

An appeal

- by -

Safari Pets & Aquatics Ltd.
("Safari")

- 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: Paul E. Love

FILE No.: 2000/657

DATE OF DECISION: January 23, 2001

DECISION

OVERVIEW

This is an application by Safari Pets & Aquatics Ltd. (the “employer” or “Safari”) to extend time to permit the filing of a late appeal. The deadline for filing the appeal was September 20, 2000, and the appeal was filed on September 22, 2000. I am satisfied that the appellant formed the intention to appeal within the appeal period, and has a reasonable excuse for the late filing. I am satisfied that there is some merit to the appeal, and that the appeal cannot be characterized as a frivolous or vexatious appeal, or an appeal lacking in good faith. I am satisfied that there is no prejudice to the employee, and therefore I extended time for the filing of the appeal.

FACTS

This is an application by the employer for extension of time to file an appeal. The Determination was issued on August 28, 2000. The deadline for the filing of the appeal was September 20, 2000. The employer filed the appeal of the Determination on September 22, 2000 by fax transmission.

The excuse offered by counsel for Safari, for the late filing of the appeal is set out in the letter to the Tribunal dated September 22, 2000. This letter also enclosed the notice of appeal. Counsel states that prior to the issuance of the Determination, the Delegate was informed that the employer would be appealing the Determination. Counsel submits that the deadline for filing “passed through inadvertence”. Counsel was unable to meet with Safari until September 21st, and upon receiving instructions to file an appeal, wrote to the Director seeking forms the same day, and filed the appeal the same day the forms were received. I note that counsel’s letter to the Director stating the intention to appeal was dated September 20, 2000.

The grounds in the notice of appeal relate to an issue of “who was the proper employer of the employee”, a misapplication of the law related to compensation for length of service and associated companies, and errors with regard to calculations of expenses, and an error with regard to an employment related loan. I note that the Delegate submits that the case of the employer on appeal may rest on evidence that should have been presented at the time of the investigation.

The employee, Chelle Le Grass has made no submission on the issue of timeliness. The Delegate opposes an extension of time on the basis that it would be “unfair to the complainant who, having complied with the legislation, has waited patiently for the resolution of this matter.” The Delegate also points out that the time to present evidence was

at the time of the investigation. From the submission made by the Director, I have not been made aware of any prejudice to the employee flowing from a late filing of the appeal.

ISSUE:

Should the Tribunal grant an extension of time to the employer to file this appeal?

ANALYSIS

In determining whether to grant an extension of time, I must consider whether the appellant formed the intention to appeal within the appeal period, that the appellant has a reasonable excuse for failing to file the appeal within the time limits set out in the Determination and that there is no prejudice to the respondent from the late filing of the appeal. I must also consider whether there is some merit to the appeal.

Excuse for Filing the Late Filing:

I conclude from the evidence before me that Safari formed an intention to appeal during the appeal period and has a reasonable excuse for the late filing of the appeal. I note that in this case the appeal *may* have been filed on time if the Delegate had included an appeal form with the Determination at the time that the Determination was delivered to the employer. There was some attempt to comply with the time limits for the filing of an appeal set out in s. 112 of the *Employment Standards Act* (the “Act”). In my view, the client should not be penalized because of the inadvertence of counsel.

Prejudice:

I see no evidence of any prejudice to the employee arising from the late filing of the appeal.

Merit:

This case involves a finding by the Delegate that the employer was an associated company. The allegation in the notice of appeal is that the only association was the fact that the employer purchased the assets of the employee’s former employer from a court appointed bailiff. There appears to be a dispute between the Delegate and Safari as to whether Safari co-operated in the investigation and provided information which bears on the finding of associated companies, and other findings of the Delegate. I should not be sorting out this issue on an application for timeliness. The Tribunal’s policy with regard to a lack of co-operation by a party during the investigation is clearly set out in a number of previous cases, and this issue can be raised for consideration by an Adjudicator who is assigned to the merits of the appeal. I am persuaded, based on the information before me, that there is some merit to the issues raised in the notice of appeal, and that the appeal cannot be characterized as a frivolous, vexatious matter, or an appeal lacking in good faith.

I therefore extend time for the filing of the appeal, and request that the Registrar invite the parties to file submissions on the merits of the appeal.

ORDER

Pursuant to section 109(1)(b) of the *Act*, I extend the time for the employer to file the appeal until the close of business on September 22, 2000.

PAUL E. LOVE

Paul E. Love
Adjudicator
Employment Standards Tribunal