Employment Standards TRIBUNAL

An Application for Reconsideration

- by -

Paradigm Management (B.C.) Ltd., operating as Expressions Hair Design
("Paradigm Management")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2001/223

DATE OF DECISION: May 31, 2001

DECISION

OVERVIEW

This is an application filed by Paradigm Management (B.C.) Ltd., operating as "Expressions Hair Design" ("Paradigm Management"), pursuant to section 116 of the *Employment Standards Act* (the "*Act*"). Paradigm Management applies for reconsideration of an adjudicator's decision issued on October 19th, 2000 (B.C.E.S.T. Decision No. D420/00).

PREVIOUS PROCEEDINGS

By way of a Determination issued by a delegate of the Director of Employment Standards on April 5th, 2000 under file number ER083-889, Paradigm Management was ordered to pay a total of $781.19 to two complainants, namely, Catherine Richard ($713.00) and Dee-Anne Hackett ($68.19) on account of unpaid wages and section 88 interest. The bulk of each employee's award represented unpaid statutory holiday pay. The two complainants also made a number of allegations against Paradigm that were not ultimately accepted by the delegate.

Paradigm Management appealed the Determination to the Tribunal (as did both employees--see B.C.E.S.T. Decision No. D421/00). Paradigm Management's appeal raised two principal issues. First, Paradigm Management alleged that the Director's delegate did not comply with section 77 of the *Act* which states that a person under investigation must be given a reasonable opportunity to respond to the the allegations made against them. Second, Paradigm Management alleged that the delegate incorrectly calculated the two employees' entitlements to statutory holiday pay.

Following an oral hearing held on August 1st, 2000, the adjudicator issued written reasons for decision dismissing the appeal and confirming the amounts that Paradigm Management was ordered to pay to the two employees by way of the Determination.

THE APPLICATION FOR RECONSIDERATION

Paradigm Management's request for reconsideration is contained in 2-page letter (with a 4-page attachment), dated March 6th, 2001 and addressed to the Tribunal. Paradigm Management's March 6th letter is signed by B.R. Christie, Paradigm Management's president. Paradigm Management's reconsideration application was actually filed with the Tribunal on March 12th, 2001. It is to be noted that this application was filed nearly 5 months after the issuance of the original appeal decision (which, as noted, was issued on October 19th, 2000).

The relevant portions of Paradigm Management's March 6th letter are reproduced below:

> "Please note that I do **not** request that the financial elements of the decision be adjusted in any way.
>
> I am nonetheless concerned that the decision ignored what I feel was a clear breach of Section 77 of the Act. It is this issue in isolation which I feel should be reviewed. I feel also that an opportunity was lost by the [Tribunal] to clarify what is a 'reasonable effort' under Clause 77 on the part of the [Employment Standards Branch] to give a person under investigation an opportunity to respond."
>
> (**emphasis** in original)

ANALYSIS

Applications for reconsideration do not proceed as a matter of statutory right; section 116 of the *Act* states that the Tribunal *may* reconsider a previous decision.

In a number of previous decisions, the Tribunal has held that applications for reconsideration must be filed within a "reasonable time" in light of the particular complexities of the case at hand and a number of other factors. Where there is a significant unexplained delay in making a reconsideration application, that application may be rejected out of hand (*i.e.,* without a detailed consideration of the underlying merits of the application) especially where there is evidence of prejudice to the respondent party(ies) and where the application, on its face, does not raise a compellingly meritorious case [see *Director of Employment Standards (Valorosos),* B.C.E.S.T. Decision No. RD046/01].

In my view, this application is untimely and, given all the circumstances, ought to be refused. I might add, simply for the sake of completeness, that in my view, this application is not meritorious in any event.

In a submission dated April 4th and filed April 5th, 2001 Mr. Christie says that Paradigm Management's application was delayed because he was unaware of the reconsideration provision in the *Act* (section 116) and, in any event, he was busy with his business operations during the period from November 2000 to January 2001. Further, Mr. Christie says that there is no prejudice to the two respondent employees since Paradigm Management does not challenge the monetary awards made in their favour.

As noted, I am not persuaded that this application ought to go forward. Mr. Christie says that he "discovered the [reconsideration] option only when I was away on a long planned holiday, and took the Act with me for light reading" (April 4th, 2001 submission). However, the 1-page "appeal information sheet" appended to the original Determination specifically mentions that if a party disagrees with a decision of a Tribunal adjudicator, that party may

apply for reconsideration. Presumably, Mr. Christie read this sheet prior to appealing the Determination, as it set out further particulars with respect to the appeal process; I find it difficult to accept that he would not have also read the paragraph relating to reconsideration applications.

As for Mr. Christie's claim that he was too busy with his business affairs to attend to the matter of a possible reconsideration application in a timely fashion, I can only observe that *all* employers could make the same sort of argument if that position were to be accepted in this case. Individuals are entitled to have their disputes resolved in a timely manner--indeed, that is a statutory requirement [see subsection 2(d)]--and timely decision-making ought not to be frustrated by the ordinary time pressures that affect all businesses (and for that matter, all employees) to a greater or lesser degree.

Further, since Paradigm Management does not challenge the adjudicator's decision with respect to the monetary awards made in favour of the two employees, one has to question the utility of proceeding with a reconsideration application in this instance. If Mr. Christie accepts that the two employees are properly owed the monies awarded to them (initially by the delegate and subsequently confirmed by the adjudicator), what possible remedy might be ordered if the section 77 argument was accepted?

With respect to the substantive argument regarding the ambit of section 77, I wholly disagree with Mr. Christie that section 77, as interpreted by the adjudicator, effectively creates "no time limit to inform [an] employer of [a] complaint" filed against it (April 4th submission). Section 77 states that the Director and her delegates "must make reasonable efforts to give a person under investigation an opportunity to respond". The delegate's efforts to advise Paradigm Management about the two unpaid wages complaints are delineated, in some detail, at page 3 of the appeal decision. Having reviewed the delegate's efforts to inform Paradigm Management about the complaints, I, for my part, cannot fathom how any reasonable person could conclude that Paradigm Management was denied a reasonable opportunity to respond to the substance of the allegations made against it.

As I conceive Paradigm Management's argument relating to section 77, its assertion is not that the delegate failed to notify it about the unpaid wage complaints, or that it was not given a chance to tell the delegate "its side of the story". Rather, Paradigm Management argues that section 77 must be interpreted as incorporating within it some sort of limitation period that would govern its backpay liability--for example, Paradigm Management argued in its original appeal documents that it should only be liable for unpaid wages that accrued in the 2-year period prior to it being formally notified about the complaints. However, section 77 is not an "unpaid wage liability" limitation provision; that function is served by section 80 of the *Act* and, so far as I can gather, there is simply no tenable section 80 argument to be advanced in this case.

ORDER

The application for reconsideration is refused.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal