

An appeal

- by -

World-Link International Services Inc.

- 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:** Norma Edelman

**FILE No.:** 2001/822

**DATE OF DECISION:** January 23, 2002

## DECISION

### OVERVIEW

This is an appeal by World-Link International Services Inc. ("World-Link") pursuant to the Section 112 of the Employment Standards Act (the "Act") against a Determination issued by a delegate of the Director of Employment Standards on October 18, 2001. The delegate found that World-Link owed Joanne Lee ("Lee") \$887.07 representing, for the most part, overtime and statutory holiday pay. The Determination indicated an appeal of it had to be delivered to the Tribunal by November 13, 2001. The Tribunal received an appeal on November 23, 2001. World-Link requested that the Tribunal extend the deadline to file an appeal. The delegate and Lee made submissions on a possible extension of the deadline under Section 109 (1)(b) of the Act. This appeal was decided based on the written submissions of the parties.

### ISSUE TO BE DECIDED

Should the Tribunal exercise its discretion under section 109(1)(b) of the Act to extend the deadline for filing an appeal?

### FACTS

On October 18, 2001 the delegate issued a Determination against World-Link. The delegate found Lee was owed \$887.07 representing overtime and statutory holiday pay, as well as wages for working 13 consecutive days without the required break of 32 hours.

The Determination indicated that an appeal of it had to be received by the Tribunal no later than November 13, 2001.

The Tribunal received an appeal from World-Link's accountant, Andrew Wong ("Wong") of Yan & Associates, on November 23, 2001. Wong effectively requested that the Tribunal extend the deadline to file an appeal. In the appeal and a further submission dated November 30, 2001, Wong said that World-Link is no longer in business and the company has been permanently closed for some time. All the corporate files were put in storage and World-Link had a very difficult time in locating the payroll records. It attempted many times to find the files, but only recently was it able to retrieve them to appeal the case. Wong said that his client has always disagreed with Lee's claim and the Determination and always intended to appeal, but without the records it was hard to prove its case. According to Wong, the Determination is incorrect based on the information and payroll records that he received from World-Link and he believes the company has a strong case. Further, World-Link received an appeal form from the Tribunal on November 13, 2001, which shows that it had the intent and attempted to file an appeal within the deadline set out in the Determination. Wong also stated that when World-Link received the appeal form it did not understand the process or how to file the appeal and as a result his firm

was approached to act on behalf of the company. Finally, he said that the reason for the appeal is that Lee was a manager and therefore is not entitled to overtime and statutory holiday pay.

The other parties on the appeal were invited to make submissions on a possible extension of the deadline for filing an appeal under Section 109 (1)(b) of the Act. Both the delegate and Lee replied to the appeal and it is their position that the appeal should not be accepted.

The delegate said that his Determination outlined the difficulty he experienced in obtaining a response from the company during his investigation. At no time did the representatives of the company indicate that they were having difficulty retrieving payroll files and needed more time. He said he made it clear he would be happy to discuss any matters with them. Nevertheless, the owner, Christine Tang ("Tang"), never contacted him and he always initiated any contact with the company. The delegate also said the company was notified that a Determination was going to be made by him and his records indicate that the Determination was delivered on October 23, 2001, yet no appeal was filed until November 23. The delegate submits that this is an unreasonable delay.

The delegate further said that World-Link did not communicate to him, Lee or to the Tribunal that it intended to appeal but that certain difficulties were causing delay. During his investigation he spoke with two representatives of the company who sounded to be very capable with no indication of any incapacity to complete forms. In the delegate's view it would have been a simple matter to inform the Tribunal by the deadline, at least, that an appeal would be filed. He submits that the fact that there was no indication of an appeal prior to November 23 fails to establish that the company always intended to appeal. The delegate further said that extending the appeal deadline would probably not harm the Respondent's case. Finally, he stated that the company, without explanation, was completely unresponsive throughout the investigation and the Tribunal has established the principle that an employer who fails to participate in the investigation will not be allowed to present evidence on appeal that it could have presented during investigation. As the Tribunal would likely exclude the evidence Wong now refers to, he submits the company has a very weak case.

Lee stated that Tang failed to respond to the delegate throughout his 8-month investigation with the hope that her wage claim would be withdrawn. She said Tang owns and runs two shops and it doesn't make sense that it would take her 10 days to realize how to file an appeal. Lee questioned why Tang did not file an appeal or request an extension on November 14 or 15, rather than waiting until November 23 to file the appeal. Further, she said if Tang always disagreed with her wage claim, that implies she was aware of the case for a period of time, and yet she failed to respond to the delegate and didn't get the corporate files ready before the November 13th deadline.

## ANALYSIS

Section 109(1)(b) of the Act provides the Tribunal with the discretion to extend the time limit for an appeal. World-Link has requested that the Tribunal extend the deadline to file an appeal.

The Tribunal has held consistently that it should not grant extensions under Section 109(1)(b) as a matter of course and it should exercise its discretionary powers only where there are compelling reasons to do so. (See, for example, Metty M. Tang BCEST #D 211/96). In deciding whether "compelling" reasons exist in a particular request for an extension, the Tribunal has identified several material considerations including:

- i. there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
- ii. there has been a genuine and ongoing bona fide intention to appeal the Determination;
- iii. the respondent party (i.e. the employer or the employee) as well as the Director of Employment Standards, must be aware of this intention;
- iv. the respondent party will not be unduly prejudiced by the granting of the extension; and
- v. there is a strong prima facie case in favor of the appellant.

I have considered the circumstances of the late filing of this appeal and I am not satisfied that World-Link has provided a reasonable and credible explanation for the failure to deliver an appeal to the Tribunal by November 13, 2001. World-Link does not dispute that the Determination was received on October 23. Clear instructions were included in the Determination about how and when to file an appeal. Even if World-Link could not retrieve its files or did not understand the process, it nevertheless had ample time prior to the expiry of the deadline to contact the Tribunal to discuss the situation and request information and additional time, if necessary, to file an appeal.

Nor am I satisfied there has been an ongoing bona fide intention to appeal the Determination. World-Link received the Determination well before the deadline to appeal and yet it did not request an appeal form until the very end of that deadline. Then, it still did not file an appeal for ten days. There is no evidence to support the view that World-Link genuinely intended to appeal prior to November 23. Further, the first the delegate and Lee knew of an actual appeal was when they received notification from the Tribunal on or about November 27, 2001 that an appeal had been received from World-Link.

Further, World-Link has not established a strong case in its favour. The Tribunal has consistently held that it will not accept evidence on an appeal that could have and should have been provided to the delegate, but was not provided to the delegate during the investigation (see Tri-West Tractor Ltd. BCEST #D268/96). In this case, World-Link does not challenge the delegate's statement that he was never told by the company it was having difficulty retrieving its files and that the company was unresponsive throughout the investigation. Accordingly, I agree

with the delegate that if the appeal were accepted, World-Link would likely not be allowed to present the evidence it seeks to present on the appeal with the result the appeal would be dismissed.

Finally, in my view, it is not in Lee's interest to have this matter further delayed by granting an extension to the appeal deadline. One of the purposes of the Act is to provide for fair and efficient procedures for resolving disputes over the application and interoperation of the Act. It is in the interest of all parties to have complaints and appeals dealt with promptly.

I decline to extend the appeal period. The obligation is on the Appellant, World-Link, to exercise reasonable diligence in the pursuit of an appeal. In this case, the Appellant has failed to persuade me it has done so and I find no compelling reasons to extend the time limit for requesting an appeal in this case.

## **ORDER**

World-Link's application under Section 109(1)(b) of the Act to extend the time for requesting an appeal is refused. Pursuant to Section 114(1)(a) of the Act the appeal is dismissed and accordingly the Determination is confirmed.

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**Norma Edelman**  
**Adjudicator**  
**Employment Standards Tribunal**