

An appeal

- by -

Purewal Bros. Enterprises Ltd.
("Purewal")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2005A/92

DATE OF DECISION: July 19, 2005

DECISION

SUBMISSIONS

Eboo Keshani

for Purewal Bros. Enterprises Ltd.

Judy Reekie

for the Director of Employment Standards

INTRODUCTION

1. This is an appeal filed by Purewal Bros. Enterprises Ltd. (“Purewal”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Purewal appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on March 24th, 2005 (the “Determination”) pursuant to which it was ordered to pay its former employee, Wasel A. Hamidi (“Hamidi”), the sum of \$5691.79 on account of unpaid wages and section 88 interest. Further, by way of the Determination, the Director’s delegate also levied \$1,500 in administrative penalties against Purewal; thus, the total amount payable under the Determination is \$7,1919.79.
2. Purewal appeals the Determination on the ground that the Director’s delegate failed to observe the principles of natural justice in making the Determination [see section 112(1)(b) of the *Act*]. However, these reasons for decision do not address the merits of Purewal’s appeal. Rather, there is a question about the timeliness of the appeal and, accordingly, that matter must first be adjudicated.

TIMELINESS OF THE APPEAL

3. An appeal of a determination must be filed, in writing, with the Tribunal within “30 days after the date of service of the determination, if the person was served by registered mail” [see section 112(3)(a) of the *Act*]. However, if the appeal is not filed within this latter statutory time limit, the Tribunal may extend the appeal period pursuant to section 109(1)(b) of the *Act*.
4. The Determination and the attached “Reasons for the Determination” (“Reasons”) were issued on March 24th, 2005. The Determination and Reasons were issued following an oral evidentiary hearing before the delegate that occurred on December 22nd, 2004. The Determination and Reasons were mailed to Purewal’s business address in Pitt Meadows as well as to its “registered and records office” in Maple Ridge. The documents were also mailed to Mr. Gurjit S. Purewal (who is a principal of Purewal).
5. The Determination contains a Notice, at the bottom of page 2, relating to appeals and this Notice stated that the appeal deadline was 4:30 P.M. on May 3rd, 2005. I presume that this deadline was calculated taking into account the “deemed service” provision contained in section 122(2) of the *Act*. Accordingly, the actual appeal period may have expired before May 3rd, 2005 depending on when the registered envelope containing the Determination and Reasons was actually received at Purewal’s registered and records office. Purewal’s Appeal Form was filed with the Tribunal on May 24th, 2005 some three weeks after the deadline set out in the Determination expired.
6. Immediately upon the appeal being filed, the Tribunal’s Vice-Chair wrote to the parties and indicated that since the appeal was, on its face, filed after the expiration of the statutory appeal period, the Tribunal

wished the parties to file written submissions regarding whether the appeal period should be extended. In her May 24th, 2005 letter to the parties, the Vice-Chair also summarized the various factors [derived from the Tribunal's section 109(1)(b) jurisprudence] the Tribunal considers when ruling on an application to extend the appeal period. The parties were given until June 7th, 2005 to file their submissions on the "timeliness of the appeal" issue.

THE PARTIES' SUBMISSIONS

7. Purewal's position is set out in a brief letter addressed to the Tribunal dated May 24th, 2005 that is appended to its Appeal Form. Purewal's "Controller" states in the May 24th letter that the Appeal Form was originally filed, by fax, with the Director of Employment Standards on May 3rd, 2005. Purewal's May 24th letter also states: "The fax number was mistakenly used from the Box 5 on the Appeal Form" and that Purewal is "sorry for the mistake and any confusion that it caused".
8. The Director's delegate, in her submission dated May 30th, 2005 indicated "that the Director has no objection should the Tribunal accept the above-named employer's late filing of an appeal".
9. The respondent employee, Mr. Hamidi, did not file any submission with respect to the timeliness of the appeal.

FINDINGS AND ANALYSIS

10. Ordinarily, one might be inclined to grant an extension of the appeal period given the comparatively short duration of time between the expiration of the appeal period and the subsequent filing of the appeal. On the face of things, there was an intention to file a timely appeal; unfortunately for Purewal, its Appeal Form was filed with the Director of Employment Standards rather than with the Tribunal. I note that the Director does not oppose an extension and, I presume since he not filed any submission by way of opposition, neither does Mr. Hamidi.
11. Notwithstanding the foregoing comments, however, I am refusing the application to extend the appeal period.
12. Purewal says that it faxed its Appeal Form to the Director but I have no evidence before me to corroborate that assertion. The Director does not corroborate that latter assertion (which I find to be a telling omission). Further, even if the Appeal Form were filed with the Director rather than the Tribunal, I note that the Notice on the Determination clearly identified the Tribunal as the appeal body (the Notice also contained the Tribunal's telephone number and website address). The Appeal Form states at the very top of the form—in a highlighted "box"—that the form must be filed with the Tribunal (the Tribunal's address and fax number are also set out). If in fact Purewal faxed its Appeal Form to the Director's office (and I am not satisfied on the evidence that actually occurred), I am nonetheless of the view that such action amounts to well more than a simple (and forgivable) mistake—I consider that sort of action to constitute gross carelessness.
13. However, even if I were inclined to extend the appeal period in this case, I would not do so in any event because I consider this appeal to have absolutely no reasonable prospect of success.

14. The Tribunal may dismiss an appeal “without a hearing of any kind” if the Tribunal is satisfied that:
- “the appeal was not filed within the applicable time limit”; or
 - “the appeal is frivolous, vexatious or trivial”; or
 - “there is no reasonable prospect that the appeal will succeed”; or
 - “one or more of the requirements of section 112(2) have not been met”;
- [see subsections 114(1)(b), (c) and (f) of the *Act*].
15. In my view, this appeal can be (and is being) summarily dismissed for any or all of the above reasons.
16. First, the appeal was filed outside the statutory time limit and I am not inclined (for the reasons I expressed above) to extend the appeal period.
17. Second, I note that the delegate made findings of fact in the face of conflicting evidence tendered at an oral hearing where both parties had the right to call evidence and challenge the evidence submitted by the other party. The evidence tendered by employer was largely hearsay and, in many respects, corroborated the employee’s version of events. To the extent that this appeal is predicated on overturning findings of fact (and despite the fact that the appellant alleges a denial of natural justice, in essence, the appellant simply asks that findings of fact be overturned), the Tribunal’s jurisprudence presents an insurmountable roadblock for the appellant.
18. Simply put, the Tribunal will not overturn findings of fact that are supported by an evidentiary foundation merely because there was some evidence before the delegate that was inconsistent with the delegate’s ultimate factual determinations. In this case, I would go further and observe that not only were the delegate’s findings of fact predicated on a proper evidentiary foundation, the delegate’s findings strike me as being the only reasonable findings that one could make given the nature of the evidence as it was recounted in the delegate’s Reasons.
19. Third, as noted earlier, Purewal appeals the Determination on the ground that the delegate failed to observe the principles of natural justice in making the Determination. This ground is not particularized in any way whatsoever in Purewal’s appeal documents. The section 112(5) record before me discloses that a complaint was filed; Purewal was then advised about the complaint and given an opportunity to make submissions to the delegate; subsequently, an oral evidentiary hearing was scheduled at which Purewal was given the opportunity to present its own evidence and challenge the employee’s evidence; finally, the delegate prepared extensive Reasons summarizing the parties’ evidence and explaining how and why she reached her factual and legal conclusions. What more could one ask of the Director and his delegate in terms of satisfying the principles of natural justice? No matter how charitably one might view the appellant’s case, I remain convinced the appellant has absolutely no hope of success and, therefore, that this appeal is frivolous.

ORDER

20. Purewal's application to extend the appeal period is refused.
21. Pursuant to section 114(1)(b)(c) and (f) of the *Act*, I order that the appeal be dismissed. It follows that the Determination is confirmed as issued in the amount of **\$7,191.79** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal