

An appeal

- by -

Peace River Building Products Ltd.
(the "Appellant")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Sheila McDonald

FILE No.: 2000/744

DATE OF DECISION: January 16, 2001

DECISION

OVERVIEW

On September 27, 2000 a Delegate of the Director of Employment Standards issued a Determination which found that the Peace River Building Products Ltd. (the employer”) had contravened Section 63 of the *Employment Standards Act* (the “Act”). The Determination ordered the employer to cease contravening Part Eight, Section 63 of the *Act* and to pay compensation for length of service totalling \$3,337.02; vacation pay on compensation for length of service totalling \$200.22 and interest totalling \$268.03 to Kathy Williams (the “complainant”).

The employer received the Determination by registered mail on September 29, 2000. The employer faxed an appeal to the Employment Standards Tribunal on October 30, 2000 outside the timelines as set in Section 112 of the *Employment Standards Act*.

Section 112 of the *Employment Standards Act* (2) states that the request for an appeal must be delivered within 15 days of the date of service, if the person was served by registered mail.

ISSUE

The issue to be decided is whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* and extend the time period for requesting an appeal even though the period has expired.

ARGUMENT

The Employer’s Position

The employer argues that he was too busy to read the determination in its entirety upon receipt. He goes on to state “As soon as I was able to read the determination in its entirety and realized there was little time for an appeal, I started as quickly as possible”.

The Director’s Position

The Director argues that there is no reason why PRBP could not file its appeal within the time frame set out in the Determination. She argues that the delay in filing the appeal resulted from the carelessness of the employer to read through the determination.

The Employee's Position

The employee argues that the employer has no valid reason for being granted an extension to the appeal time limits. She argues the employer was given adequate time to read and reply to the Determination. She states that allowing an appeal "would be in extreme prejudice to myself".

THE FACTS AND ANALYSIS

The Determination which was sent to Peace River Building Products Ltd. stated on page 7, "Any person served with this determination may appeal it to the Employment Standards Tribunal. The appeal must be delivered to the Tribunal no later than 4.30 PM on October 20, 2000."

In a letter dated November 7, 2000 addressed to the Employment Standards Tribunal Ms. Debbie Sigurdson, the Delegate of the Director of Employment Standards states that "the Determination under appeal was sent by registered mail to PRBP on September 27, 2000. In addition, she provides a certificate of delivery confirmation by Canada Post confirming that the mail was successfully delivered on September 29, 2000 and signed for by Emily Giesbrecht.

In a letter to the Tribunal dated October 25, 2000 Mr. Gerald Giesbrecht acknowledges receipt of "the letter of determination a few weeks ago". He goes on to state that, "After reading the first few pages I got the drift of the situation....I meant to read it thoroughly in the near future. I neglected to do this, until last week, and when doing so noticed the time limit for an appeal. I telephoned Debbie but she was away until yesterday afternoon (Oct 24th)".

In Ms. Debbie Sigurdson's letter dated November 7th she confirms that she spoke to Mr. Giesbrecht by telephone on October 24th at 4.00p.m. at which time he requested an extension to file an appeal. She states in her letter "This was the first notice the Delegate received of PRBP's intention to appeal the Determination." She gave Mr. Giesbrecht the Tribunal telephone number and faxed him a copy of the appeal form on the same day October 24th.

Mr. Giesbrecht faxed his appeal to The Employment Standards Tribunal on October 30, 2000 at 11.29. He also faxed to the Tribunal on October 26th a copy of a letter dated October 25, 2000 requesting an extension to the time lines to appeal.

When Mr. Giesbrecht phoned the Employment Standards Office on October 24th he received a message that Ms. Sigurdson was out of the office until October 24th. He does not provide any reason for not asking someone else in the office for the phone number of the Employment Standards Tribunal nor did he appear to have made any attempt to find the number out for himself. He then spoke to Ms. Sigurdson on October 24th and received the

phone number for the Tribunal and a fax of the appeal form. He wrote a letter to the Tribunal requesting an extension to the timelines for filing an appeal on October 25th and faxed it to the Tribunal on October 26th. He did not fax the appeal form until October 30th.

Mr. Giesbrecht stated in his letter of November 20th that as soon as he realised there was little time for an appeal he started as quickly as possible to appeal, however, his actions do not support this. If he had taken the time to obtain the phone number for the Tribunal and obtain a copy of the appeal form before Ms. Sigurdson returned to the office he would have been able to file the appeal by October 20th as specified in the Determination. On page 7 of the Determination it was stated that appeal forms were available at any office of the Employment Standards Branch. Instead he chose to wait for Ms. Sigurdson to return to the office. However, even after he obtained the phone number and the appeal form on October 24th he waited until October 30th to file the appeal.

Mr. Giesbrecht has stated in his letters that he was too busy to read the Determination in its entirety and then was too busy to file the appeal. Even given that the Determination had significant financial implications for the business, he did not find the time to deal with the matter.

In Niemisto (BC EST #D099/96) the Tribunal set out criteria for the exercise of discretion extending the time to appeal. Those are that the party seeking the extension must satisfy the Tribunal that:

- (1) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
- (2) there had been a genuine, ongoing bona fide intention to appeal the determination;
- (3) the respondent party as well as the director has been made aware of this intention;
- (4) the respondent party will not be unduly prejudiced by the granting of the extension; and
- (5) there is a strong prima facie case in favor of the appellant.

There appears to be no valid cause for the delay of the employer to read the Determination in its entirety or in filing an appeal other than he did not deal with the matter in a timely fashion. There was no indication that the employer intended to file an appeal until after the times lines were expired. In addition, the employee would in this case be unduly prejudiced should an extension be granted.

Given the evidence there are no grounds for supporting an extension to the time limits for an appeal.

ORDER

Pursuant to section 109 of the *Act*, I order that there be no extension granted to the time period for requesting an appeal.

Sheila McDonald

Sheila McDonald
Adjudicator
Employment Standards Tribunal