



An Application for Reconsideration

- by -

Gertruida Petronella Cornelia Enns a.k.a. Trudy Enns operating as
A Magic Mist Ceiling Cleaning

-and by-

Jeffrey Charters

- 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.: 2001/475

DATE OF DECISION: September 13, 2001

DECISION

OVERVIEW

This decision relates to two applications under Section 116 (2) of the *Employment Standards Act* (the "*Act*") for reconsideration of a Decision #D106/01 (the "Original Decision") that was issued by the Tribunal on March 05, 2001.

Gertruida Petronella Cornelia Enns a.k.a. Trudy Enns ("Enns") operated a business known as A Magic Mist Ceiling Cleaning. Enns employed Jeffrey Charters ("Charters") in her business and the Director of Employment Standards ("the Director") found that Enns had failed to pay certain wages to Charters and ordered her to pay \$4,071.29 in wages compensation and interest.

Both Enns and Charters appealed the Director's determination to the Tribunal. Enns submitted that Charters was not entitled to compensation because he had quit his job and Charters submitted that he was entitled to more wages than calculated by the Director.

The Tribunal held a hearing on February 26, 2001 at which both Enns and Charters appeared and testified. The Director made written submissions. An adjudicator on behalf of the Tribunal found that the Director's determination should be confirmed and that Charters was entitled to compensation and she was satisfied with the assessment as determined by the Director.

Both parties have now requested that the Tribunal exercise its discretion to reconsider the adjudication issued on March 5, 2001.

ANALYSIS

The exercise of the reconsideration discretion under section 116 of the *Act* is a two-stage 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 considers and weighs 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 of the original decision

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 reconsideration process 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.

The circumstances in which an application for reconsideration will be successful will be limited. In a Reconsideration decision dated October 23, 1998, *The Director of Employment Standards*, BCEST #D475/98, the Adjudicator sets out those limits as follows:

- *failure to comply with the principles of natural justice;*
- *mistake of law or fact;*
- *significant new evidence that was not reasonably available to the original panel;*
- *inconsistency between decisions of the tribunal that are indistinguishable on the critical facts;*
- *misunderstanding or failure to deal with a serious issue; and*
- *clerical error*

In my opinion this is not a case that warrants the exercise of the reconsideration discretion. I have thoroughly reviewed all of the materials provided by the both parties in this case, and they are extensive, and it is clear to me that the true facts of this case are almost totally obscured in the mists of acrimony that the parties have allowed to cloud any semblance of truth. Both parties have used every opportunity for litigation available to them. They have been to Residential Tenancy and Provincial Court on several occasions

In a case such as this, the issues essentially come down to questions of fact that turn on the credibility of the evidence presented and the onus of proof on the parties. The Director's delegate and the adjudicator had the opportunity to assess and weigh the evidence in person. Both the Director's delegate and the adjudicator have very carefully and clearly set out the reasons for their assessment of the evidence, and applied a rational approach to the weighing of the evidence despite the difficulties presented by the parties. The adjudicator made careful findings of fact and applied the proper legal principles in making her decision. It is now a well-established principle of this Tribunal that we will not exercise the reconsideration discretion in such circumstances. It is fully within the intent and purposes of the act that there be some finality to the decisions of the Tribunal. As stated above, reconsideration should be used sparingly and should not be used to substitute my analysis or my opinion for that of the adjudicator who wrote the original decision.

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. Therefore I am not prepared

to exercise my discretion to reconsider the original decision. It would be contrary to the purposes of the *Act* and contrary to the public interest to allow the parties in this case to use the reconsideration process to pursue their animosity further.

ORDER

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

John M. Orr
Adjudicator
Employment Standards Tribunal