

An appeal

- by -

Seabridge Construction Ltd.  
("Seabridge" or the "Employer")

- 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:** Paul E. Love

**FILE No.:** 2000/809

**DATE OF DECISION:** February 6, 2001

## DECISION

This is an application by Seabridge Construction Ltd. (the “employer” or “Seabridge”) to extend time to permit the filing of a late appeal. The deadline for filing the appeal was November 15, 2000. The employer’s counsel claims that the entire process from demand for documents to the issuance of a determination is a nullity, because the Delegate failed to deal with the company, and therefore did not extend to the company an adequate opportunity to participate in the investigation. While the appellant did not meet the usual test for a late application in that the intention to appeal was not formed during the appeal period, I am satisfied that there is an allegation of a procedural irregularity going to the investigation of the complaint, issuance of the Determination, and service of the Determination, which raises a serious issue. In light of the amount involved in the Determination, \$95,315.26, I am satisfied that there is no prejudice to the employee, and therefore I extended time for the filing of the appeal.

## FACTS

This is an application by the employer for extension of time to file an appeal. The Determination in this matter was issued on October 23, 2000 in the amount of \$95,315.26. The deadline for the filing of the appeal was November 15, 2000. Counsel for the employer contacted the Employment Standards Branch on November 23, 2000, and the Branch faxed the notice to the Tribunal on November 24, 2000. Further submissions from the employer were received by the Tribunal on November 29, 2000. Counsel indicates that at all material times he was the registered and records office for Seabridge.

In this case the employer did not participate in the Delegate’s investigation of the matter. The amount in issue in this Determination is substantial and counsel alleges that the Delegate did not contact the proper party during the investigation process, and that as a consequence the proper party did not provide any information to the Delegate. Counsel for the employer indicates that the Delegate dealt with a part-time bookkeeper for the company. This was a Determination which was issued on the basis of information provided to the Delegate by the employee.

Counsel argues that Mr. Anderson was hired as a contractor, at a gross hourly rate of \$20.00. Counsel argues that when it was discovered that Mr. Anderson could not be a contractor, he attempted to vary the agreement. Counsel argues that Mr. Anderson agreed to a settlement with Seabridge, whereby Seabridge paid the employer and employee portions of taxes, but then refused to sign a release. Counsel alleges that Mr. Anderson attempted to make public information about the company and its principal harmful to the company and its principal. I note that Mr. Anderson appears to have written to the Delegate on July 13, 2000 advising the Delegate that he had settled his claim with Seabridge and withdrawing formally his complaint. The questions on an appeal would include whether the Delegate erred in failing

to give the company an adequate opportunity to participate in the investigation, whether the Delegate erred in finding that Mr. Anderson was an employee, and whether the parties have settled any liability of the company to Mr. Anderson. These are serious issues, which cannot properly be determined on a “timeliness” application, and I cannot say that these grounds of appeal are without merit.

The intention to appeal was not formed until after the expiration of the appeal period.

I note that the employee directed a submission to the Tribunal, dated January 24, 2001, which was well after the deadline of November 18, 2001 imposed by the Tribunal. I have not considered this submission in coming to my decision on the issue of timeliness of this appeal.

### **ISSUE:**

Should the Tribunal grant an extension of time to the employer to file this appeal?

### **ANALYSIS**

In determining whether to grant an extension of time, I must consider whether the appellant formed the intention to appeal within the appeal period, that the appellant has a reasonable excuse for failing to file the appeal within the time limits set out in the Determination and that there is no prejudice to the respondent from the late filing of the appeal.

I see no evidence of any prejudice to the employee if this matter proceeds to an appeal. I am concerned, based on the submissions of counsel, that there may have been a procedural irregularity with regard to the issuing of the Determination, which has been compounded by a procedural irregularity with regard to the serving of the Determination. This irregularity may have been fundamental in the sense that there was no proper investigation by the Delegate. The procedural irregularity would also provide a reasonable excuse for failing to form an intention to appeal within the time limits, and failing to file the appeal within the time limits. It is not my function on an application to extend time to decide finally these points. The adjudicator deciding the matters of the appeal to decide whether the facts, as alleged by counsel, are the facts in the appeal. I am persuaded, however, that the appellant has raised a serious issue, which goes to procedural fairness, which would warrant a time extension for the filing of the appeal. In light of the amount at issue in this Determination, and a serious allegation that the Delegate failed to contact properly the company, I extend the time for the filing of this appeal until November 29, 2000, which was the date on which counsel for the employer set out in detail the substance of Seabridge’s appeal.

I request that the Registrar set this matter for an oral hearing, or alternatively for a hearing based on written submissions.

**ORDER**

Pursuant to section 109(1)(b) of the *Act*, I extend the time for the employer to file the appeal until the close of business on November 29, 2000.

***PAUL E. LOVE***

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**Paul E. Love  
Adjudicator  
Employment Standards Tribunal**