

An Application for Reconsideration

- by -

AVT Audio Visual Telecommunications Corporation

- 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.:** 2002/371

**DATE OF DECISION:** September 19, 2002

## DECISION

### OVERVIEW

This is an application by AVT Audio Visual Telecommunications Corporation (“AVT”) pursuant to Section 116 (2) of the *Employment Standards Act* (the “Act”) for a reconsideration of a Tribunal decision BCEST #D187/02 (the “Original Decision”) which was issued by the Tribunal on May 9, 2002.

In a Determination dated February 5<sup>th</sup>, 2002 the Director of Employment Standards (“the Director”) determined that AVT owed four former employees (“the employees”) a total sum of \$9,492.07 representing, for each employee, two weeks’ wages as compensation for length of service, vacation pay and interest. The issue related to layoffs without recall. AVT appealed the Determination to the Tribunal and on May 9, 2002 an adjudicator of the Tribunal confirmed the Determination in the original amount together with any additional accrued interest. The Director has subsequently received funds from AVT in the necessary amount.

AVT has applied to the Tribunal for reconsideration of the Original Decision.

### ANALYSIS

The test for the exercise of the reconsideration power under section 116 of the *Act* is set out in *Milan Holdings Ltd.*, BCEST #D313/98. The Tribunal sets out a two-stage analysis in the reconsideration process. The first stage is for the panel to decide whether the matters raised in the application for reconsideration in fact warrant reconsideration. In deciding this question the Tribunal should consider a number of factors such as whether the application is timely, whether it is an interlocutory matter, and whether its primary focus is to have the reconsideration panel effectively “re-weigh” evidence tendered before the adjudicator.

The Tribunal in *Milan* went on to state that the primary factor weighing in favour of reconsideration is whether the applicant has raised significant questions of law, fact, principle or procedure of sufficient merit to warrant the reconsideration. The decision states, “at this stage the panel is assessing the seriousness of the issues to the parties and/or the system in general”. Although most decisions would be seen as serious to the parties this latter consideration will not be used to allow for a “re-weighing” of evidence or the seeking of a “second opinion” when a party simply does not agree with the original decision.

It is one of the defined purposes of the *Act* to provide a fair and efficient procedure for resolving disputes and it is consistent with such purposes that the Tribunal's decisions should not be open to reconsideration unless there are compelling reasons: *Khalsa Diwan Society* BCEST #D199/96.

In my opinion this is not a case that warrants the exercise of the reconsideration discretion. The submissions made by AVT on this reconsideration application do not provide any substantial grounds upon which the adjudicator of the Original Decision could have made a different finding.

The adjudicator in the Original Decision quite properly pointed out that AVT had not provided any detailed submission to the Tribunal. As stated in the decision:

“Very simply, AVT Audio Visual has manifestly failed to provide any sort of evidentiary foundation to support its various reasons for appeal. It must be remembered that the burden of showing that the Determination is incorrect lies with AVT Audio Visual. Given the dearth of supporting information this appeal cannot succeed.”

Nevertheless the adjudicator very carefully and fairly assessed the allegations made by AVT in regard to each employee. The adjudicator analysed the allegations against the evidence provided by the employees and the information provided by the Director and concluded that the Determination should be confirmed.

The only new information provided by AVT in this application for reconsideration is a copy of a Statement of Claim filed in the Supreme Court of British Columbia. AVT claims that this document was provided to the Tribunal during the appeal process but that it wasn't considered by the adjudicator. The Tribunal staff claim that the document was not provided at that time.

I have reviewed the Statement of Claim and find that it provides no information that was not considered by the adjudicator in the original decision. Even if it had been available it would have provided no further evidence in regard to the employment status of the employees.

AVT has again failed to provide any sort of evidentiary foundation to support its request for reconsideration or its various grounds for the original appeal. I am not persuaded that there is a sufficient basis in fact or in law to warrant any interference in the decision made by the adjudicator in the Original Decision. Under these circumstances I am not satisfied that this is a proper case for the exercise of the reconsideration discretion and therefore the application for reconsideration is denied.

## **ORDER**

The application to reconsider the decision of the adjudicator in this matter is dismissed.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**