

An Application for Reconsideration

- by -

Chaytor Holdings Ltd. op/as Tim Hortons
("Chaytor")

- 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.: 2002/452

DATE OF DECISION: October 23, 2002

DECISION

OVERVIEW

On August 22, 2002 the Employment Standards Tribunal (“the Tribunal”) received a request from Chaytor Holdings Ltd. operating as Tim Hortons (“Chaytor”) for reconsideration of Tribunal Decision BC EST #D327/02 rendered by Adjudicator David B. Stevenson on July 15, 2002. The request was made pursuant to section 116 of the *Employment Standards Act* (the “Act”). The Decision confirmed a Determination of the Director of Employment Standards (“the Director”) dated March 4, 2002.

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.

ISSUE

In any application for 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. In the present instance the question is, first, whether the allegations of error made by Chaytor are justified and second, if so, whether the error is so serious as to require the Tribunal to reconsider the matter. The grounds on which the request is made are that there was an error in the facts. Essentially the allegation is that the Decision was in error in finding that Chaytor ended the employment of the employee in question on December 24,

2001. The issue is not the specific date that the employment ended but rather, whether she quit her employment or was terminated by Chaytor.

ARGUMENT AND ANALYSIS

Chaytor, in its request, makes a number of references to the date on which the employee's work ended. It is not apparent why the last day of work is the focus of this detailed attention. The issue was not when the employee's work ended but rather whether she quit of her own volition or was terminated by the action of the employer. In any event, it is abundantly clear from Chaytor's own submissions that the last day of work was December 24, 2001.

Adjudicator Stevenson devoted a large portion of his Decision to an analysis of the issue of whether the employee quit or was terminated by the employer. The conclusion reached was that the employee was terminated by the action of the employer. The thrust of Chaytor's request seems to be that this conclusion was wrong. It appears that Chaytor wishes to have the Tribunal "re-weigh" evidence previously considered or dismissed by the Adjudicator or seeks a "second opinion" because it does not agree with the Adjudicator's Decision. This is not the purpose of the reconsideration process.

In the absence of any compelling evidence or argument that Tribunal Decision BC EST #D327/02 should be reconsidered the application for reconsideration cannot be accepted.

ORDER

Pursuant to section 116 of the *Act*, and for the reasons given above, the request for reconsideration of Tribunal Decision BC EST #D327/02 is refused.

William Reeve
Adjudicator
Employment Standards Tribunal