

An appeal

- by -

Raj Gounder operating as Cozy Corner Restaurant

- 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:** Sheldon M. Seigel

**FILE No.:** 2008A/15

**DATE OF DECISION:** April 28, 2008



10. The Tribunal office received this appeal on February 8, 2008. The appeal stated that the Director failed to observe the principles of natural justice in making the Determination and that evidence has become available that was not available at the time the Determination was being made.
11. Mr. Gounder is seeking a change or variation of the Determination and a reference back to the Director for reconsideration. Mr. Gounder is also seeking an oral hearing.
12. The Appeal was due by October 11, 2005, and was therefore filed late.
13. On February 19, 2008, the Tribunal forwarded a letter to the attention of the employers. This letter indicated that the appeal was filed late and that the Tribunal would first consider whether to extend the deadline and accept the late appeal, and only if it is accepted would consider the merits of the appeal. The Tribunal indicated that it would choose a means to decide this issue. By forwarding the file (including the appeal documents, the correspondence of February 19, 2008, the Determination of September 2, 2005, and the Director's record) to the undersigned has chosen that the matter be decided by written submissions.
14. Attached to the appeal documents is a letter dated February 18, 2008 from Raj Gounder. It is a plea for an extension of the appeal date.

## ISSUE

15. Should the Tribunal extend the time period for requesting this appeal in order to allow for a consideration of the merits of the appeal?

## SUBMISSIONS

16. Mr. Gounder explains his reasons for the late appeal as follows:
  - He was made aware of the Determination on February 18, 2008, and accordingly was not able to file the appeal in time.
  - He never received any mail for any of the hearings.
  - He was very ill when *someone came down about some information*, and can provide a medical report to substantiate.
  - He was not the employer, but rather Meena Gounder was the employer.
17. The Director submits the following:
  - Mr. Gounder did not deny in his appeal that he was sent correspondence from the Director .
  - Mr. Gounder's address did not change since the investigation. Mr. Gounder has not claimed that he has been unable to receive correspondence at his address.

- The delay in filing the appeal is unreasonably long.
- A bailiff attended at Mr. Gounder's address between November 30, 2006 and January 30, 2006. A bailiff received partial payment of the outstanding funds from Mr. Gounder's bank.
- At no time was Mr. Gounder denied his entitlement to natural justice.

## ANALYSIS

18. The Director argued that Mr. Gounder was not denied natural justice. It appears that this submission is based on the appeal documents wherein Mr. Gounder indicates the grounds for his appeal. This matter is not properly before me at this time, as my task is to determine whether an extension of the time for appeal should be granted. In the event that I so find, the substance of the appeal will be considered. In the event that I do not so find, the time for making the appeal has expired and the merits cannot then be considered.
19. Mr. Gounder argued that he was not the complainant's employer, but rather Meena Gounder was the employer. This also is a substantive matter that will not be addressed until and unless an extension of the time for an appeal is granted.
20. The *Employment Standards Act*, s.109(1)(b) allows for an extension of the time for appeal beyond the appeal period in the discretion of the Tribunal.
21. In deciding whether to extend the appeal deadline, the Tribunal may look at the following factors:
1. Is there a good reason why the Appellant could not meet the deadline?
  2. Was there an unreasonably long delay in filing the appeal?
  3. Did the Appellant always intend to appeal the Determination?
  4. Were other parties- such as the Respondent and the Officer who wrote the Determination aware of the intent to appeal?
  5. Would extending the appeal deadline harm the Respondent's case?
  6. Does the Appellant have a strong case that might succeed if the Tribunal grants an extension?
22. I have carefully reviewed the file and accompanying documents. There is no evidence that Mr. Gounder moved from his address or was not in residence at any relevant time, or was unable to receive mail at his address. I note to the contrary, that the correspondence returned from Mr. Gounder's residence marked: "Not at this residence" was addressed identically to the address Mr. Gounder provided both on the appeal document and the accompanying explanation for the late appeal.
23. In the event that Mr. Gounder did not have notice of the Determination, it would indeed be a good reason why he could not meet the appeal deadline. I find, however that Mr. Gounder has not met the burden of proof that on a balance of probabilities he did not have notice of the Determination. In support of this finding, I note that bailiffs attended at Mr. Gounder's residence and ultimately partially satisfied the

award made in the Determination by obtaining funds from Mr. Gounder's bank account. This occurred more than a year before the appeal was filed with the Tribunal.

24. Mr. Gounder does not disclose how the Determination did finally come to his attention in February of 2008 notwithstanding visits to his residence by the bailiff and realization of funds from his bank in 2006.
25. Neither the file, nor Mr. Gounder's submissions in the appeal form or the accompanying plea for extension of the appeal deadline indicates any preparedness on the part of Mr. Gounder to proceed to appeal in the event of an undesirable award in the Determination.
26. The appeal was filed almost two and a half years beyond the end of the appeal period. Absent significant and convincing evidence of lack of notice, I find that to be an extreme delay.
27. Mr. Gounder provided no evidence in support of his allegation that the Director failed to observe the principles of natural justice in making the Determination, and I can find no evidence in the record or other documents that speak to that allegation.
28. Mr. Gounder provided no indication of what evidence has become available that was not available at the time of the Determination was being made. Further, Mr. Gounder did not participate in the investigation leading up to the determination, or produce employment records in accordance with his undertakings. Accordingly, I find that it would be a leap of faith to infer from the absence of supporting documentation from Mr. Gounder, that any relevant evidence would not have been available at the time the Determination was being made given a prudent search.
29. I see no evidence to indicate any reasonable probability of a strong case being made on the merits of the appeal.
30. I find that the appeal period should not be extended.

## **ORDER**

31. The appellant's request for extension of the deadline for appeal and for acceptance of the appeal is denied.
32. Pursuant to section 114(1) of the *Act* the appeal is dismissed. Pursuant to section 115(1) of the *Act* the Determination dated September 2, 2005 is confirmed. Interest, in accordance with s.88 of the *Act* shall continue to accrue until the sums payable are satisfied in full.

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**Sheldon M. Seigel**  
**Member**  
**Employment Standards Tribunal**