

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-

Lordco Parts Ltd.

("Lordco")

-of a Decision issued by-

The Employment Standards Tribunal

(the "Tribunal")

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE No.:	98/556
DATE OF DECISION:	October 14th, 1998

BC EST # D463/98
Reconsideration of BC EST # D351/98

DECISION

OVERVIEW

This is an application filed by Lordco Parts Ltd. (“Lordco”) pursuant to section 116 of the *Employment Standards Act* (the “Act”) for reconsideration of a Tribunal Adjudicator’s decision dated August 18th, 1998. The Adjudicator, following an oral hearing held on July 27th, 1998, set aside a Determination issued by a delegate of the Director of Employment Standards on April 8th, 1998 under file number 028-109 (the “Determination”).

The Director’s delegate held that Beth Donald (“Donald”) quit her employment with Lordco; the delegate rejected Ms. Donald’s position that she had only quit on the understanding that her *full-time* employment would end on January 24th, 1998 (so that she could take another full-time position) but that she would continue thereafter with Lordco on a *part-time* basis working about two Saturday shifts each month. The Adjudicator, after hearing the evidence presented by both Donald and Lordco, accepted Ms. Donald’s version of events and ordered that she recover three weeks’ wages as compensation for length of service pursuant to section 63(2)(b) of the *Act*.

ANALYSIS

Lordco’s request for reconsideration is contained in a letter to the Tribunal dated August 21st, 1998 from Lordco’s corporate counsel. In essence, Lordco submits that the Adjudicator based his decision on “erroneous information” and then simply reiterates its original position that Ms. Donald quit her employment without any agreement that she would continue with Lordco thereafter on a part-time basis.

The so-called erroneous information relates to what I consider to be a minor point. The Adjudicator held that Ms. Donald likely did not absolutely quit her employment with Lordco but rather only quit her full-time employment so that she could take another lower-paying, but more challenging, position with a firm known as “Servicemaster”. The Adjudicator wrote: “Donald was about to get married and could not afford a cut in pay”. Thus, this factor, in part (but only in part), led the Adjudicator to conclude that Ms. Donald’s story, namely, that she only quit her full-time employment on the understanding that she would continue on a part-time basis, was the more credible.

Lordco now says that, in fact, Ms. Donald was married in December 1997 and thus any discussions in January 1998 would not have been predicated on her impending marriage. In my view whether Ms. Donald was about to be married, or had only recently married, is completely irrelevant. Without the benefit of a transcript, I cannot say whether Ms. Donald testified as indicated in the Adjudicator’s decision, or whether the Adjudicator made a trivial error in recording her evidence. Either way, I consider this particular point to be of no great moment and

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hardly, of itself, places Ms. Donald's credibility in issue (as is asserted by Lordco). I should add that Ms. Donald's position is that she testified at the appeal hearing that she did not absolutely quit her employment with Lordco because she "needed to pay for her wedding"--if this was her evidence, then the fact that she was married in December 1997 or January 1998 is no longer material.

The balance of Lordco's submission is simply a reiteration of the position that was argued before, and rejected by, the Adjudicator. The Tribunal has issued several decisions regarding the permissible scope of review under section 116 of the *Act* (the "reconsideration" provision). In essence, the Tribunal has consistently held that applications for reconsideration should succeed only when there has been a demonstrable breach of the rules of natural justice, or where there is compelling new evidence that was not available at the time of the appeal hearing, or where the adjudicator has made a fundamental error of law. The reconsideration provision of the *Act* is not to be used as a second opportunity to challenge findings of fact made by the Adjudicator, unless such findings can be characterized as lacking any evidentiary foundation whatsoever.

Lordco's submission is, at its core, simply an undisguised attempt to have findings of fact, made by an Adjudicator who had the benefit of hearing the parties' evidence in person, overturned. As noted above, such an endeavour must fail. It is clear that the Adjudicator had conflicting evidence before him; in the face of that conflict, he held that Ms. Donald's evidence was the more credible. There is nothing in the record before me that would justify setting aside that latter finding.

ORDER

The application to vary or cancel the decision of the adjudicator in this matter is refused.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal