

March 25, 2003

Tribunal Decision Number: BC EST # D108/03

TO INTERESTED PARTIES

**Re: Employment Standards Act – Part 13
Appeal of a Determination issued by the Director of Employment Standards on
December 17, 2002
Tribunal File Number 2003A/80**

Sandra O’Gorman - and - Okanagan Truck Tarps Ltd.

This is an appeal by Sandra O’Gorman (“O’Gorman”) 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 17, 2002. The Determination found that the employer, Okanagan Truck Tarps Ltd. (“Okanagan”) owed O’Gorman \$74.12 in wages and interest. The deadline for filing an appeal was January 24, 2003. The Tribunal received the appeal, including reasons why it was late, on March 10, 2003. This decision, pursuant to section 109 (1)(b) of the *Act*, on whether to extend the deadline for filing an appeal and to accept the appeal, is based on the written submissions of the parties. O’Gorman advised the Tribunal that she did not intend to submit a final reply on the timeliness issue, therefore this Decision will be issued before the expiry of the deadline for final reply on this appeal.

The evidence shows that O’Gorman intended to file an appeal and in fact that she attempted to do so within the deadline. Unfortunately, through some error or misunderstanding, she sent the appeal only to the head office of the Director in Victoria and did not send her appeal to the Tribunal. Once this error was discovered O’Gorman acted promptly to submit her appeal to the Tribunal. The Director’s Delegate has confirmed the fact of O’Gorman’s timely if misdirected original appeal and has stated that in the circumstances she has no objection to the acceptance of O’Gorman’s appeal. The Respondent, Okanagan, has not made a submission on the timeliness issue.

In this situation there is no need for a lengthy analysis of the merits of the extension request. There is convincing evidence that O’Gorman attempted to file an appeal within the deadline, the intention to do so is not in doubt, the Director was aware of the intention, once the error was discovered there was a prompt attempt to remedy the situation, there is no apparent potential harm to the other parties, nor any objections from them. The issue of whether O’Gorman has a strong case can be left for an adjudication of the merits of the appeal.

I believe that extending the deadline and allowing the appeal to be heard on its merits best serve the interests of fairness and justice.

I note that the parties are already due to participate in an oral hearing of a related appeal by Okanagan. In the interests of efficiency the merits of the appeal by O’Gorman should also be addressed at that hearing.

ORDER

Pursuant to section 109 (1)(b) of the *Act* I order that the time for filing an appeal in that matter be extended to March 10, 2003 and that the appeal by O’Gorman be accepted. Pursuant to section 107 of the *Act* the merits of the appeal are referred to the Adjudicator appointed to hold an oral Hearing on the related appeal on Tribunal File number 2003A/024.

Sincerely yours,

William Reeve, Adjudicator
Employment Standards Tribunal

Interested Parties:

Sandra O’Gorman
Okanagan Truck Tarps Ltd.
Director of Employment Standards (Delegate: Amanda Clark Welder)

DO NOT DISCLOSE -- FOR ADDRESS PURPOSES ONLY!

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