

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 -

(“Francis”)
Francis Mushrooms Ltd.

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Norma Edelman

FILE NO.: 97/053

DATE OF DECISION: March 6, 1997

DECISION

OVERVIEW

This is an appeal by Francis Mushrooms Ltd. (“Francis”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination Letter dated December 12, 1996 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 6, 1997. The Tribunal received an appeal from Francis on January 24, 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

On December 12, 1996, a Determination was issued against Francis in which the delegate concluded that William Morgan (“Morgan”) was owed wages and interest in the amount of \$1661.46. The Determination was sent by certified mail to the attention of Harvey Francis at: RR1, 745 Dilworth Dr., Kelowna, BC, V1Y 7P9. A copy of the Determination was sent to the Registered and Records Office of Francis. The Determination indicated that an appeal of it had to be delivered to the Tribunal within 15 days of the date of the Determination.

The Acknowledgment of Receipt cards for the certified mail indicate that the original Determination was received by Harvey B. Francis on January 6, 1997. The copy was received at the Registered and Records Office on December 17, 1996.

On January 17, 1997, the Employment Standards Branch office in Kelowna faxed an appeal form to Francis.

On January 24, 1997, the Tribunal received an appeal from Harvey B. Francis on behalf of Francis. The appeal form was dated January 20, 1997 and was mailed on January 22, 1997. In his appeal, Harvey B. Francis addressed the issue of filing a late appeal. He said:

No contact with me was made prior to January 4th at which time I had to be out of town until January 11th. Upon my return, I contacted the post office base and they said that there was a letter for me. Upon picking up the correspondence I received direction from (the delegate) as to how to file this appeal.

In a subsequent letter to the Tribunal, Harvey B. Francis said:

...the late filing of the appeal was to the fault of the postal system and a direct result of the Christmas rush.

When I received a notice from the postal outlet regarding a registered letter, I responded immediately and contacted the outlet named on the notice. They didn't have the letter for me at the time and told me they would contact me or send another notice if or when something arrived for me. On January 4th, 1997 they had not corresponded with me and no notice had arrived. This was already 23 days after the date on the determination. I didn't have the determination in my possession within the normal 15 days and therefore it was impossible for me to respond to it.

The Tribunal invited the delegate and Morgan to reply to the issue of whether the Tribunal should exercise its discretion under Section 109(1) (b) of the *Act* and allow this appeal even though the time period for requesting an appeal had expired. Morgan replied in the negative and said "If (Francis) didn't get the said letter (Reg.) it was I feel because he was expecting the Reg. letter from you and choose (sic) to ignore picking it up." No reply was received from the delegate. Subsequently, upon the request of the Tribunal, the delegate forwarded copies to the Tribunal of the Acknowledgment of Receipt cards for the certified mail.

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 sent to the last known addresses of Francis. A copy of the Determination was received by the Registered and Records office on December 17, 1996, which was well in advance of the appeal deadline, and the original Determination was picked up by Harvey B. Francis on January 6, 1997, which was the last day to file a timely appeal.

Harvey B. Francis did not contact the Tribunal, however, on or before January 6, 1997, which would have resulted in a timely appeal. Nor did he contact the Tribunal by phone or by fax on January 17, 1997, when he received an appeal form by fax from the Kelowna Employment Standards Branch office, to advise that he intended to appeal the Determination. Harvey B. Francis knew by at least January 6, 1997 that the deadline for filing an appeal was on January 6, 1997, yet he chose not to exercise his option of disputing the Determination until sixteen days later when he deposited his appeal in the regular mail, which resulted in a further delay, as the Tribunal never received the appeal until two days later.

I have considered Harvey B. Francis' explanations for the delay in filing an appeal, and given the above, I find them to be inadequate.

In my view, Francis 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, Francis has failed to persuade me that it has done so. I find no compelling reasons to allow this appeal.

For the above reasons, I have decided not to extend the time limit for requesting an appeal in this case.

ORDER

The appellant Francis' 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