

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an application for reconsideration pursuant to Section 116 of the
Employment Standards Act, R.S.B.C. 1996, c. 113

-by-

The Owners, Strata Plan LMS 908

-and-

Strata Corporation LMS 908

(the “employer”)

-of a Decision issued by-

The Employment Standards Tribunal

(the “Tribunal”)

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE No.:	1999/372
DATE OF DECISION:	August 13th, 1999

BC EST #D311/99
Reconsideration of BC EST #D159/99

DECISION

OVERVIEW

This is an application filed by The Owners, Strata Plan LMS 908 and Strata Corporation LMS 908 (to whom I shall jointly refer to as the “employer”) pursuant to section 116 of the *Employment Standards Act* (the “Act”) for reconsideration of an adjudicator’s decision to confirm two separate Determinations that were issued by delegates of the Director of Employment Standards on December 16th, 1998.

The Director’s delegate held that Jayeson Danler and Gail Danler, former caretaker-managers at the employer’s condominium complex (comprised of some 160 units), were owed \$12,815.20 on account of unpaid overtime pay, 2 weeks’ wages as compensation for length of service and concomitant vacation pay and interest. By way of this latter Determination, a \$0 penalty was also levied. In a separate Determination issued the same day, a \$500 penalty was levied against the employer for failure to maintain proper employment records.

The employer appealed both Determinations, namely, the “wage determination” and the “\$500 penalty determination”, to the Tribunal and following two days of testimony (March 17th and April 13th, 1999), a Tribunal adjudicator issued a written decision confirming both Determinations. The adjudicator’s decision (B.C.E.S.T. Decision No. D159/99) is dated May 14th, 1999.

REQUEST FOR RECONSIDERATION

By way of a letter dated May 31st, 1999 and received by the Tribunal on June 4th, 1999, Ms. Laurie Giles, a property manager with Prudential Estates (RMD) Ltd., advised that “the Strata Corporation will be filing for a Reconsideration of the Appeal decision” and that “appropriate documentation will be forwarded to you within the next seven days”. Ms. Giles again wrote to the Tribunal Registrar on June 8th, 1999 (this letter was received by the Tribunal on June 15th, 1999) and this letter sets out the following grounds for reconsideration:

the employer was not given “due process in the Hearing or Appeal process” and that “it’s [sic] rights were usurped”;

- the two complainants presented “new evidence” at the appeal hearing and that the employer was “not afforded an opportunity to review the new evidence and prepare it’s [sic] appropriate response” (I might parenthetically add that the nature of this so-called “new evidence” is not particularized in any fashion);
- the delegates did not attend the appeal hearing and this “arrogant” action “had a negative response against the Strata Corporation”;

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- the “Reports from the Hearing and Appeal are inaccurate, unbalanced and lack the substance of the submissions provided by the Strata Corporation”; and
- the Tribunal “by denying the release of [the complainants’ job log books] to the Strata Corporation, it’s [sic] rights were usurped and the Employment Standards Branch failed to permit a democratic presentation of this evidence by the Strata Corporation”.

Ms. Giles’ June 8th letter concludes with the request that there be a reconsideration “addressing a review of the **process** under which these matters were considered” (**boldface** in original).

No further particulars or evidence have been supplied by the employer in support of its reconsideration request; thus, I have before me only a series of unsupported allegations. Nonetheless, I shall address each allegation in turn.

The employer’s suggestion that it was denied “due process” by the adjudicator is, in my view, bordering on the absurd--testimony was received over two days and all parties were given the right to make written submissions to the Tribunal with respect to the matters in dispute between the parties. As detailed in the adjudicator’s decision (page 6), the employer was afforded the opportunity to inspect the subject log books but refused or neglected to do so. At the appeal hearing, the employer made several allegations about the complainants’ credibility but failed to submit any *evidence* with respect to those allegations. The employer did not produce for the adjudicator’s consideration any calculations indicating where or how the delegate erred in her assessment of the complainants’ overtime entitlements. In sum, the employer was given every reasonable procedural opportunity to challenge the Determinations but, having been given such an opportunity, nonetheless was manifestly unable to convince the adjudicator that the Determinations ought to be set aside or otherwise varied.

The delegates were under no obligation to attend the appeal hearing but if the employer felt their attendance was so vital it could have, had it wished, summoned their attendance--the employer did not do so.

The employer is obviously unhappy with the ultimate result of these proceedings, however, mere dissatisfaction with an adjudicative outcome is not a proper basis for reconsideration. It may well be that the employer did a poor job of presenting its case on appeal--for example, the employer, as noted by the adjudicator, simply failed to present any relevant evidence on certain key points and appears to have fundamentally misconceived a number critical governing legal principles (such as what sort of behaviour, in law, amounts to a lawful “quit”, or that an employer’s failure to maintain payroll records due to ignorance regarding its record-keeping obligations is not a proper excuse for such failure). However, so far as I can gather from my review of the complete file, the adjudicator heard and considered all of the evidence and submissions that were properly before him and came to an entirely reasonable conclusion based on all of the available evidence.

I consider the instant request for reconsideration to be wholly without merit.

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ORDER

The application to vary or cancel the decision of the adjudicator in this matter is refused.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal