

An appeal

- by -

Precision Home Components Inc.
(“Precision”)

- 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: Margaret Ostrowski, Q.C.

FILE No.: 2009A/074

DATE OF DECISION: July 30, 2009

- 28 (1) For each employee, an employer must keep records of the following information:
- (a) the employee's name, date of birth, occupation, telephone number and residential address;
 - (b) the date employment began;
 - (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
 - (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;
 - (e) the benefits paid to the employee by the employer;
 - (f) the employee's gross and net wages for each pay period;
 - (g) each deduction made from the employee's wages and the reason for it;
 - (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;
 - (i) the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;
 - (j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.
- (2) Payroll records must
- (a) be in English,
 - (b) be kept at the employer's principal place of business in British Columbia, and
 - (c) be retained by the employer for 2 years after the employment terminates.

6. The Director's order of a \$500 administrative penalty was appealed by Precision on June 3, 2009, one month after the appeal request period had expired.

ANALYSIS

7. I will first consider whether to extend the deadline and accept this late appeal. Section 109(1)(b) of the *Act* gives the Tribunal the power to extend the time period for requesting an appeal even though the period has expired. The Employment Standards Tribunal has previously considered some or all of the following factors in determining whether to extend an appeal period¹:
- a. Is there a good reason why the Appellant could not meet the deadline?
 - b. Was there an unreasonably long delay in filing the appeal?
 - c. Did the Appellant always intend to appeal the Determination?

¹ See for instance *Niemisto* BC EST # D099/096 and *Frenney* BC EST # D130/04

- d. Were the other parties – such as the Respondent (Director of Employment Standards) and the delegate who wrote the Determination – aware of the intent to appeal?
 - e. Would extending the appeal deadline harm the Respondent’s case?
 - f. Does the Appellant have a strong case that might succeed if the Tribunal grants an extension?
8. The above factors do not constitute an exhaustive list and some of those factors are more relevant than others given the particular circumstances of the case.
9. I will first consider the reasons for the late submission of the appeal. Precision gave as reasons for the lateness of the appeal, *inter alia*, the fact that their premises were destroyed in January 2008 and that they moved twice in 2008. I presume that what Precision is arguing is that they did not receive the Determination when it was sent because of the fire in January 2008 and because of its two relocations in 2008. I note that the Determination was not rendered until March of 2009. Their explanation lacks credibility in that there were several months in 2009 in which they could have notified the Employment Standards Branch of a change of address, particularly since Janif was aware a decision would be forthcoming. Furthermore, it is pointed out in the Director’s submissions that a copy of the Determination was sent by registered mail to each director of Precision, Caroline Janif and Mohammed Janif, at 146 East 7th Ave. Vancouver. Both copies were returned “unclaimed”. No explanation was given as to why these copies of the Determination were unclaimed. Overall I find these reasons very weak.
10. Secondly, I find it important to consider whether Precision has a strong case which might succeed if an extension were granted. Pursuant to amendments to the *Act* which came into effect on November 29, 2002, the grounds of appeal are limited to the following as set out in section 112(1):
112. (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
 - (a) the director erred in law;
 - (b) the director failed to observe the principles of natural justice in making the determination;
 - (c) evidence has become available that was not available at the time the determination was made.
11. Precision has appealed on ground (b). They have acknowledged in their previous submissions that section 28 of the *Act* was contravened. Natural justice requires that a party has an opportunity to know the case against him or her, the right to be heard by an unbiased decision maker who has heard the evidence, and the right to receive reasons for the decision. The onus is on the appellant who has alleged a breach of natural justice to persuade the Tribunal on a balance of probabilities that there was a denial of natural justice.
12. I have reviewed the submissions of Janif (as set out in paragraph 3 above) and find no evidence of a breach of natural justice. Precision’s argument that there was insufficient time between the summer of 2007 and December 2007 to establish proper records is not credible. The further argument that a record need not be kept for employees not paid by the hour is contrary to the requirements of section 28 of the *Act* (28(1)(c) and (d)).

- ^{13.} I find the two factors discussed above, that is, the reasons for the lateness of the appeal and the probability of success, to be the most relevant factors in this case regarding accepting a late appeal. I am not satisfied from an analysis of these factors that an extension of the appeal period should be granted. The fact that the Determination was not received by Precision until late May appears to be entirely their own fault, that is, for not supplying a change of address to the Employment Standards Branch. There is no evidence that there is a case which might succeed if an extension were granted.

ORDER

- ^{14.} The request by Precision to extend the time period for an appeal is **denied**.

Margaret Ostrowski, Q.C.
Member
Employment Standards Tribunal