

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act S.B.C. 1995, C. 38

- by -

ScottLynn Contracting Ltd.
("ScottLynn")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/666

DATE OF DECISION: January 7, 1997

DECISION

OVERVIEW

This is an appeal by ScottLynn Contracting Ltd. ("ScottLynn") pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination CDET No. 004199 issued by a delegate of the Director of Employment Standards on October 3, 1996. The time limit for filing an appeal of the Determination expired on October 28, 1996. The Tribunal received an appeal from ScottLynn on November 8, 1996.

ISSUE TO BE DECIDED

The issue to be decided is whether the time limit for requesting an appeal, as set out in Section 112 of the *Act*, should be extended in this case.

FACTS

On October 3, 1996, a delegate of the Director of Employment Standards (the "delegate") issued Determination CDET No. 004199 against ScottLynn of Box 849, Queen Charlotte Islands, B.C. VOT 1SO. The Determination was sent by registered mail and it indicated that an appeal of it had to be received by the Tribunal no later than October 28, 1996.

The Determination was received by ScottLynn on October 18, 1996.

On November 8, 1996, the Tribunal received an appeal from ScottLynn. The appeal form was dated October 28, 1996 and was forwarded to the Tribunal on November 7, 1996 by Priority Courier. On the appeal form, it indicates that ScottLynn has a fax number. No Determination was included with the appeal form and ScottLynn was advised to forward a copy of it to the Tribunal by November 20, 1996. ScottLynn faxed a copy of the Determination to the Tribunal on November 13, 1996.

On November 13, 1996, ScottLynn was advised by the Tribunal that the appeal would not be considered as it was out of time.

On November 18, 1996, D. Bailey ("Bailey"), the President of ScottLynn, wrote the delegate (with a copy to the Tribunal) to advise that his appeal had not been accepted by the Tribunal. He further stated: "Your determination and appeal process was forwarded to a previous address, located in the Qn. Charlottes. It was not received nor picked up from the forwarded address until October 18th. The time involved to respond was not in line with the aforementioned 23 days. Your problem with delivery of the determination has denied our firm of a Tribunal hearing."

The Tribunal invited the delegate to reply to Bailey's letter. On November 25, 1996, the Tribunal received a copy of the delegate's November 20, 1996 reply to Bailey. In his letter, the delegate states that the Determination was sent to the last known address of ScottLynn and that Bailey had moved without notifying him of an address change. The

delegate further noted that Bailey was in receipt of the Determination for 10 days prior to the expiration of the appeal period.

Bailey was invited by the Tribunal to reply to the delegate's November 20, 1996 letter. A submission dated December 9, 1996 was received by the Tribunal via regular mail. Further submissions were received via fax on December 17, 1996 and December 20, 1996. In his submissions, Bailey does not address the issue of his change of address.

ANALYSIS

Section 122(1) of the *Act* provides that a Determination that is required to be served on a person is deemed to have been served if either served on the person or sent by registered mail to the persons last know address. Section 122(2) of the *Act* states that if service is by registered mail, the Determination is deemed to be served 8 days after it is deposited in a Canada Post Office.

Section 112(2) of the *Act* sets out the time periods for appealing a Determination. A person served with a Determination has only 8 or 15 days to file an appeal depending on the mode of service. In the case of service by registered mail, the time period is 15 days after the date of service; the time period is only 8 days if the Determination is personally served.

These relatively short time limits are consistent with one of the purposes of the *Act* which is to provide for fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. It is in the interest of all parties to have complaints and appeals dealt with promptly.

Section 109(1)(b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where there are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.

In the case at hand, I am not satisfied that an extension ought to be granted.

The Determination was served in accordance with Section 122(1) of the *Act*. The delegate claims he sent the Determination to the last known address of the employer. This was not disputed by ScottLynn. There is no evidence that the delegate was provided, at the time, with any other address for the employer. It is the responsibility of ScottLynn to ensure that the delegate has its accurate address.

Bailey became aware of the Determination 10 days prior to the expiry of the appeal period. This, it should noted, provided Bailey with a longer period of time to file an appeal than the 8 days allowed if he had been served in person. Bailey, however, did not forward an appeal to the Tribunal until approximately 3 weeks later. No explanation for this delay

was provided. ScottLynn has a fax machine and the appeal form indicates it was signed on October 28, 1996, yet Bailey chose not to forward the appeal by fax on that day. Rather, he waited for another ten days and then sent the appeal by Priority Courier. The obligation is on the employer to exercise reasonable diligence in the pursuit of an appeal. In this case, ScottLynn has failed to persuade me that it has done so. I am not convinced that ScottLynn genuinely intended to file an appeal in a timely manner.

For the above reasons, I have decided not to extend the time limit for requesting an appeal in this case.

ORDER

The appellant's request to extend the time period for requesting an appeal is denied. The appeal is dismissed pursuant to Section 114 of the *Act*.

Norma Edelman
Registrar
Employment Standards Tribunal

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