that this request for reconsideration is nothing more than an attempt to re-argue the case that was unsuccessful at appeal.

The Decision rendered by the adjudicator explained that the employer did not meet the burden of proof to overturn the determination. This request for reconsideration does not meet the threshold test in that there was no error, no failure to apply the principles of natural justice, and no new evidence that was not or could not have been considered by the adjudicator.

ORDER

Pursuant to section 116 of the *Act*, this request for reconsideration is denied; the decision is confirmed.

Fern Jeffries, Chair
Adjudicator
Employment Standards Tribunal