

An Application for Reconsideration

- by -

Foresil Enterprises Ltd.

- 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.: 2002/436

DATE OF DECISION: October 17, 2002

DECISION

OVERVIEW

This is an application by Foresil Enterprises Ltd. ("Foresil") pursuant to Section 116 (2) of the *Employment Standards Act* (the "Act") for reconsideration of a Tribunal decision BCEST #D334/02 (the "Original Decision") which was issued by the Tribunal on July 18, 2002.

The matter involved the interpretation of the *Employment Standards Regulations* ("the regulation") concerning silviculture workers. The Director of Employment Standards ("the Director") determined that Foresil had not scheduled shifts in accordance with the regulation. There were essentially two issues. Firstly whether the work location was a "remote camp" and secondly whether Foresil had the consent of the majority of the affected workers for the particular shift structure.

Foresil appealed the Determination to the Tribunal. The adjudicator concluded that Foresil had not provided an evidentiary basis to establish that the work location was a "remote camp" nor that the majority of affected workers consented to the impugned schedule.

Foresil 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 Foresil 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 Foresil had not provided any detailed evidentiary basis for its submission to the Tribunal. As stated in the decision:

“I note that the employer (*Foresil*) has not set out any information concerning the work locations, the methods of access to the work, or to the proximity of the job sites to settlements.....Given that the burden is on the employer to demonstrate error, the absence of a factual foundation for the argument is fatal to this appeal.”

“I note further, that the appellant has not demonstrated that it had written consent from the “majority of affected employees” which is required for the “10 and 4” shift schedule in the *Regulation*.”

In the application for reconsideration Foresil makes the same submissions as were made previous to the Original Decision but supports its submissions with more description of the worksite situation but still provides no documentation to show the written consent of the affected workers. However, Foresil 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.

John M. Orr
Adjudicator
Employment Standards Tribunal