



Citation: Saman Bakery Ltd.
2025 BCEST 34

EMPLOYMENT STANDARDS TRIBUNAL

An application for reconsideration
pursuant to section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

- by -

Saman Bakery Ltd.

- of a Decision issued by -

The Employment Standards Tribunal

PANEL: David B. Stevenson
SUBMISSIONS: Amir Tavanger, on behalf of Saman Bakery Ltd.
FILE NUMBER: 2025/019.ESA.RE
DATE OF DECISION: March 19, 2025

DECISION

OVERVIEW

1. Saman Bakery Ltd. (“**Saman**”) seeks reconsideration (the “**Application**”) under section 116 of the *Employment Standards Act* (the “**ESA**”) of a decision by a member (the “**Member**”) of the Employment Standards Tribunal (the “**Tribunal**”), 2025 BCEST 22 (the “**Appeal Decision**”), dated February 4, 2025.
2. The original decision considered an appeal of a Determination (the “**Determination**”) issued by a delegate of the Director of Employment Standards (the “**Delegate**”) on February 20, 2024.
3. The Determination was made by the Delegate on a complaint filed by Sayed Mohsen Taha Hasan, who alleged Saman had induced, influenced, or persuaded him to become an employee or to be available for work by misrepresenting the availability of a position in contravention of section 8 of the *ESA*.
4. The Delegate found Saman had contravened section 8 of the *ESA* and ordered Saman to compensate Mr. Hasan for lost wages and the expense of his airline ticket from Egypt, interest on that amount, and to pay an administrative penalty for the contravention.
5. An appeal of the Determination was filed by Saman.
6. The Member making the Appeal Decision found there was no reasonable prospect of the appeal succeeding and applying section 114(1)(f) of the *ESA*, dismissed it.
7. This Application seeks to have the Appeal Decision reconsidered by this panel. By logical inference, Saman seeks to have the Appeal Decision cancelled and for this panel to reach a different conclusion on their appeal than was made by the Member in the Appeal Decision.

ISSUE

8. In any application for reconsideration, there is a threshold, or preliminary, issue of whether the Tribunal will exercise its discretion under section 116 of the *ESA* to reconsider the Appeal Decision. If satisfied the case warrants reconsideration, the issue raised in this application is whether this panel of the Tribunal should cancel the Appeal Decision and allow Saman’s appeal.

BACKGROUND FACTS

9. The Appeal Decision records the following summary of facts, at paras 2-4:

The Employer recruited Mr. Hasan from Egypt to work in a chef position at their North Vancouver bakery. Mr. Hasan required a Canadian work visa, so the parties entered an employment contract and completed the requisite immigration paperwork. After Mr. Hasan received his work visa, the Employer confirmed the chef position remained available and advised him to move to Canada to commence employment. Relying on the

Employer's representations, Mr. Hasan left his employment in Egypt and moved to British Columbia, whereupon the Employer did not provide him the agreed upon work.

The Delegate ordered the Employer to compensate Mr. Hasan for lost wages and the expense of his airplane ticket from Egypt, with interest. He also issued a mandatory administrative penalty on the Employer for their contravention of the *ESA*.

The Employer appeals the Determination claiming a former employee (the "**Former Employee**") orchestrated Mr. Hasan's *ESA* complaint for bad faith reasons and that Mr. Hasan abandoned the offered position as he never showed up for work.

10. A more expansive recitation of the facts is found in paras. 8-13 and 21 of the reasons for Determination (the "**Reasons**").

SUBMISSION OF SAMAN

11. The position of Saman lies in their belief that "key aspects of the situation were overlooked" and that "the tribunal did not fully understand the context and overlooked critical facts that point to the **lack of good faith in Mr. Hasan's complaint.**" (emphasis included)

12. The submission of Saman raises the following points:

- The sponsorship process for Mr. Hasan had started 2 years before his arrival and Mr. Tavanger, the principal of Saman, had issues with the person, at the time a former employee, who had referred Mr. Hasan to Mr. Tavanger;
- Mr. Tavanger was dealing with financial stress;
- Mr. Hasan was instructed to meet with a bakery employee named Reza at a bakery location;
- It was unlikely Mr. Hasan ever arrived at the bakery location to meet with Reza;
- In messages exchanged between Mr. Tavanger and Mr. Hasan later the same day Mr. Hasan says he went to the bakery location, Mr. Hasan indicated he would return to Egypt if there was no work for him with Saman, but he did not return to Egypt;
- Five chefs Mr. Tavanger has sponsored have filed claims against him and one of them is suing Mr. Tavanger's immigration consultant; and
- All of these events have caused the business "immense financial and operational strain" and point to a lack of good faith on the part of Mr. Hasan.

ANALYSIS

13. I commence my analysis of this application with a review of the statutory provisions and policy considerations that attend an application for reconsideration generally. Section 116 of the *ESA* reads:

116 (1) On an application under subsection (2) or on its own motion, the tribunal may

- (a) reconsider any order or decision of the tribunal, or
 - (b) confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.
- (2) The director or a person served with an order or a decision of the tribunal may make an application under this section.
 - (2.1) The application may not be made more than 30 days after the date of the order or decision.
 - (2.2) The tribunal may not reconsider an order or decision on the tribunal's own motion more than 30 days after the date of the decision or order.
 - (3) An application may be made only once with respect to the same order or decision.
 - (4) The director and a person served with an order or a decision of the tribunal are parties to a reconsideration of the order or decision.

14. The authority of the Tribunal under section 116 is discretionary. A principled approach to this discretion has been developed and applied. The rationale for this approach is grounded in the language and purposes of the *ESA*. One of the purposes of the *ESA*, found in section 2(d), is “to provide fair and efficient procedures for resolving disputes over the application and interpretation” of its provisions. Another stated purpose, found in section 2(b) is to “promote the fair treatment of employees and employers.” The approach is fully described in *Milan Holdings Inc.*, BC EST #D313/98 (Reconsideration of BC EST # D559/97). Briefly stated, the Tribunal exercises the reconsideration power with restraint. In *Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, BC EST # RD046/01, the Tribunal explained the reasons for restraint:

. . . the Act creates a legislative expectation that, in general, one Tribunal hearing will finally and conclusively resolve an employment standards dispute.

There are compelling reasons to exercise the reconsideration power with restraint. One is to preserve the integrity of the process at first instance. Another is to ensure that, in an adjudicative process subject to a strong privative clause and a presumption of regularity, the “winner” not be deprived of the benefit of an adjudicator’s decision without good reason. A third is to avoid the spectre of a Tribunal process skewed in favour of persons with greater resources, who are able to fund litigation, and whose applications will necessarily create further delay in the final resolution of a dispute.

15. In deciding whether to reconsider, the Tribunal considers timeliness and such factors as the nature of the issue and its importance both to the parties and the system generally. An assessment is also made of the merits of the Appeal Decision. The focus of a reconsideration application is, generally, the correctness of the Appeal Decision.

16. The Tribunal has accepted an approach to applications for reconsideration that resolves itself into a two-stage analysis. At the first stage, the reconsideration panel decides whether the matters raised in the application in fact warrant reconsideration. The circumstances where the Tribunal’s discretion will be exercised in favour of reconsideration are limited and have been identified by the Tribunal as including:

- failure to comply with the principles of natural justice;
- mistake of law or fact;
- significant new evidence that was not 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.

17. If the Tribunal decides the matter is one that warrants reconsideration, the Tribunal proceeds to the second stage, which is an analysis of the substantive issue raised in the reconsideration.

18. I find this matter does not warrant reconsideration.

19. Nothing in the submission on the Application adds anything new to the factual matrix or identify and demonstrate a reviewable error in the Appeal Decision.

20. All of the points raised in this Application were addressed in the Appeal Decision. Saman has revisited the fact that Mr. Hasan did not inquire about Reza when he attended at the bakery location to meet him. The Member addressed that point in the Reasons at para. 11, indicating what Mr. Hasan did at the bakery location was “immaterial as the facts demonstrate Mr. Hasan did follow up regarding his employment.”

21. At para. 16, the Member summarized her view on the assertion by Saman in the Appeal that the Delegate had erred in law:

The Delegate did not act without any evidence. He considered Mr. Hasan’s lateness on his first scheduled workday, his messages to Mr. Tavangar indicating a desire to commence work, and the subsequent lack of attempt by the Employer to commence his employment. The Delegate correctly concluded the Employer did not provide Mr. Hasan the agreed upon work and did not find Mr. Hasan had abandoned the position. This was a reasonable view of the facts and was not an error of law.

22. I am in complete agreement with that view.

23. Saman also revisits the contention that Mr. Hasan’s complaint was not filed in good faith. That contention was addressed by the Delegate in the Reasons and by the Member in the Appeal Decision. Both rejected that contention and nothing in this Application shows there was a reviewable error by either the Delegate or the Member in that regard.

CONCLUSION

24. For the above reasons, this Application is denied.

ORDER

25. Pursuant to section 116(1)(b) of the *ESA*, the Appeal Decision 2025 BCEST 22 is confirmed.

/S/ David B. Stevenson

David B. Stevenson
Member
Employment Standards Tribunal