

An appeal

- by -

FS Food Equipment & Operating Inc., operating as Freshslice Pizza
("Freshslice")

- 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.: 2003A/023

DATE OF DECISION: March 25, 2003

DECISION

OVERVIEW

This is an appeal by FS Food Equipment & Operating Inc., operating as Freshslice Pizza (“Freshslice”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) against a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on December 5, 2002. The Determination found that Freshslice owed former employee Bobbi-Anne Zuffa \$601.35 in total for return of a uniform deduction, unpaid wages, unpaid vacation pay and accrued interest. The deadline for filing an appeal of the Determination was 4:30 p.m. on January 13, 2003. The appeal form was dated and received on January 20, 2003. It included reason why the appeal was late. Freshslice asks that the appeal deadline be extended to allow the appeal.

This decision is made 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 in accordance with the powers of the Tribunal under section 109(1)(b) of the *Act*.

ARGUMENT

In its appeal form, dated January 20, 2003, Freshslice stated,

“We are a small company, our human resources manager quit on us and did not let us know the that appeal had been filed. We found the determination and wish to appeal.”

In its submission attached to the appeal form Freshslice stated, among other things,

“4) Human resources department were to handle all appeals of determinations, subsequently the Human Resources manager was fired due to not performing the job correct. We had expected these to have been filed early January, while clearing out her desk in mid January we found these Determinations and discovered that they had not been appealed, so we are proceeding to attempt to appeal them late.”

Other reasons provided with the appeal under eight numbered points as to why the appeal was late and why the deadline should be extended included the following.

“1) we have moved our head office operations from 2445 East Hastings to 5665 Victoria Drive.

“3) This arrived late in December at this point and we had Christmas closures, and officers of the company were on vacation.”

In response to the Tribunal’s acknowledgement letter Freshslice re-submitted the same documents filed with the appeal. In a subsequent submission, dated February 24, 2003, Freshslice conceded that the change of its address did not affect the timeliness of its receipt of the Determination.

The response to the timeliness issue by the Delegate of the Director stated, among other things,

“The Determination was sent by registered mail on December 5, 2002, not late in December as alleged by Freshslice... the Determination was sent by registered mail to the Victoria Drive address, the new office location, and to the registered and records office.”

The Delegate also stated that ,

“The director received telephone communication from Freshslice in December 2002, after issuance of the Determination, at which time Freshslice advised that it would appeal the decision.”

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 first question is whether the appeal *could not* be filed before the deadline. The submission of the Delegate indicates that someone at Freshslice was aware of the Determination and expressed an intention to appeal it, in December 2002. The submissions of Freshslice on this subject seem to offer a multiple choice answer to the question. Either the person who was expected to file an appeal quit, or the person who was expected to file an appeal was fired for poor job performance, or the Determination was received at the time of the Christmas closure, or the officers of the company were on vacation when the Determination was received. If, as Freshslice states, the person expected to file the appeal was fired for poor job performance then it is hard to understand why Freshslice failed to look into the status of that person's work in a timely manner and instead only found the Determination when cleaning out a desk, apparently some weeks later. If the Determination was received during the Christmas closure it is hard to understand how someone from Freshslice would have called the Delegate to inform her that it was intended to appeal. All together the explanations given are not consistent or convincing.

I note that the submissions of the Appellant refer to “Determinations” in the plural in several places however only one Determination is before the Tribunal under appeal.

As to the question of whether the delay of approximately a week is unreasonable I note that the appeal was received more than six weeks after the Determination was issued. Deadlines set by legislation should not be treated casually.

As to the question of whether Freshslice always intended to appeal the Determination we have the statement of the Delegate that the Director was informed of such an intention in December 2002, some weeks before the appeal was filed. Nothing has been received from the Respondent employee on this question.

The extension of the deadline to allow the appeal can be presumed to be against the interests of the respondent mainly through the fact that it would probably extend the time before a final resolution of the matter is achieved. However the Respondent has not chosen to make any submission thus leaving the Tribunal to conclude that she may not be particularly concerned about this possibility.

Finally, there is the question of how strong a case Freshslice appears to have. In reviewing the Determination and the appeal documents it appears that there is little likelihood of the Determination being overturned on its merits.

Since nothing has been provided that constitutes a compelling reason to extend the deadline I therefore decline to do so.

ORDER

The Appellant Freshslice's 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 December 5, 2002 is confirmed.

William Reeve
Adjudicator
Employment Standards Tribunal