

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

716318 Alberta Ltd., 537223 B.C. Ltd. operating as Dollar Rent A Car and
Allen Schwabe, Director/Officer of 716318 Alberta Ltd., 537223 B.C. Ltd.
operating as Dollar Rent A Car
("Dollar" and "Schwabe")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NOS.: 1999/76 and 1999/77

DATE OF DECISION: April 7, 1999

DECISION

OVERVIEW

This Decision addresses two appeals brought pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by 716318 Alberta Ltd., 537223 B.C. Ltd. operating as Dollar Rent A Car (“Dollar”) and Allen Schwabe, Director/Officer of 716318 Alberta Ltd., 537223 B.C. Ltd. operating as Dollar Rent A Car (“Schwabe”) of Determinations which were issued on January 15, 1999 against Dollar and Schwabe by a delegate of the Director of Employment Standards (the “Director”). In the Determination issued against Dollar, the Director found that Dollar had contravened Sections 18, 58(1)(a) and 63(1) of the *Act* in respect of the employment of Jamie Wilkinson, ordered Dollar to cease contravening the *Act* and to pay an amount of \$745.01. In the Determination issued against Schwabe, the Director found that Schwabe was a director or officer of Dollar, that he had contravened Sections 18, 58(1)(a) and 63(1) of the *Act* in respect of the employment of James Wilkinson, ordered him to cease contravening the *Act* and to pay an amount of \$745.01.

Dollar and Schwabe appeal the conclusion that Schwabe is a Director/Officer of Dollar.

ISSUES TO BE DECIDED

The first issue raised by these appeals is whether the Tribunal should exercise its discretion in favour of Dollar and Schwabe and extend the time limited for requesting an appeal under the *Act*. The second issue, in the event the Tribunal does extend the time limits, is whether Dollar and Schwabe have demonstrated the conclusion of the Director that Schwabe is a Director/Officer of Dollar is wrong.

FACTS

The facts relating to the timeliness issue are as follows:

1. On November 9, 1998, the delegate of the Director notified Schwabe in a letter of a complaint by James Wilkinson, a former employee of Dollar. The letter notes in part:

Based on the evidence from the Richmond Licencing Office and the B.C. Company Search, you were a Director or Officer of the company at the time these wages were earned or should have been paid.

2. The Director issued the Determination on January 15, 1999 and delivered it to Dollar and Schwabe. The Determination clearly states on its face that a party served with the

Determination may appeal to the Tribunal and that any appeal is required to be delivered to the Tribunal by February 8, 1999.

3. On January 20, 1999, Schwabe called the delegate of the Director to say he was not a Director/Officer of Dollar. On the same day, the delegate forwarded the information on file upon which the conclusion was made that Schwabe was a Director/Officer of Dollar.
4. Prior to the end of January, Schwabe again called the delegate and was told by her that if he disagreed with the Determination he had the right to appeal and that the deadline for appeal was set out in the Determination.
5. An appeal was delivered to the Tribunal on February 11, 1999.
6. The appeal noted:

I am late due to the fact I was ill for the previous four days. I was also under the impression I had 30 days to appeal.

ANALYSIS

There is an obligation on a person served with a Determination to exercise reasonable diligence in filing an appeal. There is a discretion vested in the Tribunal to extend the time limited for requesting an appeal:

109. (1) *In addition to its powers under section 108 and Part 13, the tribunal may*
- (b) *extend the time period for requesting an appeal even though the period has expired;*

The Tribunal has been reluctant to exercise this area of discretion unless there is a compelling explanation for the delay and there is no actual prejudice to any of the other parties affected by the Determination. The policy reasons for this approach are founded on the purposes stated in Section 2 of the *Act*, most specifically paragraph (d) which states:

2. *The purposes of this Act are to*
- (d) *provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act,*

In circumstances such as this, where the time limited for requesting the appeal has been missed by only a few days, some explanation is given for the delay and there is no apparent prejudice to any party, the Tribunal will be inclined to exercise its discretion in favour of the appellant if a preliminary analysis of the appeal material indicates to the Tribunal there is a fair question to be addressed.

No such fair question exists in this case. The documentary material relied upon by the Director in reaching the conclusion that Schwabe was a Director/Officer of Dollar is compelling and is not brought into doubt in any way by the material provided by Dollar or Schwabe in the appeal. It is noteworthy that Schwabe was advised in the November 9, 1998 letter from the delegate that there was evidence he was a director or officer of Dollar. As well, he had the material upon which the delegate relied in reaching her conclusion that he was a Director/Officer of Dollar for approximately 10 days before the appeal was filed. Yet at no time has any attempt been made by him to explain why that material should not have been accepted or relied on by the Director.

The Tribunal will not extend the time for requesting the appeals. The second issue does not need to be considered.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated November 13, 1998 be confirmed in the amount of \$745.01, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David Stevenson
Adjudicator
Employment Standards Tribunal