

An appeal

- by -

Jeanette Burns
(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: M. Gwendolynne Taylor

FILE No.: 2000/718

DATE OF DECISION: January 18, 2001

DECISION

SUBMISSIONS BY:

For the Employee	Jeanette Burns
For the Employer	Tom Scott, for the Sportsman Country Inn
For the Director	Rod Bianchini, Industrial Relations Officer

OVERVIEW

The Director of Employment Standards (the “Director”) issued a Determination against Judy Harvey and Melvin Martin, operating as the Sportsman Country Inn (the “Respondents”), on May 10, 2000. This Determination awarded Jeanette Burns (the “Appellant”) \$1,378.69, plus interest, for unpaid wages and compensation for length of service.

The Respondents appealed the determination and the Employment Standards Tribunal held an oral hearing on October 6, 2000.

The Appellant filed this appeal, from the Director’s determination, on October 12, 2000. The deadline for filing the appeal was June 2, 2000.

ISSUE

The Tribunal must decide whether to exercise its discretion under Section 109(1)(b) of the *Act* to extend the appeal deadline from June 2, 2000 to October 12, 2000. This decision deals only with that issue.

FACTS AND SUBMISSIONS

In the determination of May 10, 2000, the Director’s Delegate (the “Director”) set out the allegations of the Appellant and one other employee who was included in the investigation and determination. For the Appellant, the Director noted the following allegation:

Burns alleges she was not paid regular wages and was not given written notice or Compensation for Length of Service equal to 1 week’s wages.

The Director found that Burns worked at least 8 hours per day or 40 hours per week and that the wage was \$9.80 per hour. The Director found that the employer had not provided proof that they adequately notified Burns that her conduct was a matter of serious significance that could jeopardize her employment. The Director also found that the employer had not

provided proof that Burn's actions warranted summary dismissal without notice or compensation for length of service.

The Director did not address whether Burns was entitled to compensation for overtime.

In the application to extend the time to appeal, the Appellant states that when she received the Determination she contacted the Director regarding the calculation of wages owed and was not informed that she would have to file an appeal to deal with overtime. Further she states that when the Respondent filed an appeal, she again contacted the Director and was told to respond to the Sportsman's appeal and to ensure that she indicated she was asking for overtime. The Respondent's appeal was received by the Tribunal on May 31, 2000.

The Appellant says she was advised, on October 6, 2000, by the Tribunal adjudicator that she should have filed a separate appeal. However, she reiterates that she included overtime in her original letter of complaint and doesn't understand why it is being treated as a separate issue.

Mr. Bianchini submits that the Appellant asked him on several occasions about her responsibilities during the appeal process. He says he explained the submission and response process and referred her to the Employment Standards Tribunal for this information.

PRINCIPLES FOR EXTENDING AN APPEAL DEADLINE

The purpose of the *Employment Standards Act* (the "Act") under section 2 (d) is "to provide fair and efficient procedures for resolving disputes". The Act imposes an appeal deadline to ensure appeals are dealt with promptly. The Tribunal requires parties to file their own appeals even if this means multiple appeals from one Determination.

Under section 109(1)(b) of the Act, the Tribunal can extend the time for requesting an appeal if there are compelling reasons. To decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria which Appellants must satisfy:

- (1) there is a good reason they could not appeal before the deadline;
- (2) there is not an unreasonably long delay in appealing;
- (3) they always intended to appeal the Determination;
- (4) the other parties (the respondent and the Director) are aware of the intent to appeal;
- (5) the respondent will not be harmed by an extension; and
- (6) they have a strong case that might succeed, if they get an extension.

ANALYSIS

- (1) There was nothing preventing or impeding the Appellant from appealing within the deadline. It is clear that the Appellant received the Determination and the information on the appeal process. She chose not to appeal, apparently, on the assumption she could raise her issues on the Respondent's appeal. She did not contact the Employment Standards Tribunal to inquire about the appeal process. Where there is disagreement between the Appellant and the Director on the information the Director gave the Appellant, I accept the Director's submissions. Accordingly, I find that the Director referred the Appellant to the Tribunal.
- (2) The purpose of the Act is to provide fair and efficient procedures for resolving disputes. One of the procedures is the method and timing of filing an appeal. From June 2 until October 12 is a substantial delay and I find it is an unreasonably long delay.
- (3) Although the Appellant says she wanted the overtime issue addressed, I find she had no intention of appealing the determination. The Respondent did not file an appeal until May 31. I find it unlikely that the Appellant would have been waiting for that appeal to be filed in order to avoid filing an appeal herself. I find that she was aware as soon as she received the Determination that the overtime issue was not addressed and she took no steps to file an appeal.
- (4) The Respondent would not have been aware of the Appellant's intention to appeal until the oral hearing on October 6, 2000.
- (5) If an extension is granted, the Respondent will have to prepare for another hearing and will continue to be at risk of an adverse monetary award.
- (6) It is possible that the Appellant could prove a case for overtime. Mr. Bianchini found that she worked at least 8 hours per day. However, in addition to evidence supporting hours worked, a determination would involve other evidence and legal issues. On the basis of the evidence before me, it is not clear that the Appellant has a strong case for entitlement to overtime or ability to prove hours worked.

This case comes down to the Appellant saying she relied on the Director's delegate to provide advice on how to ensure her position was protected. The Directive included information on the appeal process, including information on the Employment Standards Tribunal. I have accepted Mr. Bianchini's statement that he referred her to the Tribunal. She did not contact the Tribunal. I find that the Appellant was not diligent in pursuing her appeal and that it would be contrary to the intent of the *Act* to allow her to file an appeal four months late.

ORDER

The Tribunal declines to extend the time to file an appeal.

M. GWENDOLYNNE TAYLOR

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal