

An appeal

- by -

S & G Logistics Ltd.
(“S & G”)

- 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: David B. Stevenson

FILE No.: 2012A/30

DATE OF DECISION: June 6, 2012

DECISION

SUBMISSIONS

Gurjinder Randhawa on behalf of S & G Logistics Ltd.
Greg Brown on behalf of the Director of Employment Standards

OVERVIEW

1. This decision addresses an appeal filed under Section 112 of the *Employment Standards Act* (the “*Act*”) by S & G Logistics Ltd. (“S & G”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on February 10, 2012.
2. The Determination found that S & G had contravened provisions of the *Act* in respect of the employment of Harjinder Manhas (Ms. Manhas”) and ordered S & G to pay wages to Ms. Manhas in the amount of \$10,784.74 and to pay administrative penalties in the amount of \$1,000.00.
3. S & G has filed an appeal of the Determination on the ground that the Director failed to observe principles of natural justice in making the Determination.
4. The appeal was filed late, and S & G has requested the Tribunal extend the time period for filing an appeal. On May 28, 2012, the Tribunal notified the parties that the timeliness issue would be decided before the parties were asked to respond on the merits of the appeal. This decision addresses this application to extend the time period for filing an appeal under the *Act*.
5. The Tribunal has discretion, under section 103 of the *Act* and section 36 of the *Administrative Tribunals Act*, to choose the type of hearing for deciding an appeal and has decided the matters raised in this appeal can be decided from the written submissions.

ISSUE

6. The issue is whether the Tribunal should extend the time for filing the appeal.

THE FACTS

7. The facts relating to the issue of timeliness are as follows:
 1. The Determination was issued, without reasons, on February 10, 2012;
 2. The Determination indicated that written reasons for the Determination could be requested and that such request must be delivered to an office of the Employment Standards Branch by February 27, 2012;
 3. The Determination contained appeal information that stated, among other things, an appeal “**must include a copy of the Director’s written reasons for this determination**” (emphasis included);
 4. The appeal information also stated that the time limited for filing an appeal under the *Act* expired on March 19, 2012;

5. On March 19, 2012, the Tribunal received an incomplete appeal from S & G;
6. Although the Appeal Form indicated otherwise, the appeal did not, as required by section 112(2) (i.1), include a copy of the written reasons for the Determination;
7. On March 19, 2012, the Tribunal contacted Mr. Randhawa, who had filed the appeal on behalf of S & G, and informed him of the deficiency in the appeal and of the requirement to obtain written reasons for the Determination;
8. The Tribunal advised Mr. Randhawa that he needed to file the written reasons by April 13, 2012, and provide reasons for filing the appeal late;
9. The written reasons for the Determination and a brief explanation, which shall be reproduced later in this decision, were delivered to the Tribunal on April 13, 2012;
10. The substance of the appeal alleges Ms. Manhas brought the complaint against S & G in order to “get back” at Mr. Randhawa for having broken off a close personal relationship and alleges he has the necessary proof to show this, although none of it has been included with the appeal;
11. The document outlining the substance of the appeal, which is dated March 12, 2012, was first provided by Mr. Randhawa to the Director on March 19, 2012, when the request for written reasons was made, and after the Determination had been made by the Director;
12. The Determination indicates that Mr. Randhawa was aware of the claim being made by Ms. Manhas but never responded to it in any substantive way during the investigation and prior to the Determination being made.

ARGUMENT

8. Mr. Randhawa has provided the following explanation for the deficiency that has resulted in a late filing of the appeal:

Mohinder Singh randhawa [sic] was director of the company at that time. He has been out of the country and only just returned. is [sic] the reason for my delayed reply sorry. I went to employment standards office in Langley and they said they would fax papers rite [sic] away but never did! Also I was unaware that I had to attach determination of appeal along with it, so I do apologize for that. I tried filing by march [sic] 19th.

9. In response to an invitation from the Tribunal to address the late filing of the appeal, the Director notes the Determination clearly stated the filing requirements and time lines for an appeal and says S & G has provided no good reason for failing to file the appeal in time.

ANALYSIS

10. The *Act* imposes an appeal deadline to ensure appeals are dealt with promptly: section 2(d). The *Act* allows the appeal period to be extended on application to the Tribunal. In *Metty M. Tang*, BC EST # D211/96, the Tribunal expressed the approach it has consistently followed in considering requests to extend time limits for filing an appeal:

Section 109(1)(b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where there are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.

11. The Tribunal has developed a principled approach to the exercise of its discretion as set out in *Re Niemisto*, BC EST # D099/96. The following criteria should be satisfied to grant an extension:
 1. There is a reasonable and credible explanation for failing to request an appeal within the statutory limit;
 2. There has been a genuine and ongoing *bona fide* intention to appeal the Determination;
 3. The respondent party and the Director have been made aware of the intention;
 4. The respondent party will not be unduly prejudiced by the granting of an extension; and
 5. There is a strong *prima facie* case in favour of the appellant.
12. The above criteria have been considered and applied in numerous decisions of this Tribunal. These criteria are not exhaustive. Other, perhaps unique, criteria can also be considered. The burden of demonstrating the existence of any such criterion is on the party requesting the extension of time. The Tribunal has required “compelling reasons”: *Re Wright*, BC EST # D132/97.
13. For the following reasons, the request to extend the appeal period is denied.
14. First, although the initial attempt at filing an appeal of the Determination was made on March 19, 2012, within the appeal period, S & G failed to comply with the statutory requirements for filing an appeal set out in section 112(2) of the *Act* until April 13, 2012. I agree with the Director that no good reason has been provided for failing to file a proper appeal within the time allowed in the *Act*. In fact, on examination of the explanation provided by Mr. Randhawa, I find no reason at all has been provided. The explanation referring to Mohinder Singh Randhawa being a director of S & G “at that time” is not shown to have any relevance to the delay and is, in any event, inconsistent with the material in the record, which shows Mr. Randhawa has been listed as the sole director for the company since January 2010. No other explanation is given.
15. Second, I am satisfied there is no *prima facie* case raised in this appeal. An assessment of the *prima facie* case criterion does not require a conclusion that the appeal will fail or succeed, but it does require consideration of the relative strength of the grounds for appeal chosen against long standing principles that apply in the context of those grounds. As noted by the Tribunal in *Gerald Knodel a Director of 0772646 B.C. Ltd. carrying on business as Home Delivery*, BC EST # D083/11:

. . . this inquiry [into whether there is a *prima facie* case] flows from the section 2 purposes of the Act and, in particular, the need for fair treatment of the parties and fair and efficient dispute resolution procedures. Simply put, it is neither fair nor efficient to put parties through the delay and expense of an appeal process where the appeal is doomed to fail.
16. In this case, the relevant principles would include the evidentiary burden requiring a party alleging a denial of natural justice to provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99. The appeal is devoid of the necessary evidence to satisfy that burden. It is apparent from the Determination and the material in the record that S & G were provided with the information relating to Ms. Manhas’ claim and the opportunity to respond to that claim, but failed to take advantage of that opportunity. As well, for S & G to raise the matters found in its appeal after not having participated in any meaningful way in the complaint process would be inconsistent with the objects and purposes of the *Act* and fly in the face of the long standing approach by the Tribunal to such attempts in similar circumstances: see *Tri-West Tractor Ltd.*, BC EST # D268/96, and *Kaiser Stables Ltd.*, BC EST # D058/97.

17. The appeal is dismissed.

ORDER

18. Pursuant to section 115 of the *Act*, I order the Determination dated February 10, 2012, be confirmed in the amount of \$11,784.74, together with any interest that has accrued under Section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal