

An appeal

- by -

Regions Group of Companies International Trading Ltd.
(“Regions”)

- 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: William Reeve

FILE No.: 2003/005

DATE OF DECISION: March 25, 2003

DECISION

OVERVIEW

This is an appeal by Regions Group of Companies International Trading Ltd. (“Regions”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) against a Determination issued by the Director of Employment Standards (“the Director”) on October 22, 2002. The Determination found that the Act had been contravened and that employee Rosemarie Andreas was owed \$427.09. The amount included compensation for length of service, vacation pay and interest. Although there is reference in the submissions to a Director/Officer Determination issued on the same date, the present appeal deals only with a corporate Determination.

The deadline for appeal was November 14, 2002. Regions filed an appeal that was dated February 4, 2003 and was received by the Tribunal on that date. In its appeal Regions gave reasons why the appeal was late. The implication of the appeal and the reasons why it was filed late is that Regions is asking for an extension of the deadline for filing an appeal.

The issue of whether to extend the deadline for appeal is decided on the basis of 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 in accordance with the powers of the Tribunal under section 109(1)(b) of the Act.

ARGUMENT

In the appeal Regions stated, under the heading “Why are you appealing the Determination?”

“I was never served with the determination, so I’ll have the chance to give explanation.”

In response to the question “Do you require an oral hearing?” Regions said, in part,

“I was never served with the attached determination so I can appeal or file on time...”

In its final reply to the appeal Regions principal, Samir Fawaz (Fawaz), made reference to a landlord/tenant dispute concerning its premises at 900 West Hastings Street, the resultant denial of access to its files and property, the closure of its office at that location on August 30, 2002, and stressful personal and marital problems. The reply stated with reference to October 2002 that,

“No information was ever received. Then I was unavailable until mid January 2003 when I received the ruling from the Employment Standard and which was received by David Lee on December 2002.”

In reply to the appeal the Respondent employee commented unfavourably on the attitude of Fawaz on several matters including issues of timeliness.

In the reply to the appeal from the Delegate there was an account of the difficulties the Delegate experienced in making or maintaining contact with Regions or its principal. According to the Delegate a corporate Determination against Regions and a Director/Officer Determination against Fawaz were both issued on October 22, 2003. According to the Delegate both Determinations were sent by registered mail to Regions Hastings Street address, to Regions Burrard Street address and to Fawaz's home address. The submission reports that the Determination sent to the Hastings Street address were returned by Canada Post marked "moved"; the Determinations sent to the Burrard Street address were returned marked "refused" and the Determinations sent to the home address were returned marked "unclaimed". Copies of the covers of the returned items were supplied by the Delegate.

According to the Delegate a telephone call was received from Fawaz on November 27, 2002. In the call Fawaz confirmed that the Burrard Street address was still valid but provided a new Granville Street address. A package containing the Determinations was sent to that new address on November 28, 2002 and it was received and signed-for by a David Lee at that address on December 2, 2002.

THE FACTS AND ANALYSIS

The *Act* imposes an appeal deadline to ensure that appeals are dealt with promptly. This 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 help it decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. They are the following:

1. is there a good reason why the appeal could not be filed before the deadline;
2. was there an unreasonable delay in appealing;
3. did the appellant always intend to appeal the determination;
4. were the other parties aware of the intent to appeal;
5. is an extension of the appeal deadline harmful to the interests of the respondent; and
6. does the Appellant have a strong case that might succeed if an extension were granted.

The main issue is this, "is there a good reason why the appeal could not be filed before the deadline". I am prepared to believe that Fawaz did not have possession of a copy of the Determination before the date on which it was accepted by a person in the Granville Street office of Regions on December 2, 2002. However, based on the previous contacts with the Delegate, and on the pattern of conduct of Fawaz, I believe that, on the balance of probabilities, it is most likely that Fawaz was fully aware of the likely unfavourable nature of the Determination even before it was issued.

Though Fawaz may have been ignorant of the precise details of the Determination until after the deadline for appeal had passed, such ignorance, in itself, does not necessarily provide a good reason why the appeal could not be filed before the deadline. Where such ignorance is genuinely innocent, or where

circumstances not under the control of the Appellant cause the ignorance, it might be considered good reason for a modest extension of the deadline for appeal. In the present case however, the fact that Fawaz may not have had possession of a copy of the Determination now under appeal was wilful and of his own doing.

Section 122 of the *Act* says,

- “122 (1) A determination or demand that is required to be served on a person under this Act is deemed to have been served if
- (a) served on the person, or
 - (b) sent by registered mail to the person's last known address.
- (2) If service is by registered mail, the determination or demand is deemed to be served 8 days after the determination or demand is deposited in a Canada Post Office.
- (3) At the request of a person on whom a determination or demand is required to be served, the determination or demand may be transmitted to the person electronically or by fax machine.
- (4) A determination or demand transmitted under subsection (3) is deemed to have been served when the director receives an acknowledgment of the transmission from the person served.”

In the present appeal the Delegate has complied with the requirements of the *Act* with respect to serving the Determination on Regions. The language in this section, particularly the reference to circumstances where a determination “is deemed to be served”, is intended to address situations such as the one created by the present appellant. It is my finding, therefore, that Regions did not have a good reason for failing to meet the deadline for appeal.

The second question asks if there was an unreasonable delay in appealing. Regions acknowledges that a copy of the Determination was received on December 2, 2002. That was already eighteen days past the deadline for appeal. The appeal, however, was received on February 4, 2003, over nine weeks later. The appeal missed the deadline by over eleven weeks in total. Under almost any circumstance, no matter what the cause, such a delay would be considered unreasonable.

There is no evidence that Regions informed the other parties of an intention to appeal until the Delegate was told of the intention to appeal in a telephone conversation on February 4, 2003.

The Respondent’s interests would be affected by extension of the appeal deadline to the extent that this might delay final resolution of the matter and receipt of the monies owed.

The final criterion is whether the Appellant has a strong case that might succeed. The circumstances surrounding the end of the employer/employee relationship are the subject of highly contradictory statements from the Appellant and the Respondent. The circumstances might well be described as murky. The assertions of Regions however, unsupported by other sources of evidence, do not in themselves constitute a good case likely to succeed.

ORDER

Regions request to extend the time period allowed for making an appeal is denied. The appeal is dismissed pursuant to section 114(1) of the *Act*. Pursuant to section 115(1) of the *Act* the Determination dated October 22, 2002 is confirmed.

William Reeve.
Adjudicator
Employment Standards Tribunal