

**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 -

Leaoni R. Webb  
("Webb")

- of a Decision issued by -

The Employment Standards Tribunal  
(the "Tribunal")

<b>ADJUDICATOR:</b>	Mark Thompson
<b>FILE No.:</b>	97/915
<b>DATE OF DECISION:</b>	July 29, 1998

## **DECISION**

### **OVERVIEW**

This is an application for reconsideration by Leoni R. Webb (“Webb”) pursuant to Section 116 of the *Employment Standards Act* (the “Act”) against a Decision of the Employment Standards Tribunal (the “Tribunal”) on June 26, 1997 (BC EST #D292/97). In the Decision, the Adjudicator cancelled a Determination dated October 31, 1996 which held that Webb's former employer, Bosun's Locker (“Bosun's”), had violated Section 54(2)(3) of the *Act* by failing to place her in a comparable position after her maternity leave.

Webb filed her request for reconsideration on December 9, 1997, almost six months after the date of the Decision.

In her request for reconsideration, Webb stated that her duties did not change prior to her pregnancy leave, and Bosun's had not informed her of any reorganization. When she returned from her leave, her pay was reduced, and her status was changed. Bosun's asserted that these changes were due to a reorganization of the company. Webb compared her experience to constructive dismissal, and argued that she had not been offered a comparable position after her pregnancy leave as required by the Act. She argued that the adjudicator in the original Decision did not consider her change in job functions properly. Webb explained the delay in filing her request for reconsideration by the need to consult law libraries after her normal working hours.

Bosun's opposed the request for reconsideration on the grounds that Webb's delay had been excessive and that she had not produced additional information that warranted a reconsideration of the Decision. In addition, the grounds of her request did not meet the tests in *Zoltan Kiss* (BC EST #D122/96).

### **ISSUES TO BE DECIDED**

The issues to be decided in this case are: was Webb's request for reconsideration of the Decision filed was timely; and if so, did the Adjudicator in the original Decision make a fundamental error of law when he decided that Webb had been offered a comparable position after the completion of her pregnancy leave.

### **FACTS**

The basic facts of the case were not in dispute and were stated in the Decision. Bosun's, a marine supply and service store in Victoria, hired Webb in January 1994. The owner of

**BC EST #D328/98**  
**Reconsideration of BC EST #D292/98**

the store, Mr. Wayne Dunsmuir ("Dunsmuir") also operated it. He first employed Webb as an "administrative manager," with the intention that she would eventually purchase the business from him, as his health was declining. Sometime in the spring of 1994, Dunsmuir apparently decided that Webb would not be a suitable successor, although she was an excellent employee. Dunsmuir's health continued to worsen, and he looked for another buyer for his business. Ultimately, two new parties, Bosun's accountant and a private company, purchased Bosun's. In September 1995, the private company became the sole owner of Bosun's. Dunsmuir agreed to remain as manager until a suitable replacement could be hired. Webb's pregnancy became known in February or March 1995. Dunsmuir hired Mr. Paul Betts ("Betts") as a part-time employee in March 1995. Dunsmuir concluded that Betts was a suitable replacement as manager, but said nothing to Betts (or to Webb). In July 1995, the new owners of Bosun's offered Betts the general management position, and he accepted. After a transition period with Dunsmuir, Betts became store manager in August 1995.

Webb gave written notice to Bosun's on August 23, 1995 that she would begin her pregnancy leave in October 1995 and would return on April 23, 1996. Betts replied to her letter, confirming her leave and informing her that a reorganization of management was under way. Furthermore, Webb's position no longer existed, but she would be offered another job "with remuneration consistent with that position" upon her return to work.

In April, Betts offered Webb a sales position, with a reduction in her compensation and conversion from a monthly salary to an hourly wage. The amount of the reduction was difficult to calculate, since Webb's hours in her previous position were not recorded. The adjudicator concluded that the reduction was approximately ten per cent. After discussions with Bosun's about her compensation and other aspects of the new job, Webb declined the position offered, and filed a complaint under Section 54(3) of the Act.

The Director's delegate found that Betts had taken over Webb's position and that Bosun's had failed to offer Webb a comparable position after her pregnancy leave. The Determination ordered Bosun's to pay wages for approximately six months.

In his Decision, the adjudicator examined the evidence presented by the parties on the corporate reorganization. He concluded that Betts had taken Dunsmuir's position and had eliminated two sub-management positions, taking over the management functions himself. The sales and customer service elements in Webb's position remained, and Bosun's offered her a position with those functions in April 1996. The adjudicator further concluded that the changes in management functions were unrelated to Webb's pregnancy except that she was allowed to retain her salary and title until she began her leave. Webb did not challenge any of these changes prior to commencing her leave. Finally, the adjudicator concluded that Bosun's had offered Webb a comparable position when she returned from pregnancy leave.

**ANALYSIS**

In her request for reconsideration, Webb stated that she required considerable time to prepare legal arguments in support of her position, and pointed out that Section 116 of the Act does not contain time limits for the filing of applications for reconsideration. She further argued that the adjudicator had failed to give proper weight to the functions of the job she had been offered compared to her duties prior to her pregnancy leave. She took exception to his calculation of the change in her compensation and stated that Betts had never informed her about the substance of the changes in her duties after her maternity leave. According to Webb, neither she nor other members of the Bosun's staff were aware of the changes that followed Betts's appointment.

Counsel for Bosun's argued that Webb's application for reconsideration should not be accepted because of the delay in its filing. Counsel pointed to a purpose of the Act to provide fair and efficient procedures for resolving disputes over the application and interpretation of the Act. Tribunal case law supports a limited scope for reconsideration of decisions. Webb's request presented no new facts or jurisprudence. In addition, the grounds on which reconsideration was sought did not meet the criteria set out in previous Tribunal decisions.

Webb correctly pointed out that Section 116 of the Act does not establish any time limits for applications for reconsideration. However, the statutory scheme in the Act emphasizes the expeditious resolution of disputes within a framework of natural justice. The Act contains time limits for appeals, and the Tribunal may dismiss an appeal if it has not been filed within the time limits in Section 112. Section 2 states the purposes of the Act, including:

(b) to promote fair treatment of employees and employers;

. . . . .

(d) to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.

In *The Director of Employment Standards (BC EST #D122/98)*, the Tribunal set out principles to be applied to assessing the timeliness of applications for reconsideration at pp. 7-8:

The purposes of the Act require that the Tribunal avoid a multiplicity of proceedings and ensure that appeals are dealt with expeditiously, in a practical manner, and with due consideration of the principles of natural justice. In our view, this includes, generally, an expectation that one hearing will finally and conclusively resolve the dispute. Read in conjunction with Section 115, the power to 'vary, confirm or cancel' a determination implies a degree of finality, (i.e., a party should not be deprived of the benefit of a decision without compelling reason). As noted in *Zoltan Kiss*, above and other cases, an application for reconsideration

**BC EST #D328/98**  
**Reconsideration of BC EST #D292/98**

does not provide an opportunity to re-argue the merits, but provides for an appeal on much narrower grounds.

In our view, an application for reconsideration must be filed within a reasonable time. What constitutes a 'reasonable time' depends on the circumstances of each particular case. The Tribunal may be guided by the principles applied by the courts and the length of the delay may not be determinative. However, as noted by the courts, if good cause can be shown for a long delay, the Tribunal will exercise its discretion to reconsider. In our view, it would be contrary to the purposes of the Act to permit a person to apply for reconsideration except in the rare and exceptional circumstances because that person wanted to obtain a legal opinion. The only explanation provided by the Director for the delay in applying for reconsideration was the wish to canvas the law further. However, it appears to us that, in the main, the submissions are similar to those made before the original Adjudicator.

The principles stated above apply squarely to this case. The delay in filing the application arose out of Webb's desire to review the law that she believed was relevant to her case, comparable to the Director's desire to canvas the law further in The Director of Employment Standards. In other words, there were no exceptional circumstances. The delay was lengthy, given the statutory framework in the Act.

Without canvassing the merits of Webb's request for reconsideration in detail, Kiss, supra and other cases decided by the Tribunal mean that an application for reconsideration should not merely be an opportunity for a party to re-argue points of fact or law previously considered by an adjudicator. In this case, Webb's argument in support of her request for reconsideration repeat points already considered by the adjudicator in the original decision. It would be inappropriate for the Tribunal to in effect overturn findings of fact made by an adjudicator who rendered a decision with full benefit of participation by both parties and the Director's delegate.

**ORDER**

For these reasons, pursuant to Section 116 of the *Act*, Decision #D292/97 is confirmed.

**Mark Thompson**  
**Adjudicator**  
**Employment Standards Tribunal**