

**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 -

Dr. Linda Patry  
("Patry")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Genevieve Eden

**FILE NO.:** 96/143

**DATE OF HEARING:** May 29, 1996

**DATE OF DECISION:** June 4, 1996

**DECISION**

**APPEARANCES**

Dr. Linda Patry           the Appellant

Sheila Harwood        on her own behalf  
Yvana Jovanovic       on her own behalf

Eric Ronse              on behalf of the Director of Employment Standards

**OVERVIEW**

This is an appeal by Dr. Linda Patry ("Patry") pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination # CDET 000695 issued by a Delegate of the Director of Employment Standards. The Determination requires Patry to pay Sheila Mackintosh, now Harwood ("Harwood"), \$748.32 and Yvana Jovanovic ("Jovanovic") \$738.34 for unpaid wages.

The Determination was issued on January 9, 1996 with a deadline for appeal of February 1, 1996. Patry appealed the Determination on February 27, 1996 requesting an extension of the deadline for filing appeals.

A hearing was held in Victoria on May 29, 1996. All witnesses gave evidence under oath.

**FACTS**

Patry's reasons for appeal state she did not become aware of the Determination nor the appeal deadline until after the deadline expired. She relates a telephone call with Jill Walker ("Walker"), the Director of Employment Standards on February 15, 1996 stating, "I phoned her, as my first awareness of any meeting re: employee Mackintosh & any determination let alone any appeal deadline was on Feb. 14/96 when my credit union wrote me that an account of mine & a business partner (not even my money) had been garnisheed".

Attached to the appeal were several handwritten pages which Patry referred to at the hearing. These state she had been informed by Walker that a meeting had taken place in December 1995 "without my being informed, aware of at all and therefore not present for my input" and that the Industrial Relations Officer "spoke only with the employee". She queried how such an unfair decision could be made "with no notice or input from me".

Both Patry and Ronse testified regarding communications with each other during the period August to November 1995. The first communication was a letter from Ronse on August 24, 1995 informing Patry of Harwood's complaint and asking Patry to check her records. This was followed by a letter from Ronse dated September 8, 1995 setting out calculations of amounts owing according to Harwood's records. It concludes by requesting a

response from Patry and stating that he would be happy to discuss the matter. On September 14, 1995, Patry faxed Ronse his letter of September 8th on which she made several handwritten comments. On September 15th Patry faxed a document entitled "Employee's Earnings" which showed hours of work and earnings for Harwood as well as handwritten comments.

Ronse's evidence was that arrangements were made for he and Patry to meet on September 25, 1995. Patry did not "show". A meeting was rescheduled to September 29th on which date Ronse received a message from Patry's son that she could not attend due to an emergency. Another meeting was scheduled for October 6th on which date a message was received that Patry was too busy to come in. On October 19th, Ronse sent Patry a letter confirming her request to reschedule their meeting of that day and referring to her inability to keep meetings; the letter stressed the necessity of meeting at the earliest opportunity. A separate letter dated October 19th notified Patry of the complaint filed by Jovanovic. A reply from Patry by fax dated October 31st suggested they meet that evening or "anytime this weekend". They agreed to meet on Saturday, November 4th, but Patry again did not show; Ronse received a voice mail message cancelling the meeting after he got home.

Ronse testified that, on November 16, 1995, he sent Patry a letter confirming his request on two more occasions that Patry call him with her suggestions as to date, time and place for a meeting; he received no acknowledgement of these requests. This letter went on to advise Patry that, if she did not contact him or arrange to meet him by December 4th, a Determination would be issued in favour of the employees based on the information obtained from them. A further letter was sent by Ronse on November 30th reminding Patry to contact him before December 5th to set up an appointment with him and that otherwise a Determination would be issued.

On December 9, 1995 Ronse received a fax from Patry advising of her mother's death on December 5th.

On December 13, 1995 a Determination was issued with a deadline for appeal of January 5, 1996; this was returned from the post office with the notation "moved". A second Determination was issued on January 9, 1996 with a deadline for appeal of February 1, 1996. This was sent to Patry's last known business address as well as home address by registered mail. Copies of notices addressed to "Dr. Linda K. Patry, M.D." submitted in evidence show that the post office served a notice to her home address (685 Beach Drive) on January 11th and her work address (205-1121 Yates Street) on January 12th and final notices on January 16th and 17th after which both were returned "unclaimed".

Following the telephone call from Patry on February 15, 1996, a letter dated February 22, 1996 was sent to Patry from Walker enclosing another copy of the Determination. As already noted, Patry appealed this Determination on February 27, 1996.

Patry testified that, during the period September to November 1995, she had to make an election about priorities given events in her life at the time. Her evidence was that she was involved in a legal case and was often in court. Also, during this period, she maintained she

"faced a very odd, persecutory/harrassing situation" in her office. During this time her mail was stolen and intercepted. In addition, her office was illegally entered and damages incurred.

At the same time she had to deal with her mother who was upset about these events. Given these events, as well as inefficient secretaries, her worries about care of her patients, and delivering babies, she had to make choices about what was important. Her evidence was that she was often not able to reach Ronse. On cross examination, when the question was posed "Were you aware there would be a decision?", Patry replied "Yes".

Patry maintains that, in mid November, she was forced to "flee" her office given the harassing situation. She arranged to work at Dr. Buie's office and filed a change of address with the post office from her office on Yates Street to Dr. Buie's office on Pandora Street. Then, on December 5th her mother died; a copy of the bereavement notice was submitted in evidence. At the end of December she filed with the post office another change of address to that of her home.

Patry testified regarding difficulties with her mail. She submitted copies of two envelopes addressed to "Dr. Sheila Patry", stating the mailman took them back because the name was not hers. Neither of these envelopes indicated that they had been sent by the Employment Standards Offices. She recalled receiving Ronse's letters of August 24th, September 8th, and October 19th, but testified she did not receive his letters of November 16th and 30th nor the first and second Determinations. After her mother's death she was not in town, but staying in Vancouver and with friends; she was afraid to be at home. She returned to her home around April. She stated that during this period "anything that went to me by registered mail, I was advised not to pick up, if it was sent to me regular mail, it was forwarded to me." She submitted letters from her doctor dated January 15th and 24th, 1996 and one from another doctor dated January 18th; these refer to stressors in her life including her mother's death, that she was unable to work and that it would be advisable to defer any court appearances and legal correspondence. Ronse found it significant that the Determination was issued just a week before her doctors' letters were obtained. Patry stated she obtained the letters to inform the Courts.

Patry also submitted a letter dated April 12, 1996 from the post office confirming that mail addressed to her office at Yates Street had been held. It stated "I understand you were absent for some time and therefore unaware that not all of your mail was being forwarded to your new address". Ronse's response was that this letter addresses only the mail addressed to her office on Yates Street while the last Determination was sent also to her home address.

## ISSUE TO BE DECIDED

The issue to be decided is whether the time limit for requesting an appeal set out in section 112 of the *Act* should be extended.

## ARGUMENTS

Patry argued that her first awareness of the Determination was on February 14, 1996 when she was advised of the garnishee of her wages. She was dealing with the tragedy of her mother's death and the difficult office situation as discussed in evidence and was not able to receive registered mail. Further, her mail addressed to her office on Yates Street had been held.

Ronse argued that every reasonable effort had been made to contact Patry. Even further, when the first Determination was returned, a second Determination was issued and sent to her last known work and home addresses. He contended that the death of Patry's mother was not the issue before the Tribunal.

## ANALYSIS

Section 112(2) of the *Act* sets out the time periods for appealing a Determination. A person served with a Determination by registered mail has 15 days after the date of service to file their appeal. Section 109(b) provides the tribunal with the discretion to extend the time for requesting an appeal. In this case Patry appealed the Determination on February 27, 1996 after the deadline of February 1, 1996.

The onus for proving that the time period for appeal should be extended is on the appellant employer.

Patry requested an extension of the time limits for appeal claiming a decision had been made without her input, that she did not receive the Determination, and that she had to deal with the tragedy of her mother's death and a difficult office situation.

While Patry stated in her appeal that Ronse spoke only with the employee, with no notice or input from her, it is clear from the evidence that her input was sought on several occasions. Ronse's uncontradicted testimony was that meetings had been arranged with Patry on September 25th, September 29th, October 6th, October 19th, and November 4th, 1995 all of which Patry subsequently indicated she was unable attend. Subsequent to this, Ronse's evidence is that he made two more requests that Patry call him with her suggestions as to date, time and place for a meeting to which he received no acknowledgement. In addition, he testified that further letters were sent to Patry on November 16th and November 30th letting Patry know he was still available to meet with her, and that if he didn't hear from her by December 4th, a Determination would be issued in favour of the employees.

While Patry claims she did not receive Ronse's letters of November 16th and 30th, it is clear that, even before November 16th, Ronse went to considerable lengths to accommodate Patry's schedule and provided her ample opportunity to meet and provide her input from August 24th onwards. The Determination was issued only after several attempts to meet with her.

Although Patry maintained that she did not receive Ronse's letters of November 16 and 30th, nor the subsequent Determinations, her evidence was that she continued working at Dr. Buie's office until just prior to her mother's death on December 5, 1995. The evidence reveals that she knew complaints had been filed, that Ronse required further input from her, and that a decision on the matter would be made. However, there is no evidence that she advised Ronse of a change of address. Under the circumstances, I suggest that there was an onus on Patry to advise Ronse how she could be reached, and particularly since she maintained her mail had been stolen or intercepted. In any event, by law, an agency is entitled to rely on the last known address for service. Section 122 of the *Act* is explicit in this regard; it provides that a determination is deemed to have been served if sent by registered mail to the person's last known address. Copies of notices submitted in evidence illustrate that the Determination was deemed delivered in law.

Patry's evidence was that, given events occurring in her life at the time, she had to make an election about priorities and had to make choices about what was important. This was her decision. When advised of a complaint the employer has the option of disputing it or not. If an employer decides to dispute a complaint, clearly there is an obligation to give the matter sufficient priority. Complaints under the *Act* must be investigated and decisions made. It is desirable that disputes be resolved promptly and not be allowed to simmer.

It is in the interest of both employers and employees to have complaints dealt with promptly. Professor Mark Thompson discusses the need for time limits under the *Act* at pages 134 to 137 of his Report, "Rights and Responsibilities in a Changing Workplace. He reports that feedback from members of the community regarding the appeal system was almost unanimous. An important aspect of the advice received was that cases should be decided quickly. While discretion to extend the time limits is provided under the *Act*, in my view, such extensions should not be granted as a matter of course.

In this case, prior to issuance of the first Determination, delay in processing the complaints had already occurred. Based on the evidence before me, I attribute the delay to Patry's unavailability to attend meetings arranged and subsequently not contacting Ronse regarding how she could be reached. Considerable efforts to accommodate Patry's schedule had been made. When the first Determination was issued, more than 3 months had elapsed since Ronse's initial contact with Patry in August 1995.

Having attributed delay in having the matter processed expeditiously during the investigation stage to the employer, I am not satisfied that an even further delay should be incurred by an extension of the time limits for appeal.

**ORDER**

Pursuant to section 114 of the *Act*, the appeal is dismissed. The appeal has not been requested within the time limit set out in section 112. The appellant's request to extend the time period for requesting an appeal is denied.

After hearing evidence and argument on the time limits, I advised the parties at the hearing that I would reserve my ruling on the time limits, and, given the presence of several witnesses, would hear evidence on the merits. Given extensive evidence on the merits of Harwood's claim, there was insufficient time to hear evidence of Jovanovic's claim. I advised the parties that a subsequent date would be set to hear Jovanovic's claim only if a ruling was made to extend the time limits. Given that I've concluded that the time limits should not be extended, it is not necessary to set another hearing date for Jovanovic's complaint.

Pursuant to section 115 of the *Act*, I order that Determination # CDET 000695 be confirmed.

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**Genevieve Eden**  
**Adjudicator**  
**Employment Standards Tribunal**