

An appeal

- by -

Hart Towing Ltd. and Earl's Towing (1997) Ltd.
("Earl's" or "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.: 2000/785

DATE OF DECISION: February 6, 2001

DECISION

OVERVIEW

This is an application by Earl's Towing (1997) Ltd. (the "employer" or "Earl's") to extend time to permit the filing of a late appeal of a Determination dated September 15, 2000. The deadline for filing the appeal was September 25, 2000. The appeal was filed on November 6, 2000, at the same time as the filing of an appeal of a determination made against the directors of the employer. I accept the advice of counsel for Earl's that this employer formed the intention to appeal during the appeal period. I accept the advice of counsel that due to an administrative error of counsel the appeal was filed late. In this case there was no prejudice to the respondents arising from the late filing of the appeal. I was not satisfied that the appeal submission raised a serious issue that the Delegate erred in finding an association between Earl's and Hart Towing Ltd. I therefore refused the application to extend time to late file the appeal.

FACTS

This is an application by the employer for extension of time to file an appeal of a Determination made on September 15, 2000. This application proceeded on written submissions made by counsel for the employer, the Director, and with written submissions made by a number of the employees affected by the Determination. The Delegate issued a determination against Hart Towing Ltd. ("Hart") on May 17, 1999 finding that 13 employees were entitled to the sum of \$32,461.99 for compensation for length of service and vacation pay. The deadline for filing an appeal from the first determination was May 25, 1999. On September 15, 2000 a Determination was issued against Hart Towing Ltd. and Earl's Towing (1997) Ltd. in the amount of \$35,25.10 in favour of the same 13 employees. The difference between the first and second Determination was accruing interest. This determination also found that Hart and Earl's were associated employers. The deadline for the filing of the appeal of the second determination was September 25, 2000. A determination was made against the directors of Earl's Towing (1997) Ltd. on October 13, 2000, and the period for filing an appeal expired on November 6, 2000. Counsel for the employer filed an appeal of the second determination and third determination on November 6, 2000.

This application concerns the "second determination". In this determination the Delegate found that the employees were owed compensation for length of service and vacation pay as a result of the cessation of the operations of Hart Towing Ltd. The Delegate found that Hart Towing Ltd. and Earl's Towing (1997) Ltd. were associated employers pursuant to s. 95 of the *Act*.

There is no evidence in this case, other than the submissions of counsel, that the appellants formed an intention to appeal during the appeal period. The explanation given for the delay

in this case was an administrative error in the part of counsel for the appellants. There is no evidence in this case of prejudice arising to the employees if an extension of time were granted to the employer to file an appeal.

Counsel for the appellant addresses the merits of the appeal as follows:

My client has a strong defence in this case, in that Hart Towing Ltd. and Earl's Towing (1997) Ltd. were not associated at the time in question. Earl's Towing Ltd., at the relevant time was not registered for GST, PST or WCB. The only business carried on by Earl's Towing Ltd., at the relevant times was that of leasing vehicles to Hart Towing Ltd.

I note that the application for extension of time was filed at the same time as an appeal of the Determination against the directors of the appellant.

Director's Position:

Counsel for the Director submits that the appellant has not disclosed a sufficient legal or factual basis to support a request of extension of time, and requests that the appeal be summarily dismissed.

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, that there is a serious issue relating to errors in the Determination and that there is no prejudice to the respondent from the late filing of the appeal.

It is open to me to accept the submissions of counsel for the appellant that the appellant had an intention to appeal, even though this intention was not expressed to the Delegate, prior to the expiration of the time for appeal. Counsel for the employer notes that there was an administrative error in his office, and this is the explanation for the late filing. I am inclined to accept the submissions of counsel, without a need to delve into the particulars of counsel's administrative error. I do not think that the administrative errors of counsel should be visited on the client. I think that I should rely on the accuracy of submissions made by the appellant's counsel. If counsel has been inaccurate in his submission there are remedies in other forums. I am also satisfied that no prejudice arises to the respondents because of the late appeal.

I am however concerned that this case appears to be lacking in merit such that I cannot conclude that the appellant has raised a "serious issue" that the Determination is in error. The Director has characterized the test as being a "strong prima facie case". The initial appeal form is devoid of any real grounds of appeal. Counsel's letter of January 2, 2000

received on January 2, 2001 does not persuade me that there is a serious issue that the Determination is in error. The Determination goes through, in substantial detail, the facts supporting the Delegate's determination that Earls and Hart are related companies. These facts include interlocking directorship, common place of business, common dispatch, common use of vehicles, common signing authority.

The submission of the appellant confirms that there are two entities carrying on business. The lack of registration by Earl's for GST, PST or WCB does not in and of itself refute that there are two entities carrying on business. The appellant's submission is that the only business of Earl was to lease vehicles to Hart. The submission of the appellant's counsel confirms an association between Earl's and Hart. It is not a necessary feature of s. 95 that the two related companies carry on the identical business functions, and therefore the fact that Hart is a towing company and that Earl's "only" leases vehicles to Hart does not show an error in the Delegate's finding that the companies are associated in the towing business. From the submission of the appellant, I can see no serious issue that the Delegate erred in the finding of association.

It is not my function on an extension of time application to consider the merits of the appeal in detail, that is the job of an adjudicator assigned to hear the appeal. I, am however concerned that the argument presented by the appellant, after the appeal period has expired, does not raise a serious issue that the Delegate erred in finding that these two companies are associated. I, therefore, dismiss the application to extend time for the filing of this appeal.

ORDER

Pursuant to section 109(1)(b) of the *Act*, I decline to extend the time for the employer to file the appeal of the Determination dated September 15, 2000.

Paul E. Love

Paul E. Love
Adjudicator
Employment Standards Tribunal