

**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 -

All India Foods (1991) Ltd.  
("All India")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 96/632

**DATE OF DECISION:** January 13, 1997

## DECISION

### OVERVIEW

This is an appeal by All India Foods (1991) Ltd. (“All India”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determinations CDET No. 003965 and No. 003969 issued by a delegate of the Director of Employment Standards on, respectively, September 12, 1996 and September 18, 1996. The time limit for filing an appeal of the Determinations expired on October 7 & 11, 1996. The Tribunal received appeals from All-India on October 28, 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 September 12 & 18, 1996, Determinations CDET No. 003965 & 003969 were issued against All India. The Determinations were sent by registered mail and they indicated that an appeal of them had to be received by the Tribunal no later than October 7 & 11, 1996.

The Determinations were received by All India by September 23, 1996. The Tribunal’s records indicate it faxed an appeal form to All India on that date.

On October 24, 1996, the delegate placed Demand Notices on All India’s credit union accounts.

On October 28, the Tribunal received appeals from All India. The appeal forms were dated October 2, 1997. On the forms, it indicates that All India has a fax number.

On October 29, 1996, All India was advised by the Tribunal that the appeals would not be considered as they were out of time.

All India wants the Tribunal to accept the appeals. In a fax from B. B. Dhanji, Accountants for All-India, dated October 28, 1996, the sender, Ying, states that appeal forms were sent to the Tribunal on October 2, 1996. A list of daily outgoing mail was submitted, which shows, according to Ying, that mail was sent to the Tribunal on October 2, 1996. In a subsequent letter sent to the Tribunal, Tony Mrock of All India states that the secretary of All India’s accountant mailed the appeal forms to the Tribunal on October 1, 1996, but the forms were sent back because of insufficient postage. The forms were then re-mailed, and as he puts it, “...our bad luck the forms did not get to your office...”.

An envelope was submitted which has a Canada Post date of October 1, 1996, and a return to sender sticker which indicates the envelope was mailed with insufficient postage. The envelope also contains a sticker which indicates the sender is All-India.

The delegate argues that the appeals should be rejected. In a submission to the Tribunal dated November 6, 1996, she states that All India knew of the appeal at least as early as September 23, 1996; it can be assumed that the envelope would have been returned to All India yet no one contacted her until she served a Demand Notice on All India's account; All India had ample time to present their case before the Determinations were issued but did not; All India could have contacted her once the Determinations were issued but did not; Ying denies that the envelope was mailed a second time; even if the envelope was re-mailed it was employer's responsibility to make sure the Tribunal was notified it was being mailed again or to follow-up with the Tribunal to make sure it was received, and there is no evidence that it did this; All India have not provided any proof that the envelope was mailed a second time; All India has not shown that it did not have ample opportunity to present its case to her, or that it did everything possible to ensure the Tribunal received the appeals on time or that if the documents would be received late that it notified the Tribunal of this; and All India ignored everything until the Demand Notices were served on their bank.

The delegates submission was forwarded to All India for reply. A reply was received on December 17, 1996 from Charanjit Mrock of All India which reiterated that the appeals had been sent by mail and were returned due to insufficient postage. No new information concerning the filing of the appeals was provided.

## **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 person's 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 Determinations were properly served in accordance with Section 122(1) of the *Act*. The delegate sent the Determinations to the last known address of the employer and they were received prior to the expiry of the appeal period.

I am not satisfied that All India took any steps to file an appeal in a timely manner. The list of outgoing mail and the envelope does not establish that appeals were mailed to the Tribunal on October 1 or October 2 (both dates were provided by All India). All India claims the envelope with the appeal forms was returned and re-mailed and, once again, was not received by the Tribunal. There is no evidence to support the claim that the forms were re-mailed to the Tribunal. The Tribunal received appeal forms on October 28, 1996 which were two and one-half to three weeks out of time. No explanation, at that time, was provided for the delay. At no time prior to October 28, 1996 did All India contact the Tribunal to advise of any problems with the mailing of the appeal forms. All India has a fax machine but it did not fax the appeal forms to the Tribunal, which one would have expected if the envelope had been returned, or if All India was aware the envelope had not been received by the Tribunal, and there was a timeliness issue. The obligation is on the employer to exercise reasonable diligence in the pursuit of an appeal. In this case, All India has failed to persuade me that it has done so. I am not convinced that All India genuinely intended to appeal prior to the issuance of the Demand Notices by the delegate.

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

**ORDER**

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

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**