

An appeal

- by -

Majid Zargham
("Zargham")

- 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

TRIBUNAL MEMBER: Kenneth Wm. Thornicroft

FILE No.: 2004A/118

DATE OF DECISION: August 17, 2004

DECISION

INTRODUCTION

This is an appeal filed by Majid Zargham (“Zargham”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). Mr. Zargham appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on April 28th, 2004 (the “Determination”). The Determination was issued following an oral hearing held on April 22nd, 2004 and pursuant thereto Mr. Zargham was ordered to pay, in total, the sum \$2,358.07.

Mr. Zargham’s notice of appeal was filed with the Tribunal on June 30th, 2004. The appeal period expired as of the close of business on June 7th, 2004. Accordingly, since this appeal was filed some three weeks after the applicable appeal period expired [see section 112(3)], Mr. Zargham now applies, pursuant to section 109(1)(b) of the *Act*, for an order extending the appeal period.

These reasons for decision address only this latter application, although, as will be seen, I do not consider this appeal, in any event, to be meritorious and, accordingly, quite apart from the timeliness question, I would dismiss this appeal as being frivolous and/or vexatious [see section 114(1)(c) of the *Act*].

On August 10th, 2004 the Tribunal’s Vice-Chair advised the parties, by letter, that Mr. Zargham’s application for an extension of the appeal period would be adjudicated based solely on their written submissions. Previously, on July 6th, 2004, the Vice-Chair wrote to both Mr. Zargham and the respondent employee and requested that they file detailed submissions with respect to Mr. Zargham’s section 109(1)(b) application. I might add that the Vice-Chair’s July 6th letter provided significant guidance to the parties since it summarized the relevant considerations in an application such as this as developed by the Tribunal over the course of the last several years. Nevertheless, neither Mr. Zargham nor the respondent employee filed any material with the Tribunal. The Director’s delegate, by way of a submission filed July 8th, 2004, opposes Mr. Zargham’s application.

The only explanation for the late appeal given by Mr. Zargham was contained in his originating appeal notice: “I had family emergency which my mom was passed away so I left to Toronto to be with the family”.

In a one-page note, dated July 4th, 2004 and appended to Mr. Zargham’s appeal notice, Mr. Zargham clearly indicates that this latter explanation concerns Mr. Zargham’s failure to attend the April 22nd hearing before the delegate; this latter explanation does not, in any fashion, speak to why his *appeal* was not filed in a timely manner.

THE DETERMINATION

The Director’s delegate’s “Reasons for the Determination” indicate that Mr. Zargham was a roofing subcontractor engaged by a firm known as “Chisholm Roofing”. Mr. Zargham, in turn, employed Jason Skipper (“Skipper”) as a roofer during the period August 25th to 29th, 2003 at a wage rate of \$18 per hour.

As noted above, the Determination was issued following an oral hearing, however, as between the two parties, only Mr. Skipper attended that hearing. Although Mr. Zargham was given written notice of the

hearing date (forwarded by regular mail), he failed to attend the hearing or to otherwise notify the Employment Standards Branch as to the reason for his absence. I note that the Branch hearing officer delayed the hearing by some 30 minutes on the off chance that Mr. Zargham was delayed by traffic or some other reason.

The delegate also heard the oral testimony of another Branch officer who met with Mr. Zargham on March 18th, 2004. This latter officer testified that Mr. Zargham stated that he (Zargham) gave an envelope, containing Mr. Skipper's wages in cash, to another employee who, in turn, was supposed to give the envelope to Mr. Skipper. However, Mr. Skipper denied ever having received his wages and Mr. Zargham had no payroll records whatsoever to corroborate his statement that Mr. Skipper's wages were paid in cash.

In light of the foregoing, the delegate awarded Mr. Skipper \$858.07 in wages (including regular wages, overtime, concomitant vacation pay and section 88 interest). In addition, the delegate levied three separate \$500 monetary penalties given Mr. Zargham's contraventions of sections 18 (payment of wages), 40 (overtime) and 58 (vacation pay) of the *Act*. Thus, the total amount payable under the Determination was \$2,358.07.

FINDINGS AND ANALYSIS

The Application to Extend the Appeal Period

As noted above, although Mr. Zargham provided some sort of explanation regarding his nonattendance at the Branch hearing, he has not provided any explanation regarding his failure to file a timely appeal. In his July 4th memorandum appended to his appeal notice, Mr. Zargham noted that he traveled from Vancouver to Toronto one week before the scheduled Branch hearing (and apparently made no effort whatsoever to have that hearing adjourned) and returned to Vancouver three weeks after the hearing concluded. Accordingly, after Mr. Zargham returned to Vancouver (in about mid-May 2004) he still had over three weeks to file a timely appeal. Despite this latter circumstance, this appeal was not filed within the statutory appeal period and I have no explanation before me regarding his failure to file a timely appeal.

I do not find this to be an appropriate case to extend the appeal period due to the absence of an explanation coupled with the dubious merit of this appeal. I now briefly examine this latter matter.

Merits of the Appeal

Even if I were inclined to extend the appeal period, I would nonetheless summarily dismiss this appeal as being wholly without merit.

Mr. Zargham states in his appeal documents that he gave an envelope containing Mr. Skipper's wages, in cash, to another employee named "Robyn"; he concedes that he never paid the wages directly to Mr. Skipper. Mr. Skipper did not authorize the payment of his wages to a third person nor does Mr. Zargham have any payroll records documenting payment of Mr. Skipper's wages to anyone, let alone to Mr. Skipper. While an employer is entitled to pay wages in cash [section 20(a)], that payment must be made to the *employee* or their authorized agent. Further, all wage payments must be documented (sections 27 and 28).

Mr. Zargham asserts that he believes Mr. Skipper and “Robyn” were “trying to pull a scam on me”, however, that latter assertion is not supported by the slightest shred of evidence. The record before me does not indicate that any of the statutory grounds of appeal have been satisfied in this case; there is no obvious error of law; the appellant did not attend the Branch hearing, however, he admits he was aware of the hearing but made no effort whatever to have it adjourned or to participate by teleconference; Mr. Zargham has not submitted any “new evidence”. Even if I extended the appeal period, I would, in any event, dismiss this appeal pursuant to section 114(1)(c) of the *Act*.

ORDER

Mr. Zargham’s application to extend the appeal period, made pursuant to section 109(1)(b) of the *Act*, is **refused**.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal