

BC EST #D447/99
Reconsideration of BC EST #D287/99

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 -

Terry Adams
("Adams")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

ADJUDICATOR: Cindy J. Lombard

FILE NO.: 1999/512

DATE OF DECISION: October 14, 1999

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DECISION

OVERVIEW

The employee, Terry Adams (“Adams”), seeks a reconsideration under Section 116 of the *Employment Standards Act*, (“the Act”), of a Decision of the Employment Standards Tribunal “the original Decision” BC EST #D287/99. The Tribunal Decision reversed a Determination of a Delegate of the Director of Employment Standards (“the Director”) on April 20, 1999, in respect of a complaint by Adams that he had been terminated without notice or cause by the Employer, Integrity Hair Group Inc. (“Integrity”). The Director found that Integrity had dismissed Adams without just cause and without compensation for length of service and ordered that Integrity pay two weeks wages plus vacation pay and interest on the total amount of \$600.70 to Adams.

The original Decision reversed the Determination of the Director and found that Adams had been dismissed with cause and that the Determination be cancelled.

The basis on which the Reconsideration is sought by Adams is that he disputes complaints by the Employer in a warning letter dated April 22, 1998, which is attached hereto as Attachment “A” and a dismissal letter dated September 18, 1998, which is attached as Attachment “B” are untrue.

ISSUES TO BE DECIDED

In the case of an application for a reconsideration, there is a threshold issue of whether the Tribunal will exercise its discretion under Section 116 of the Act to reconsider the original Decision. Some of the grounds for a reconsideration are:

- a) a failure by the Adjudicator to comply with the principles of natural justice;
- b) the Adjudicator committed an error of law by basing findings of fact on mistake of fact;
- c) inconsistency with other Tribunal Decisions which are not distinguishable on the fact;
- d) significant and serious new evidence that has become available and that would have led the Adjudicator to a different decision;
- e) failure to deal with the significant issue;
- f) clerical error.

In this case, based on the Adams argument, the issue would be whether the Adjudicator complied with the powers of natural justice and whether he committed an error of law by basing findings of fact on mistakes of fact.

ANALYSIS

Section 116 of the *Act* confers reconsideration powers on the Tribunal:

116. (1) On application under subsection (2) or on its own motion, the tribunal may
 - (a) reconsider any order or decision of the tribunal, and
 - (b) cancel or vary the order or decision or refer the matter back to the original panel.
- (2) The director or a person named in a decision or order of the tribunal may make an application under this section.
- (3) An application may be made only once with respect to the same order or decision.

Section 116 is a discretionary power.

The Tribunal will reconsider Decisions only where there has been a demonstrable breach of the rules of natural justice or in this case a demonstrable error of fact.

This discretionary power is exercised with restraint and caution. A heavy onus is on the party requesting reconsideration, that is in this case, Adams, to demonstrate that the Decision in question was arrived at in a procedurally unfair manner or contains a fundamental error of law in arriving at findings of fact which could now lead to a different decision. It is not a case where the applicant, Adams, has an automatic right to rehash the case. Where, as in this case, the applicant's primary focus is to have the reconsideration panel effectively reweigh or rehash evidence already tendered before the adjudicator (as distinct from tendering new evidence or demonstrating an important finding of fact) there are no significant grounds for reconsideration. See for example: *Image House Inc.* BC EST #D075/98 (Reconsideration of BC EST #D418/97) and *Alexander (Perequine Consulting)* BC EST #D095/98 (Reconsideration of BC EST #D574/97).

1. Error in law resulting from mistakes of fact

Adams' grounds for appeal are that the allegations of fact for cause set out in the letters which are Attachments "A" and "B" are untrue. No new evidence is submitted. In his Determination, the Adjudicator made a detailed analysis of the facts concerning cause and warnings. Many of the allegations of cause, which individually the Adjudicator found constitute just cause for termination, were substantiated or corroborated by the evidence of other employees. For example:

1. A comment made by Adams about a client's hair, namely, "If I had to work with hair like that, I would quit the industry" within hearing distance of the stylist and client was corroborated by a written statement signed by coworker, Jane Hanson.

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2. Other allegations of misconduct alleged by the employer were corroborated by a written statement of the salon manager, Judy Lopushinsky, dated January 9, 1999, which includes support for the following allegations of misconduct by the employer:

- a) not treating his coworkers with respect: Lopushinsky corroborates that on at least one occasion he referred to the female staff as “bitches”.
- b) late for his shifts: Lopushinsky states that “I personally warned Terry many times about being late for work”.
- c) maligning clients: Lopushinsky states that Adams told an elderly woman who was distraught about her hair color treatment that she should leave the salon and not come back.

This list is not exhaustive, the purpose of this Reconsideration not being to rehash all evidence.

We find no basis that supports an exercise in our discretion to reconsider the original Decision.

ORDER

Pursuant to Section 116 of the Act, we reject the application for reconsideration of the Tribunal's Decision of July 21, 1999.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal