

An Application for Reconsideration

- by -

Ekman Land Surveying Ltd.
("Ekman")

- 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: William Reeve

FILE No.: 2002/389

DATE OF DECISION: September 12, 2002

DECISION

On July 9, 2002 the Tribunal received a request from Ekman Land Surveying Ltd. (“Ekman”) for reconsideration of Tribunal Decision BC EST #D253/02. That Decision, rendered on June 10, 2002 by Adjudicator W. Grant Sheard, ordered that the Determination of the Director of Employment Standards (the “Director”) dated January 30, 2002 be varied. According to the Decision, the Appellant, employee Michael J.F. Neylan (“Neylan”), was entitled to compensation for length of service. The matter was referred back to the Director to calculate that entitlement.

The *Act* intends that Adjudicator’s Appeal Decisions are “final and binding”. Therefore, the Tribunal only agrees to reconsider a Decision in exceptional circumstances. Reconsideration is not a right to which a party is automatically entitled, rather it is undertaken at the discretion of the Tribunal. The Tribunal uses its discretion with caution in order to ensure: finality of its decisions; efficiency and fairness of the appeal system and fair treatment of employers and employees.

The Tribunal will not normally agree to reconsider a Decision if the intent is simply to have the Tribunal “re-weigh” evidence previously considered or dismissed by the Adjudicator or to seek a "second opinion" when a party simply does not agree with the Adjudicator's Decision. The Reconsideration process was not meant to allow parties another opportunity to re-argue their case.

Some of the reasons why the Tribunal might agree to reconsider an Order or Decision are:

- The Adjudicator failed to comply with the principles of natural justice;
- There is some mistake in stating the facts;
- The Decision is not consistent with other Decisions based on similar facts;
- Some significant and serious new evidence has become available that would have led the Adjudicator to a different decision;
- Some serious mistake was made in applying the law;
- Some significant issue in the appeal was misunderstood or overlooked; and
- The Decision contains some serious clerical error.

In the request for reconsideration Ekman reviews the Decision of Adjudicator Sheard. The entire submission appears to be an attempt to re-argue the matter. Nothing in the submission raises a serious challenge to the Decision on any of the seven grounds noted above. In this circumstance the request for reconsideration cannot succeed.

ORDER

Pursuant to section 116 of the *Act*, and for the reasons given above, the request for reconsideration of Tribunal Decision BC EST #D253/02 is refused.

William Reeve
Adjudicator
Employment Standards Tribunal