

An appeal

- by -

Denys Brais

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the

Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

TRIBUNAL MEMBER: Carol L. Roberts

FILE NO.: 2017A/135

DATE OF DECISION: January 22, 2018

DECISION

SUBMISSIONS

Denys Brais on his own behalf

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*ESA*”), Denys Brais has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on May 23, 1996. In that Determination, the Director found that Gary Crawford had contravened sections 40(1) and (2) of the *ESA* in failing to pay Denys Brais regular and overtime wages and interest in the total amount of \$8,142.63.
2. Mr. Brais appeals the Determination contending that evidence has become available that was not available at the time the Determination was being made. Mr. Brais also seeks an extension of time in which to file his appeal.
3. This decision is based on Mr. Brais’ written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made, and the Reasons for the Determination.

FACTS AND ARGUMENT

4. Mr. Brais was employed as an underground miner for 7639 Yukon Ltd., a company engaged in speculation mining near Atlin, British Columbia. The company’s partners ceased funding the project on March 31, 1995, and the employees were paid all wages owed. Gary Crawford, one of the partners, then decided to continue the project on his own and pursued alternate sources of funding. Mr. Brais continued to work for Mr. Crawford during April 1995 until he quit on April 27, 1995, because he did not receive any wages.
5. In a letter dated December 6, 1995, Mr. Crawford acknowledged owing Mr. Brais outstanding wages and proposed a payment plan. In his May 23, 1996 Determination, the delegate found that Mr. Brais was entitled to regular and overtime wages in the total amount of \$8,142.63, represented outstanding wages and interest.
6. On July 31, 1996, Mr. Brais filed an appeal of the Determination. According to the record, after receiving the appeal, a staff member from the Employment Standards Tribunal contacted Mr. Brais. The staff member determined that Mr. Brais’ appeal had been filed in error, as he did not dispute the Determination and returned the appeal to him.
7. On November 10, 2017, Mr. Brais filed a second appeal of the Determination, contending that on or about August 20, 2008, he saw Mr. Crawford and asked him if he was going to be paid the wages determined outstanding by the delegate in 1996. When Mr. Crawford replied that he was, Mr. Brais gave Mr. Crawford his phone number and banking information and asked him to put money into his Whitehorse account. Mr. Brais said that he did not see Mr. Crawford again until late October 2017.

8. Mr. Brais seeks to have the Tribunal “take aggressive action” against Mr. Crawford to recover the outstanding wages. I infer from Mr. Brais’ submission that the Branch was unable to locate Mr. Crawford to recover the amounts owing and now that Mr. Brais knows where Mr. Crawford is, he wishes them to enforce the judgment.

ANALYSIS

9. Section 114 of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:

- 114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:
- (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
 - (f) there is no reasonable prospect that the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 112(2) have not been met.

10. Section 112(1) of the *ESA* provides that a person may appeal a determination on the following grounds:

- the director erred in law;
- the director failed to observe the principles of natural justice in making the determination;
- evidence has become available that was not available at the time the determination was being made.

11. There are two difficulties with Mr. Brais’ appeal. The first is that he does not, in fact, dispute the delegate’s determination that Mr. Brais was entitled to outstanding wages. Mr. Brais does not challenge either the correctness of that finding or the amount owing. In effect, what Mr. Brais seeks through his appeal is an Order from the Tribunal to the Director to enforce the 1996 Determination. The Tribunal has no authority to make such orders. Mr. Brais’ remedy, if he has one at all, lies with the Director, not the Tribunal. The role of the Tribunal is to evaluate the “correctness” of the Director’s decisions.

12. The second difficulty with Mr. Brais’ appeal is that, even if he was challenging the correctness of the Determination, the appeal was filed 20 years too late. Section 112 (3) of the *ESA* provides that a party wishing to appeal a Determination must deliver that appeal to the Tribunal within 30 days of the date of the Determination, if the person was served by registered mail. Even though the Tribunal has the discretion to extend the time to file an appeal, that discretion will not be exercised in circumstances such as these, where there is no challenge to the Determination and where there has been a significant passage of time.

13. Pursuant to section 114 of the *ESA*, I dismiss the appeal.

ORDER

14. Pursuant to section 115 of the *ESA*, I order the Determination dated May 23, 1996, be confirmed in the amount of \$8,142.63, together with any interest that has accrued under section 88 of the *ESA*.

Carol L. Roberts
Member
Employment Standards Tribunal