

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 -

Jean-Pierre Huchez
a Director or Officer of Jean-Pierre Hair Fashion Inc.
("Huchez")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE No: 1999/727

DATE OF DECISION: February 4, 2000

DECISION

OVERVIEW

This is an appeal by Jean-Pierre Huchez (“Huchez”), a Director or Officer of Jean-Pierre Hair Fashion Inc. (“JPHF”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Directors Determination (“DDET”) dated November, 2, 1999 issued by a delegate of the Director of Employment Standards (the “Director”). Huchez alleges that the delegate of the Director erred in the DDET by concluding that wages were owed to various former employees of JPHF.

The Determination sets out that any appeal of the Determination must be delivered to the Tribunal by November 25, 1999. The appeal by Huchez was received by the Tribunal on November 29, 1999.

ISSUE

The issue to be decided in this appeal is whether the appeal by Huchez was delivered to the Tribunal within the timelimits set for such delivery.

FACTS

The DDET was mailed to Huchez as a Director or Officer as listed in the Company search of the Registrar of Companies.

The DDET is dated November 2, 1999 and clearly sets out that any appeal must be delivered to the Tribunal by November 25, 1999.

The appeal by Huchez was received by the Tribunal on November 29, 1999.

Huchez, in his appeal states that he “received a determination Friday Nov 26/99 at 12:50 p.m. and since I am working at Sukis Beauty Sales I could not absent myself from work and my client. But I did call and w(h)ent (sic) to the Bureau to pick up these form of “Appeal of determination” and reply to you as quickly as I can. Being Saturday the 27th and Sunday the 28th you were closed. ”

Huchez then proceeds to dispute that wages are owing to former employees and one individual who Huchez states was not an employee.

The delegate of the Director responded to the timeliness of the appeal filed by Huchez with respect to the DDET issued November 2, 1999 and states that:

- On August 27, 1999 a Determination was issued to Jean-Pierre Hair Fashion Inc. for a complaint filed by Leo Beaudoin. The copy sent to Jean-Pierre Hair

Fashion Inc. at 1111 Robson Street, Vancouver, B.C. was not returned. The copy sent to Jean-Pierre Huchez as Director or Officer c/o Registered and Records Office was returned to the Employment Standards Branch, Vancouver Office September 3, 1999 by Canada Post marked **“Refused by addressee”**. This Determination was not appealed by Jean-Pierre Hair Fashion Inc.

- On October 6, 1999 a Determination was issued to Jean-Pierre Hair Fashion Inc. for complaints filed by Richard Cory Jung, Brenda Garner, Luan Davison and Tracy Squibb. The copy sent to Jean-Pierre Hair Fashion Inc. at 1111 Robson Street, Vancouver, B.C. was returned to the Employment Standards Branch, Vancouver Office October 25, 1999 by Canada Post marked **“refused, Moved, address unknown”**. The copy sent to Jean-Pierre Huchez as Director or Officer c/o Registered and Records address was returned to Employment Standards Branch, Vancouver Office October 18, 1999 by Canada Post marked **“moved - address unknown”**. This Determination was not appealed.
- On November 2, 1999 a Determination was issued to Jean-Pierre Huchez as Director or Officer of Jean-Pierre Hair Fashion Inc. re the above two Determinations. The appeal deadline was November 25, 1999 - the appeal was not received until November 29, 1999. Mr. Huchez has not presented any plausible reason for not picking up his certified mail until after the deadline expired.
- Based on the information available from the Registrar of Companies on August 16, 1999 the mailing address for the Registered and Records office was: 7929 - 120th Street, Delta, B.C. V4C 6P6 and for Jean-Pierre Huchez, President/Secretary was 1111 Robson Street, Vancouver, B.C. V6E 1B5. The Robson Street address was formerly Jean-Pierre Hair Fashion Inc. until Sukis Beauty Bazaar Ltd. purchased the assets. Jean-Pierre Huchez works at Sukis, 1111 Robson Street, Vancouver, B.C. hence he has not “moved, address unknown”.
- Mr. Huchez was aware of the investigation and, at the very least, of the Determination issued re Leo Beaudoin. He continues to work at 1111 Robson Street and it is reasonable to presume he was aware of the certified mail delivered for Jean-Pierre Hair Fashion Inc. - in that previous correspondence had not been returned, someone refused delivery.
- Pursuant to Section 77 of the *Act*, it is the Director’s opinion that reasonable efforts have been provided to allow Mr. Huchez as the employer and as director or officer to respond to the Determinations issued.

ANALYSIS

The timelimits for the filing of an appeal with the Tribunal are found in Section 112 and provides:

Section 112, Right to appeal director's determination

(1) Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.

(2) The request must be delivered within

(a) 15 days after the date of service, if the person was served by registered mail, and

(b) 8 days after the date of service, if the person was personally served or served under section 122 (3).

(3) The filing of a determination under section 91 does not prevent the determination being appealed.

(4) This section does not apply to a determination made under section 119.

The evidence is that the appeal by Huchez was received by the Tribunal outside of the timelimits set forth in Section 112 *supra*.

The powers of the Tribunal to exercise discretion in regard to timelimits are set forth in Section 109 (1) (b) of the Act which provides:

109.(1) In addition to its powers under section 108 and Part 13, the tribunal may

.....

(b) extend the time period for requesting an appeal even though the period has expired,

The discretion of the Tribunal to extend the timelimits for accepting an appeal should, in my view, be exercised only where extenuating circumstances beyond the control of the appellant prevented the appellant from meeting the timelimits set out in the Determination.

The evidence is that Huchez' reason for not filing the appeal on time is stated in the appeal as " I received a determination Friday Nov 26/99 at 12:50 p.m. and since I am working at Sukis Beauty Sales I could not absent myself from work and my client".

Huchez offers no **evidence** to support his allegation that he did not **receive** the DDET until 12:50 p.m. November 26, 1999.

The delegate of the Director submits that Huchez has offered no plausible reason for not **picking up** his certified mail until after the deadline expired.

In the absence of any **evidence** to the contrary, I am not convinced the *unsupported allegation* that the DDET was not received until November 26, 1999 constitutes extenuating circumstances for not being able to meet the timelimits set forth. Furthermore, there was no reasonable explanation of why the DDET was not picked up prior to November 26, 1999. I therefore decline to exercise the Tribunal's discretion pursuant to Section 109 (1) (b) with respect to the timelimits for filing an appeal.

For all of the above reasons I conclude that the appeal by Huchez was not received by the Tribunal within the timelimits set forth and the appeal will not be considered.

As a result, it is not necessary to consider any arguments with respect to the merits of the appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated November 2, 1999 be confirmed in the amount of **\$12,821.80** together with whatever interest has accrued pursuant to the provisions of Section 88 of the *Act*.

Hans Suhr
Adjudicator
Employment Standards Tribunal