

An appeal

- by -

Central Villa Sand & Gravel Ltd.
(“Central Villa”)

- 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 (as amended)

TRIBUNAL MEMBER: Kenneth Wm. Thornicroft

FILE No.: 2014A/34

DATE OF DECISION: May 27, 2014

SUBMISSIONS

Parminder Brar

on behalf of Central Villa Sand & Gravel Ltd.

INTRODUCTION

1. This is an application to extend the time for appealing a Determination. I am issuing these reasons for decision based solely on the submissions filed on behalf of the applicant although, in addition, I have reviewed the record that was before the Director of Employment Standards when the Determination in question was being made.
2. On July 12, 2013, a delegate of the Director of Employment Standards (the “delegate”) issued a Determination under section 79 of the *Employment Standards Act* (the “*Act*”) against Central Villa Sand & Gravel Ltd. (“Central Villa”). By way of the Determination, Central Villa was ordered to pay its former employee, Rajvansh Gill (“Gill”), the sum of \$5,803.59 on account of unpaid wages and section 88 interest. In addition, and also by way of the Determination, the delegate issued two separate \$500 monetary penalties against Central Villa (see section 98) and thus the total amount payable under the Determination is \$6,803.59.
3. There were a number of attachments to the Determination including, on page 3, a text box containing information about the appeal process. The final date for filing an appeal to the Tribunal was stated to be August 19, 2013, and I presume this deadline was calculated in accordance with the deemed service provisions set out in section 122 of the *Act*.
4. Central Villa’s appeal was actually filed on March 24, 2014, well past the appeal deadline thus triggering the instant application under subsection 109(1)(b) of the *Act*.

FINDINGS AND ANALYSIS

5. Central Villa’s appeal documents include a 7-paragraph memorandum headed “Reasons for Filing An Appeal After the Appeal Period Has Expired”. Paragraph 1 states that the “last date for the appeal was 18-oct-2013 till 4:30 PM” but this particular deadline has no application whatsoever to Central Villa’s appeal. As noted above, the Determination itself contained a text box advising Central Villa that the appeal deadline was August 19, 2013. It appears as though the October 18th date was selected because it was the appeal deadline relating to a separate section 96 determination issued against Mr. Sarbjit Singh Dult (“Dult”), Central Villa’s sole director and officer, on September 10, 2013. Mr. Dult filed a late appeal relating to the Section 96 Determination and I will address that matter in a separate set of reasons.
6. Returning to the instant appeal, in the second paragraph of the 7-paragraph memorandum, Central Villa states it “received the determination by email on 06-Nov-2013 after the date of right to appeal”. Central Villa has not provided *any* explanation regarding why, even if it did not receive the Determination until November 6, 2013, it waited about 4 ½ more months before it finally filed its appeal.
7. I have reviewed the section 112(5) “record” and it shows that the Determination was originally sent, by registered mail, to Central Villa’s registered and records office on July 12, 2013 – the same date that the Determination was issued. This letter was returned to the Employment Standards Branch as undelivered to the addressee. The Determination was also mailed to Central Villa’s sole director and officer, Mr. Dult; this letter was also returned to the Employment Standards Branch as undelivered to the addressee.

8. The record also includes correspondence and other documentation showing that Central Villa did not respond to telephone messages and letters from Employment Standards Branch officers and that, overall, Central Villa simply refused to participate in any fashion with any of the Employment Standards Branch's processes relating to Mr. Gill's unpaid wage complaint. The record also shows that as of July 10, 2013, Central Villa was not in good standing with the Registrar of Companies and that it was "in the process of being dissolved" presumably for failing to file annual reports.
9. The Tribunal has established a number of criteria that should be taken into account when considering an application to extend the appeal period including factors such as the length of the delay, the reason why the appeal was not filed in a timely fashion, whether the appellant can demonstrate a *bona fide* ongoing intention to appeal and has communicated this intention to the Director, the presumptive merit of the appeal and whether any other party would be prejudiced if the appeal period were extended. The burden of demonstrating that these criteria have been satisfied in any particular case lies on the applicant and extensions of the appeal period are only ordered when there are compelling circumstances that favour granting the application.
10. The record before me suggests that Central Villa was seemingly determined to avoid engaging in the Director's consideration of this matter from the outset and that it was validly served with the Determination, and other formal demands, but in every case refused or neglected to accept service. The delay in filing the appeal is significant – over 7 months – and Central Villa has not provided *any* explanation, let alone a credible explanation, for its failure to file a timely appeal. The merits of its appeal are, on the face of things, very weak since Central Villa's entire argument appears to be a general assertion the complaint should not have been upheld. But it has not provided any *evidence* to suggest why its position should prevail other than to say that a paycheque issued to the complainant was countermanded because it was based on an incorrect wage rate and that it never agreed to pay Mr. Gill the wage rate used to calculate his unpaid wage claim. There is no credible evidence before me corroborating Central Villa's bald assertion that the delegate applied an incorrect wage rate when calculating Mr. Gill's unpaid wage claim.
11. I might add that if Central Villa had actually attended the January 25, 2013, mediation session or the May 1, 2013, complaint hearing, rather than taking a determined stance to avoid any contact whatsoever with the Employment Standards Branch (notices relating to both of these matters were sent to Central Villa but were returned to the Employment Standards Branch as "unclaimed" mail), any issues about Mr. Gill's proper wage rate could have been sorted out before the Determination was issued.
12. Central Villa bases its appeal solely on the "new evidence" ground (subsection 112(1)(c) of the *Act*) and whatever evidence it might now wish to tender about the dispute (and Central Villa's material is very scanty on this score), would, in my view, almost certainly be inadmissible in light of the strict criteria governing the admissibility of new evidence (see, for example, *Davies et al.*, BC EST # D171/03).
13. Mr. Gill's unpaid wage claim dates from July 2012; it is now May 2014. He has waited more than long enough for his money and any further delay would, in my view, be unreasonably prejudicial to his interests especially in light of the very weak case advanced by Central Villa on the merits and the complete dearth of an explanation for its failure to file a timely appeal.

ORDER

- ¹⁴. Central Villa's application for an extension of the appeal period is refused. Pursuant to subsection 114(1)(b) of the *Act*, this appeal is dismissed. Pursuant to section 115 of the *Act*, the Determination is confirmed as issued in the amount of \$6,803.59 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal