

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-

Barbara Anne Hughes

(“Hughes”)

-of a Decision issued by-

The Employment Standards Tribunal

(the “Tribunal”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/362

DATE OF DECISION: August 12, 1998

BC EST # D346/98
Reconsideration of BC EST # D088/98

DECISION

OVERVIEW

This is an application filed by Barbara Anne Hughes (“Hughes”) pursuant to section 116 of the *Employment Standards Act* (the “Act”) for reconsideration of an adjudicator’s decision to confirm a Determination issued by the Director of Employment Standards on November 5th, 1997 under file number 041894 (the “Determination”). The adjudicator’s decision was issued on March 18th, 1998.

FACTS AND ANALYSIS

On May 26th, 1997 the Director issued a determination for \$630.74 (representing 2 weeks’ wages as compensation for length of service under section 63 of the *Act*) in favour of Windy L. Markel, a former employee of Mid Star Productions Ltd. (“Mid Star”). Mid Star purported to appeal this latter determination but its appeal was filed after the statutory appeal period had expired and thus was rejected (as was the request for an extension of the appeal period) by the Tribunal; the Tribunal’s decision was issued by way of a letter dated September 24th, 1997 from the Tribunal Registrar to Mid Star.

On November 5th, 1997, the Determination now before me was issued under section 96 of the *Act* against Hughes by reason of her status as an officer of Mid Star. On November 26th, 1997, Hughes appealed the Determination to the Tribunal--Hughes never challenged the Director’s delegate’s finding that she was an officer of Mid Star; rather, her appeal was a clear attempt to re-litigate the matter of Ms. Markel’s claim for termination pay.

Not surprisingly, Hughes’ appeal was dismissed on the ground that the matter of Markel’s entitlement was *res judicata*. Although Hughes asserted, without providing *any* corroborating evidence, that she was not an officer of Mid Star at the material time, this assertion was contradicted by official corporate records maintained by the B.C. Registrar of Companies as well as other evidence set out in the original adjudicator’s decision.

The request for reconsideration was not properly filed with this Tribunal. On April 1st, 1998, Hughes wrote to the delegate who issued the section 96 determination stating that “I am making an application under Section 116 of the Employment Standards Act for a reconsideration of the decision of the Employment Standards Tribunal which upheld the director’s decision of Nov. 05, 1997”. In turn, on June 4th, 1998 the delegate submitted Ms. Hughes’ request to the Tribunal Registrar. No formal request for reconsideration has ever been filed by Hughes with the Tribunal, however, and although I have some doubts about the procedures that have been followed in this case, I am prepared to proceed on the assumption that the present request for reconsideration is properly before me.

However, even if one accepts that the present section 116 request for reconsideration has been properly filed with the Tribunal, Ms. Hughes has simply yet again asked that the Tribunal review

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the facts and circumstances surrounding Markel's initial claim. The matter of Markel's entitlement to termination pay has been finally determined for some considerable time (nearly two years) and cannot now be re-opened. Ms. Hughes obviously believes that the original decision in favour of Markel was incorrect but however strong her belief, the fact remains that Markel's entitlement is a matter of *res judicata* and is not now open for further argument.

ORDER

The application to vary or cancel the decision of the adjudicator in this matter is dismissed save that the original adjudicator's decision contains a typographical error--the amount of the original determination is incorrectly stated, at page 2 and again at page 3, to be \$830.74 rather than \$630.74. The original adjudicator's decision is varied accordingly.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal