

An appeal

- by -

Elaine Salo/Stepney, operating as Coastal Cleaners  
("Salo")

- 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.:** 2001/871

**DATE OF DECISION:** February 22, 2002

## DECISION

### OVERVIEW

This appeal is made by Elaine Salo/Stepney operating as Coastal Cleaners. Under appeal is a Determination issued by the Director of Employment Standards on November 23, 2001. The Determination found that Salo had violated sections 18 (1), 21, 34, 40, 45, 46 and 58 of the Employment Standards *Act* (the “*Act*”) and owed \$2,191.30 in wages to Steven Vlatkovic (“Vlatkovic”). The deadline for filing an appeal was December 17, 2001 and the appeal was filed on December 18, 2001. The appeal includes, by implication, a request for extension of the deadline to allow the appeal to proceed on its merits. The issue has been decided based on the written submissions of the parties.

### ISSUE

The only issue to be addressed in this Decision is whether the Tribunal should extend the deadline for requesting an appeal, as set out in Section 112 of the *Act*, in accordance with the powers of the Tribunal under section 109 (1) (b) of the *Act*.

### ARGUMENT

In filing the appeal the Appellant stated,

“I am slightly late on this paper work but I did send a letter stating my intention to appeal. I was not aware of the need to use this prescribed form. The deadline was 4:30 yesterday and it being faxed at 8:30 AM today, the day after. Hopefully you will allow this as I had actually made an attempt well within the time period.”

In responding to the issue of timeliness the Director’s Delegate stated,

“The appeal deadline was clearly stated on the Determination. Appeal procedures were attached. This appellant has appealed before. The appellant sent a letter indicating her intention to appeal to this Branch on 13 December 2001. a response was faxed back at 9:00 am the next day (see attached fax confirmation) indicating the proper procedure and attaching an appeal form. I submit the appellant has sufficient time to submit an appeal. No good reason has been given for failure to meet the deadline.”

On the merits of the appeal the Delegate notes, in part, that, “The appeal is thus entirely without merit and has no chance of succeeding”.

Further in his submission the Delegate asked the Tribunal to consider what he described as a “...patterns of late response and non-response...” by the Appellant in another recent series of

appeals filed by the Appellant. The Delegate also drew the Tribunal's attention to the allegation of "stall tactics" made against the Appellant by the Respondent in that other series of appeals.

Vlatkovic, the Respondent, in reply to the appeal, stated,

"To the best of my knowledge, Elaine Stepney had no reason for a late response other than delaying the payment that is owed to me!"

Vlatkovic also mentioned the negative effect of further delay on his personal situation.

## THE FACTS

On November 23, 2001 the Director issued a Determination as the result of an investigation into a complaint filed by Steven Vlatkovic. The Determination was accompanied by information stating that the deadline for filing an appeal was 4:30 p.m. on December 17, 2001. An information sheet provided by the Tribunal also accompanied the Determination. The information sheet contained information on the procedure for filing an appeal.

On December 18, 2001 the Tribunal received an appeal of the Determination. The appeal was dated December 18, 2001.

Salo has been a party to previous appeals to the Tribunal. These appeals led to Decisions BC EST #D148/01, BC EST #D449/01 and BC EST #RD647/01

## 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.

These criteria will be addressed in the order stated above.

Was there a good reason they could not appeal before the deadline? Salo was sent the Determination under appeal in late November 2001. No argument has been made that the Determination was not received by Salo in a timely manner or that any particular circumstance prevented the Appellant from filing an appeal within the deadline. As a result of previous experience with the Tribunal Salo cannot be deemed to have been ignorant of the requirements of the *Act* or of the procedures of the Tribunal.

Was there a long delay in appealing? The appeal was received one day late, not an unreasonably long delay.

Did they always intend to appeal the determination? The Appellant did, apparently, send a fax letter to the Delegate on December 13, 2001, four days before the deadline for appeal, indicating an intention to appeal the Determination. This was the first indication to any of the other parties that an appeal was intended.

Will the Respondent be harmed by an extension? The Respondent has made it clear that delay in settling the matter is having a continuing adverse effect on his personal situation.

Does the Appellant have a strong case that might succeed, if granted an extension? The appeal appears to be based on the contention that Vlatkovic was an contractor, not an employee. That is an issue that Salo failed to raise during the investigation, even when specifically asked by the Delegate. It is also the same issue that was decided in the series of appeal Decisions mentioned above concerning another similarly situated employee. Clearly the appeal is, as the Delegate states, "entirely without merit and has no chance of succeeding."

The apparent lack of merit in the appeal combined with the decision of the Appellant to delay filing the appeal, despite knowing the deadline, until after the deadline had passed lends credence to the allegations by the other parties that the appeal was filed for no other purpose than delay.

## ORDER

Salo's request to extend the time period for requesting an appeal is denied. The appeal is dismissed pursuant to section 114 (1) (a) of the *Act*.



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