

An Application for Reconsideration

- by -

Patara Holdings Ltd. operating as Canadian Lodge Motel

- 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: John M. Orr

FILE No.: 2003A/244

DATE OF DECISION: November 17, 2003

DECISION

SUBMISSIONS:

Elizabeth A. Harris

counsel for Patara Holdings Ltd.

Berhane Semere

on behalf of the Director of Employment Standards

OVERVIEW

This is an application by Patara Holdings Ltd. operating as Canadian Lodge Motel (“Patara”) pursuant to Section 116 (2) of the *Employment Standards Act* (the “Act”) for a reconsideration of a Tribunal decision #D234/03 (the “Original Decision”) which was issued by the Tribunal on July 22, 2003 without holding an oral hearing and based on the record and written submissions of the parties.

Patara employed Trevor Crouse (“Crouse”) as the ‘manager’ of the Motel from August 2001 to July 2002. Subsequently, Crouse filed a complaint that he was not paid properly for overtime and sought compensation for length of service. Patara maintained that Crouse was a “manager” and was therefore excluded from the provisions of the *Act* regarding overtime pay. A delegate of the Director of Employment Standards (“the Director”) found that Crouse was not a “manager” as defined by the *Employment Standards Regulation* (“the Regulation”) and was therefore indeed entitled to overtime wages. Patara appealed and the appeal was heard by way of written submissions.

An adjudicator of the Tribunal conducted a review of all of the record supplied by the Director and the submissions on file from the parties. He analysed the legal principles and the facts and concluded that Crouse was not a manager and upheld the Determination on this point. The adjudicator also upheld a penalty determination that had also been issued.

Patara has requested that the Tribunal reconsider the decision made by the adjudicator in the Original Decision. The reasons cited for requesting the reconsideration are that Patara was denied the opportunity for a full and oral hearing and also that they did not have a full opportunity to provide full written submissions.

ISSUE

The issue in this application is whether the applicant was entitled to an oral hearing and whether the applicant was denied the opportunity to provide full written submissions.

ANALYSIS

The Tribunal is established and governed by the provisions of the *Employment Standards Act* which addresses the issue of oral hearing in Section 107 as follows:

107. Subject to any rules made under section 109(1)(c), the tribunal may conduct an appeal or other proceeding in the manner it considers necessary and is not required to hold an oral hearing.

This section has been considered by the Tribunal on a number of occasions and the Tribunal has developed the principle that generally the Tribunal will not hold an oral hearing on an appeal unless the case involves a serious question of credibility on one or more key issues or it is clear on the face of the record that an oral hearing is the only way of ensuring that each party can state its case fairly; *D. Hall & Associates Ltd.* [2001] BCSC 575; *Re National Credit Counsellors of Canada Inc.* [2003] BCEST #D102/03.

In this case the Tribunal decided that an oral hearing was not necessary and the applicant has provided no rationale for upsetting that decision. However, it does appear on the face of the correspondence on file that counsel for Patara may have been confused about the process for submissions to the Tribunal. Any reasonable reading of the information provided to the parties about the process makes it clear that “**all submissions**” must be provided in writing to the Tribunal before the final decision is made as to whether the matter is decided based on those submissions or referred for an oral hearing.

In this case it appears that the lawyer for Patara may have misunderstood and believed that further submissions would be permitted. Out of an abundance of caution and to ensure that Patara has had a full opportunity to argue its case I have concluded that this matter should be referred back to the Adjudicator to consider a final written submission from Patara with an opportunity for the other parties to reply.

ORDER

The application to reconsider is granted and this matter is referred back to the Adjudicator to consider a final written submission by Patara and any reply by the other parties.

John M. Orr
Adjudicator
Employment Standards Tribunal