

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 -

Hemwat Logging Ltd.
("Hemwat" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/678

DATE OF DECISION: February 10, 1999

In *Blue World It Consulting Inc.* (BCEST #D516/98), the Adjudicator summarized the considerations applicable to a request for an extension of the appeal period:

- “1) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
- 2) there has been a genuine and ongoing *bona fide* intention to appeal the Determination;
- 3) the respondent party (*i.e.*, the employer or the employee) as well as the Director of Employment Standards, must have been made aware of this intention;
- 4) the respondent party will not be unduly prejudiced by the granting of the extension; and
- 5) there is a strong *prima facie* case in favour of the appellant.”

I note at the outset that the appeal is approximately eight months late. In any event, in my view, for the reasons set out below, the application fails to satisfy these criteria.

First, the *Act* specifically provides that a determination is deemed to have been served if it is “sent by registered mail to the person’s last known address” (Section 122(1)(a)). In this case, the Determination was served at the correct address of the Employer and its directors. In addition, the Determination was served on the registered and records office. Moreover, as argued by the Director, Canada Post left cards on January 21, 26 and February 5, 1998. In my view, the Employer has not provided a reasonable and credible explanation for the delay, particularly as it appears from the material submitted that it was aware of the complaints and had made submissions in that regard. There is no explanation of what the Employer did to inform itself of the status of the complaints.

Second, I understand from the Employer’s affidavit that the amount of the Determination was garnished and held in trust by the Director. If those funds have been paid out--and I understand from the Director’s submission--that the file was closed, there is prejudice to the respondents and other parties. Moreover, I understand from the Employer’s affidavit--though that point is somewhat unclear--that the Employer or its counsel were aware of the garnishing order in September 1998. It would thus seem that the Employer could have taken steps to inform itself earlier.

Third, with respect to one of the employees, the Employer’s appeal suggests that there was an agreement with the employee not to pay overtime wages at the Employer provided certain other benefits, for example truck rental. With respect to another employee, the Employer acknowledges that it owes him money. Finally, with respect to the third employee the Employer acknowledges

that he was being evaluated on his ability to operate the Employer's equipment for a short period. In my view, there is not a strong *prima facie* case in favour of the Employer.

In the result, I dismiss the application for extension of time to file the appeal.

ORDER

The application to extend time to file an appeal of a Determination dated January 13, 1998 is dismissed.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal