

An appeal

- by -

Craig Edgar  
("Edgar")

- 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:** Norma Edelman

**FILE No.:** 2001/839

**DATE OF DECISION:** February 18, 2002

## DECISION

### OVERVIEW

This is an appeal by Craig Edgar pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued by the Director of Employment Standards (the “Director”) on September 25, 2001. The Determination found that the *Act* had not been violated and that no monies were owing to Edgar.

The deadline for appeal was October 18, 2001. Edgar filed an appeal that was received by the Tribunal on November 29, 2001, after having expressed his intention to appeal in correspondence received by the Tribunal on October 29, 2001. The Appellant asked for an extension of the deadline for appeal.

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

### ISSUE

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, in his letter to the Tribunal dated October 26, 2001, stated that he had just returned from “...employment in a remote community, without postal service.” He clearly expressed his intention to appeal the Determination. He went on to state,

“I sent the Board a fax indicating that I would be unavailable until further notice. This was September 25, 2001. This was the day the letter was written. I did not receive the Board’s registered mail. I will be flying out of town on Monday. I will be out of town for next 4 to 6 weeks. Will not have the opportunity to get the forms in time to send them in as according to the decision letter.”

Later in the same letter he stated,

“I have responded in a timely manner, given the unusual circumstances of my new job. I do not have E-mail.

“I will respond to further correspondence at the earliest opportunity. I hope to be back in Vancouver at some point in December.

“I have no means of reliable communication, as a result of the remoteness of the community. I will be in touch in December.

“I trust that under the unusual circumstances, the delay in this response will be accepted, and an appeal will be granted.”

In his appeal letter addressed to the Tribunal and dated November 26, 2001 Edgar stated,

“I am sorry for the delay in this response; I am working in a remote community without postal service, so my response is delayed. Thank you for your consideration. I will continue to be required to fly in and out of Rivers Inlet on short notice, and my time in the city is usually very brief and hurried.”

In his response to the submissions from the other parties Edgar states that he flew to a job at Rivers Inlet on September 25, 2001, the date on which the Determination was issued, and that he remained there until October 24, 2001, six days beyond the appeal deadline, in a situation where he was unable to receive mail. According to his submission Edgar then flew back to his remote work location on October 29, 2001 and remained there until November 22, 2001. He states that he could not have known about the Determination or the appeal deadline and that the reasons for his late appeal were matters beyond his control.

The Respondent, Weyerhaeuser Company Limited, in its response to the appeal, noted that there was a delay of two months between the date of the Determination and the date of the appeal. The Respondent states that it had no notice or other indication of Mr. Edgar's intention to appeal the Determination. The Respondent also states that Mr. Edgar had not provided evidence that it was always his intention to appeal the Determination. The Respondent points out that extending the deadline for appeal will cause harm to its interests and that the length of time that has elapsed since Edgar ceased to work for the Respondent, on June 24, 1999, has resulted in the departure from the firm of the Respondent's key witness and source of information.

On the question of why Edgar missed the appeal deadline the Respondent says,

“Mr. Edgar states that he is working in a remote community without postal service. I am advised by Canada Post that Rivers Inlet is provided with General Delivery postal service at Dawson's Landing Postal Outlet on at least a weekly basis. Further Mr. Edgar does not state during what periods of time he is at Rivers Inlet and during what periods he is in the city where postal service is of course readily available. In addition, there is no evidence that Mr. Edgar could not have made formal notice of his intention to appeal by telephone or other means, such as requesting that a friend of [sic] relative send in a notice of appeal on his behalf.”

The Director submitted evidence of an attempt to serve Edgar with a copy of the Determination by registered mail at his address and of the refusal of that item by the postal customer at that

address. The director also states that the delay is unreasonable and that Edgar has not presented a strong case which might succeed.

## THE FACTS

The facts in this appeal are as follows.

On September 25, 2001 the Director of Employment Standards issued a Determination under the authority of section 79 of the *Act* and pursuant to the investigation of a complaint made by Craig Edgar. The Determination found that the *Act* had not been violated and that no monies were owing to Edgar. The deadline for appeal of the Determination was 4:30 p.m. on October 18, 2001.

A copy of the Determination was sent to the Appellant at the Appellant's last known address by registered mail. Following an unsuccessful attempt to deliver the Determination on September 26, 2001 the item, according to Canada Post, was refused by the customer at that address on October 12, 2001 and was returned by Canada Post to the Employment Standards Branch. The Director then sent a copy of the Determination to the Appellant's last known address by regular mail on October 16, 2001.

On October 26, 2001, eight days after the deadline for appeal, the Appellant wrote to the Tribunal acknowledging that he had received the Determination and expressing his intention to appeal the Determination. An incomplete copy of the Determination accompanied the letter as well as copies of several other documents. The Tribunal responded to Mr. Edgar's communication on October 29, 2001 pointing out that his appeal was incomplete.

Among the enclosures included with Edgar's October 26, 2001 letter was a copy of a letter signed by the Appellant, dated September 24, 2001 and addressed to the Delegate of the Director. In that letter the Edgar informed the Delegate as follows,

"I am writing to inform you that I have likely secured employment in a remote community. This will make further communication with you very difficult.

"I will be arranging for the forwarding of my mail, but delays should be expected."

The letter dated September 24, 2001 bore Edgar's address and the address given is identical with his address on all other documents in the record both those pre-dating the Determination and those dated subsequent to the date of the Determination. According to Edgar he left his address to travel to a remote work site on the day the Determination was issued, September 25, 2001, and did not return to his address until October 24, 2001, six days after the expiry of the appeal deadline. In the interval Edgar states that he was in a location where there was no mail service.

On November 29, 2001 the Tribunal received an appeal of the Determination from Edgar and the appeal was accepted, despite the fact that the copy of the Determination which accompanied the

appeal was incomplete in that the attachments to the Determination were missing. The appeal was dated November 26, 2001. Accompanying the appeal were copies of a number of documents. The documents submitted were different from those that had accompanied the earlier letter dated October 26, 2001.

## ANALYSIS

The *Act* imposes an appeal deadline to ensure appeals are dealt with promptly. That is consistent with one of the purposes of the *Act*, which is to provide fair and efficient procedures for resolving disputes. Under section 109(1)(b) of the *Act*, the Tribunal can extend the time for requesting an appeal, even though the appeal period has expired.

The Tribunal does not grant extensions automatically but it may extend a time limit if there are compelling reasons to do so. To decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. Appellants who are seeking a time extension for an appeal, should satisfy the Tribunal on balance that:

1. there is a good reason they could not appeal before the deadline;
2. there is not an unreasonably long delay in appealing;
3. they always intended to appeal the determination;
4. the other parties (the respondent and the officer who wrote the determination) are aware of the intent to appeal;
5. the respondent will not be harmed by an extension; and
6. they have a strong case that might succeed, if they get an extension.

I will address first the issue of whether Edgar had a good reason why he could not appeal before the deadline. In reviewing the evidence and arguments with respect to the present appeal I note that Edgar has provided some evidence that he may not have received the Determination in a timely manner. It is clear that he did eventually receive the Determination, however there is no evidence as to the exact date on which he received it. From his own evidence it would appear that he probably received it on the date of his return to his residence on October 24, 2001. I think it is most likely, in view of the chronology of the events and on the balance of probability, that Edgar did in fact receive the Determination for the first time on October 24, 2001. The reasons that he may not have received the Determination in a timely manner may be partly the Appellant's own acts or omissions. He told the Director's Delegate in a letter dated September 24, 2001 that he would "...be arranging for the forwarding of my mail" however he apparently did not or could not do so and he did not make any apparent arrangement for someone else to handle his mail and affairs during his absences.

If Edgar received the Determination no earlier than October 24, 2001, as I think is most likely, then this would be consistent with his first letter to the Tribunal expressing his intention to appeal and dated October 26, 2001, two days after he reports his return for a short period to his residence.

On the question of whether there was an unreasonably long delay in appealing I note that Edgar clearly expressed his intention to appeal in his letter dated October 26, 2001, which was probably written only two days after he first received the Determination, however the Tribunal did not accept his correspondence as an appeal at that time because it was incomplete. The Tribunal's letter to him, dated October 29, 2001, in which he was informed of the deficiencies of his appeal, was sent on the date when he departed for his remote work site from which he returned, according to his evidence, on November 22, 2001. Edgar's appeal which was accepted was dated November 26, 2001, four days after his reported return to his residence. From the point of view of the other parties it may appear that there was a long delay in appealing the Determination however Edgar was quite prompt in his responses considering his circumstances.

As for the questions of whether Edgar always intended to appeal the determination and whether either of the other parties were aware of this intention I believe that it is clear that he intended to appeal the Determination once he received it and that he expressed that intention in his October 26, 2001 letter to the Tribunal. The other parties did not receive that letter and might understandably have concluded that Edgar had no intention to appeal.

With respect to the question of whether the Respondent will be harmed by an extension the Respondent have made a case that an extension of the appeal deadline will be adverse to their interests and that addressing the merits of an appeal so long after work of the Appellant ceased will be made more difficult by the passage of time. This interest must be balanced against the other considerations in deciding whether to grant an extension of the appeal deadline.

The final test as to whether an extension should be granted is the question of whether the Appellant has a strong case that might succeed, if granted an extension. On examining the Determination and the submissions of the Appellant I am left doubtful of the strength of the Appellant's case.

In balancing the factors considered above I believe that the unfairness of depriving the Appellant of the right to be heard on the merits of his appeal because he probably did not receive a copy of the Determination until after the appeal deadline and because he was unable to respond promptly and fully to the Determination for reasons that were largely beyond his control outweigh the adverse effects on the Respondent and the apparent weakness of the merits of the appeal and dictate that he be granted the extension requested.

**ORDER**

The deadline for appeal of the Determination issued on September 25, 2001 is extended to November 29, 2001 and the appeal may proceed to a consideration of its merits.

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**Norma Edelman**  
**Adjudicator**  
**Employment Standards Tribunal**