

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Dr. H.S. Bergman
("Bergman")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 97/056

DATE OF DECISION: February 25, 1997

DECISION

OVERVIEW

This is an appeal by Dr. H.S. Bergman (“Bergman”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination Letter dated January 8, 1997 issued by a delegate of the Director of Employment Standards (the “delegate”). The time limit for filing an appeal of the Determination expired on January 16, 1997. The Tribunal received an appeal from Bergman on January 27, 1997.

ISSUE(s) TO BE DECIDED

The issue to be decided is whether the time limit for requesting an appeal, as set out in Section 112 of the *Act*, should be extended in this case.

FACTS

In late September or early October of 1996, Bergman was made aware that a former employee, Suzanne Carr (“Carr”), had filed a complaint with the Employment Standards Branch regarding the payment of wages.

On January 8, 1997, a Determination was issued against Bergman in which the delegate concluded that Carr was owed wages in the amount of \$1963.41. The Determination was hand delivered to Bergman’s office in Port Coquitlam and it indicated that an appeal of it had to be delivered to the Tribunal within 8 days of the date of the Determination.

Bergman acknowledges that he read the Determination on January 15, 1997.

On January 17, 1997, Bergman contacted the Tribunal. A copy of the Tribunal’s appeal form was faxed to him on that day.

On January 27, 1997, the Tribunal received an appeal via fax from Bergman. The appeal form was dated January 17, 1997. Subsequently, the Tribunal received a hard copy of the appeal form which included the following statement which was not on the fax copy:

I have not previously used a fax machine and had to enlist the help of my son when he returned home late January 26, 1997.

The Tribunal invited the delegate and Carr to reply to the issue of whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* and allow Bergman’s appeal even though the time period for requesting an appeal had expired. Both replied in the negative.

ANALYSIS

Section 122(1) of the *Act* provides that a Determination that is required to be served on a person is deemed to have been served if either served on the person or sent by registered mail to the persons last know address.

Section 112(2) of the *Act* sets out the time periods for appealing a Determination. A person served with a Determination has only 8 or 15 days to file an appeal depending on the mode of service. In the case of service by registered mail, the time period is 15 days after the date of service; the time period is only 8 days if the Determination is personally served.

These relatively short time limits are consistent with one of the purposes of the *Act* which is to provide for fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. It is in the interest of all parties to have complaints and appeals dealt with promptly.

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 are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.

In the case at hand, I am not satisfied that an extension ought to be granted.

The Determination was served in accordance with Section 122(1) of the *Act*. The Determination was read by Bergman at least one day prior to the expiry of the appeal period.

Bergman did not contact the Tribunal on January 15 or 16, 1997 which would have resulted in a timely appeal. Rather, Bergman waited until mid-afternoon on January 17, 1997 to contact the Tribunal. By this time, it was clear that his appeal was out of time, but there is no evidence that Bergman made mention of this fact to the Tribunal, nor did he request an extension to file an appeal.

Later on January 17, 1997, the Tribunal faxed an appeal form to Bergman. The Tribunal's fax records indicate the appeal form was received by Bergman within minutes. Ten days later, Bergman forwarded an appeal to the Tribunal. It appears that Bergman's explanation for the delay is due to his never previously using a fax machine and he had to enlist the help of his son when he returned home late on January 26, 1997. I do not accept this as an adequate explanation for the delay. At no time during the ten days that Bergman had the appeal form, did he contact the Tribunal to advise he intended to appeal but was having problems faxing his appeal form to the Tribunal. Furthermore, Bergman has a fax machine in his office and I see no reason why he could not have enlisted the help of his office staff

if he did not know how to send a fax. Alternatively, Bergman could have sent his appeal to the Tribunal by courier, rather than waiting for his son to return home.

In my view, Bergman had the opportunity to file an appeal in a timely manner. The obligation is on the employer to exercise reasonable diligence in the pursuit of an appeal. In this case, Bergman has failed to persuade me that he has done so. I find no compelling reasons to allow this appeal.

ORDER

The appellant Bergman's request to extend the time period for requesting an appeal is denied. The appeal is dismissed pursuant to Section 114 of the *Act*.

Norma Edelman
Registrar
Employment Standards Tribunal