

An appeal

- by -

MCLK Holdings Ltd. operating as Hoochies Fish & Chips
("Hoochies")

- of Determinations 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 Nos.: 2001/840 and 2001/841

DATE OF DECISION: February 6, 2002

DECISION

OVERVIEW

This is an appeal by Hoochies pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) against two Determinations issued by the Director of Employment Standards (the “Director”) on September 19, 2001. The first Determination found that the *Act* had been contravened and that Robert Hill was entitled to \$819.66. The second Determination imposed a penalty of \$500 for failing to produce proper payroll records.

The deadline for appeal of both Determinations was October 12, 2001. Hoochies filed an appeal that was received by the Tribunal on November 29, 2001.

The issue of whether to extend the deadline for appeal was decided on the basis of the written submissions from the parties.

ISSUES

The only issue to be addressed in this Decision is whether the Tribunal should extend the deadline for requesting an appeal in accordance with the powers of the Tribunal under section 109 (1) (b) of the *Act*.

ARGUMENT

The Appellant, Hoochies, on the timeliness issue, state on the appeal form, “Did not receive the mail explained in the letter”. The attached letter referred to is a copy of a letter addressed to the Delegate of the Director. The only references in it that appears to pertain to the timeliness issue were the words, “WE RECEIVED YOUR DOCUMENTS LATE SEPTEMBER FROM COBBLE HILL”. Nothing was received from Hoochies in response to the Tribunal’s letter dated November 30, 2001 requesting comments on the timeliness issue.

The Respondent, Robert Hill, in his submission dated December 13, 2001, said,

“As stated in the letter by Martin Minns and Carolyn Simcoe, they received the documents in September – prior to the October 12th deadline for appeal, so there is no excuse for filing 6 weeks late.”

The Director's submission, on the issue of the timeliness of the appeal on the merits, states,

“In the employer's letter dated October 10, 2001, they state that the documents were received in late September. The appeal deadline was 4:30 PM on October 10, 2001.

“The letter in question was received in the Duncan office on October 17, 2001. At that time I left several messages on their voice mail advising them of the need to appeal to the Employment Standards Tribunal.”

The Director's submission, on the issue of the timeliness of the appeal of the penalty, states,

“The employer had until October 12, 2001 to file, with the Tribunal, an appeal of the instant Determination. The Employer has not offered any explanation as to why the appeal of the Determination did not reach the Tribunal until seven weeks after the letter of October 10, 2001, was sent to Elizabeth Lyle.”

THE FACTS AND ANALYSIS

The facts in this appeal are as follows.

On September 19, 2001 the Director issued a corporate Determination under the authority of section 79 of the *Act* and pursuant to the investigation of a complaint made by Robert Hill. The Determination found that the *Act* had been contravened and that Robert Hill was entitled to \$819.66. The deadline for appeal was 4:30 p.m. on October 12, 2001. A Penalty Determination was also issued on September 19, 2001. In it Hoochies was found to have contravened section 46 of the *Employment Standards Regulation* and imposed a \$500 penalty. The appeal deadline was also October 12, 2001.

On November 29, 2001 the Tribunal received an appeal from Hoochies. The appeal was dated November 26, 2001. The appeal was accompanied by copies of both the Corporate Determination and the Penalty Determination, however, in both cases, the attachment showing the appeal deadline was missing. On November 30, 2001 the Tribunal acknowledged receipt of the appeals and invited the parties to respond to the issue of whether the Tribunal should extend the deadline and accept the late appeal.

No evidence or argument has been submitted to the Tribunal that would show that Hoochies had a good reason why they could not appeal before the deadline. There was a long, unexplained delay between the acknowledged receipt of the Determination and the filing of the appeal. There is no evidence that Hoochies intended to file an appeal, until after the deadline had passed, and, even then, more than five weeks passed before an appeal was filed. The first indication that Hoochies might wish to file an appeal was in the letter received by the Director's Delegate about a week after the deadline had passed. Even then Hoochies did not state that they wished to file an appeal and it was only a surmise on the part of the Delegate that they might wish to do so. The Respondent has already been left owing wages since November 2000 and further delay may

imperil his chances of ever receiving the monies determined to be owed to him. No evidence has been adduced that would impugn the correctness of the Determinations or that would suggest that the appeal would have any chance of success.

For all of these reasons the deadline for appeal will not be extended.

ORDER

Pursuant to section 115 (1)(a) of the *Act*, I order that the Determinations issued on September 19, 2001 be confirmed. Pursuant to section 114 (1)(a) of the *Act* the appeal is dismissed.

Norma Edelman
Adjudicator
Employment Standards Tribunal