

An appeal

- by -

Zahra Hakim

- 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: John M. Orr

FILE No.: 2003A/286

DATE OF DECISION: January 19, 2004

DECISION

APPLICATION

This is a consideration of an application by Zahra Hakim (“Hakim”), pursuant to Section 109 of the Employment Standards Act (the “Act”) to extend the time period for requesting an appeal from a Determination dated October 7, 2003 by the Director of Employment Standards (the “Director”) even though the time period for requesting an appeal has expired.

Zahra Hakim is a hairstylist and was employed by 587886 Ontario Ltd operating as First Choice Haircutters (“First Choice”) from December 1999 until she was dismissed on December 2, 2002. Hakim sought compensation for length of service. First Choice alleged that the employer’s liability for compensation was discharged because Hakim was dismissed for just cause for soliciting clients from First Choice for her own personal and competing business.

A delegate on behalf of the Director investigated Hakim’s complaint and held some form of oral hearing to assist in establishing the facts. The delegate determined that First Choice had met the onus of establishing that there was just cause for dismissal and accordingly found that the employer’s liability to pay compensation for length of service had been discharged.

Hakim has filed an appeal but the appeal was filed outside of the time required and this decision addresses an application to extend the time so that her appeal may be heard. The Director’s delegate takes no position on the application but First Choice opposes the extension of time.

The Determination is dated October 7, 2003 and contains a notice that any appeal must be delivered to the Tribunal by 4:30 pm on November 14, 2003. The Tribunal received the appeal on November 17, 2003 at 12:31 pm. It should be noted that November 14th was a Friday and that the appeal was received shortly after noon on the following Monday.

The Tribunal has authority under Section 109(b) to extend the time period for requesting an appeal even though the period has expired. The Tribunal has developed certain basic principles to exercising the discretion granted in this section which include that:

1. Is there a good reason why the person appealing could not meet the deadline?
2. Was there an unreasonably long delay in filing the appeal?
3. Did the person appealing always intend to appeal the Determination?
4. Were the other parties aware of the intent to appeal?
5. Would extending the appeal deadline harm the Respondent’s case?
6. If the Tribunal grants an extension, does the person appealing have a strong case that might succeed?

In this case there was not an unreasonable delay in filing the appeal and some personal reasons are given for the delay. Hakim explains that she was attempting to deliver the appeal in person on November 14th but was caught in traffic and missed the deadline. She arranged for the appeal to be faxed by a friend on the following Monday. However, Hakim does not explain why delivery of the appeal was left until the last day or why it could not have been delivered by mail or fax prior to the last day.

Because the delay is minor the issues of notice to the other parties and intent to appeal do not really have much significance as such notice is not required until the deadline date in any case. There is also no issue of prejudice to the Respondent in this case.

However, in my opinion, no purpose would be served by granting the extension in this case. The appeal that has been filed simply takes issue with the findings of fact made by the delegate but alleges no error in law or failure to observe the principles of natural justice. In fact, Hakim makes further admissions in her appeal documents that she was aggressively competing with her employer's business prior to her dismissal. These were the very grounds for dismissal.

If an extension of the time for filing the appeal were to be granted it is clear that the appellant does not have a strong case. There is little likelihood that the appeal would succeed. Essentially, there is no substantive ground of appeal alleged that would have any likelihood of success. Any extension would simply prolong the process to the inconvenience of the other parties involved.

In conclusion, the application for an extension of time for requesting an appeal pursuant to s.109 (1)(b) is denied and the appeal is dismissed without a hearing in accordance with s. 114 (1)(a) as I am satisfied that the appeal has not been requested within the time limit in section 112(2).

ORDER

Accordingly, pursuant to section 109(1)(b), I decline to extend the time for filing of the appeal herein. The appeal is dismissed without a hearing pursuant to section 114(1)(a).

John M. Orr
Adjudicator
Employment Standards Tribunal