

EMPLOYMENT STANDARDS TRIBUNAL

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

Employment Standards Act, R.S.B.C. 1996, c. 113

-by-

Baljit Aujla
("Aujla")

-and-

Acme Stucco Ltd.
("Acme Stucco")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/726 & 98/727

DATE OF DECISION: January 25, 1999

DECISION

OVERVIEW

On August 14th, 1997, a delegate of the the Director of Employment Standards (the “Director”) issued a Determination against A & R. Stucco Ltd. (“A & R”) and Acme Stucco Ltd. (“Acme Stucco”)--the Director’s delegate declared these two firms to be associated corporations pursuant to section 95 of the *Employment Standards Act* (the “Act”)--for \$1,729.23 on account of unpaid wages and interest owed to the complainant employee, Malkeet S. Mangat. I shall refer to this determination as the “Corporate Determination”.

On November 14th, 1997, a further determination was issued pursuant to section 96 of the *Act*--which establishes a personal liability for unpaid wages by the employer’s officers or directors--against Baljit Aujla (“Aujla”) for \$1,743.56. I shall refer to this determination as the “Director/Officer Determination”. It should be noted that the higher dollar figure represents additional interest that has accrued since the date of the Corporate Determination.

On November 18th, 1998, and pursuant to section 112 of the *Act*, Aujla filed an appeal in his own right from the Director/Officer Determination and on behalf of Acme from the Corporate Determination.

ISSUE TO BE DECIDED

The sole issue addressed in these Reasons for Decision is the timeliness of an appeal filed on November 18th, 1998 by Aujla on his own behalf and on behalf of Acme.

Section 112(2) of the *Act* provides that a party must file an appeal of a determination within 15 days after having been served with the determination if service was effected by registered mail, or within 8 days in the case of personal service. The Tribunal may extend the applicable appeal period under section 109(1)(b) of the *Act*. Inasmuch as the appeal periods with respect to both the Corporate Determination and the Director/Officer Determination have now expired, Aujla seeks an order extending the two appeal periods.

FACTS AND ANALYSIS

The delegate who issued the Corporate Determination sent it by certified (registered) mail to the registered and records office of both companies named in the determination, however, the envelope containing the determination was returned to the delegate as “unclaimed” on September 16th, 1997. Further, the Corporate Determination was also sent to Aujla (who is the president,

secretary and one of two directors of Acme Stucco) at his address as listed in Acme Stucco's corporate records held by the B.C. Registrar of Companies.

The Director/Officer Determination was mailed to Aujla, by certified mail, at two separate addresses--the registered and records office of Acme and to his residential address listed in Acme Stucco's corporate records. Both envelopes were returned to the delegate "unclaimed"; the former on January 20th, 1998, the latter on January 21st, 1998. The addresses to which the envelopes were sent was still listed as proper addresses according to a corporate search conducted by the delegate on November 13th, 1998. I understand that as of December 11th, 1998, Aujla's correct address has been filed with the Registrar of Companies.

In support of the two applications for time extensions, Aujla states that he made "an honest mistake [in failing] to update his address". Further, Aujla states that he ceased residing at the address noted in the Registrar of Companies' records on "approximately April 30th, 1996". However, even if that is true, it must be remembered that companies are obliged to file an updated annual report with the Registrar of Companies each and every year. Aujla's correct addresses could have been recorded in Acme Stucco's annual reports that should have been filed for the years 1996, 1997 and 1998. Aujla appears to display a very cavalier attitude to his filing obligations; not only was this appeal filed well after the time limits for so doing had expired but Acme Stucco also failed to file annual reports for 1996 and 1997. In my view, members of the public, including the Director, are entitled to rely on corporate records filed with the Registrar of Companies and parties should not expect special dispensations when they have neglected to ensure that requisite documents were filed in a timely and accurate fashion.

In his appeal documents, Aujla referred to "some negative information on his credit file" which came to his attention in late September 1998, presumably referring to the Director/Officer Determination. However, there is no explanation for the ensuing delay between September 1998 (when this negative information apparently came to light) and November 18th, 1998 (when the present appeal was filed with the Tribunal).

Bearing in mind the criteria set out in the Tribunal's decision in *Niemisto* (B.C.E.S.T. Decision No. D99/96), I cannot conclude that this is an appropriate case to exercise my discretion and extend the appeal period. In my view, the material before me does not raise any substantive defences under either section 95 or section 96 of the *Act*; the material does evidence ongoing dilatory conduct by the appellants; and I do believe that an extension order would prejudice the interests of the respondent employee.

ORDER

The request by Baljit and Acme Stucco Ltd. to extend the time period for requesting an appeal is **denied**. Accordingly, both the Corporate Determination and the Director/Officer Determination continue in full force and effect.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal