

An appeal

- by -

John Vekeman
("Vekeman")

- 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

ADJUDICATOR: William Reeve

FILE No.: 2003A/087

DATE OF DECISION: May 6, 2003

DECISION

OVERVIEW

This is an appeal by Mr. John Vekeman (“Vekeman”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued by the Director of Employment Standards (the “Director”) on February 6, 2003. The Determination found that Vekeman owed \$3,120.69 to employee Iveta Kucharik (“Kucharik”). The amount included regular wages, vacation pay and interest. The deadline for appeal was February 27, 2003. The appeal, dated March 19, 2003, was received by the Tribunal on that date. The appeal contained an explanation as to why the appeal was filed late. The implication of filing a late appeal with reasons why it was late is that the Appellant is requesting an extension of the deadline for appeal.

This decision is made based on the written submissions of the parties.

ISSUE

The only issue to be addressed in this decision is whether the Tribunal should extend the deadline for requesting an appeal in accordance with the powers of the Tribunal under section 109(1)(b) of the *Act*.

EVIDENCE and ARGUMENT

On the March 19, 2003 appeal form Vekeman stated, “Their was a mistake to where to send these appeal form.” Attached to the appeal was a letter from the Delegate of the Director. It is dated March 13, 2003. In the letter the Delegate states, “Although you appear to have sent my office a copy of a form appealing this Determination, the appeal was never filed with the Tribunal.”

In response to the appeal Kucharik stated, in a letter dated March 7, 2003, “I oppose the extension of the appeal deadline that you are considering for Mr. Vekeman.” She went on later in the letter to state, “...Mr. Vekeman.... had no misunderstanding of what was required to appeal he simply failed to do it and now he wants to put everybody to the futile effort of a groundless appeal.” Later she said,

“I submit that this appeal is just a delaying tactic

“I am not aware of any intention to appeal, Mr Vekeman never expressed to me any intention to appeal.

“Mr. Vekeman asks to submit new evidence but he doesn’t say what that new evidence is. I can’t imagine what new evidence he could bring that would change the outcome. The Appeal Application says he is not challenging the facts or how the law was applied.”

Kucharik made extensive further arguments concerning what she saw as the lack of a good reason why the appeal was late, the absence of a good case and the difficulties and adverse effects on her interests of extending the appeal deadline.

The Director’s Delegate, in a submission dated April 4, 2003, stated that “It is clear that Mr. Vekeman intended to file an appeal but he did not send the Tribunal a copy of that appeal. He filed a copy with the

Director of Employment Standards within the required time period. He did not file a copy with the Tribunal until I advised him that he had failed to file his appeal correctly....”

The Tribunal received a letter from Mr. Rob Knutson. It is dated April 25, 2003 and was evidently solicited by Mr. Vekeman. Mr. Knutson is apparently the operator of a business for which Mr. Vekeman contracted to provide services. The letter outlines deficiencies in the performance of the work done by both Mr. Vekeman and his employees including Kucharik. The letter does not appear to contain anything that might be expected to change the conclusion reached by the Delegate in the Determination.

THE FACTS AND ANALYSIS

The *Act* imposes an appeal deadline to ensure that appeals are dealt with promptly. This is consistent with one of the purposes of the *Act*, which is to provide fair and efficient procedures for resolving disputes. Under section 109(1)(b) of the *Act*, the Tribunal can extend the time for requesting an appeal, even though the appeal period has expired.

The Tribunal does not grant extensions automatically but it may extend a time limit if there are compelling reasons to do so. To help it decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. They are the following:

1. is there a good reason why the appeal could not be filed before the deadline;
2. was there an unreasonable delay in appealing;
3. did the appellant always intend to appeal the determination;
4. were the other parties aware of the intent to appeal;
5. is an extension of the appeal deadline harmful to the interests of the respondent; and
6. does the Appellant have a strong case that might succeed if an extension were granted.

In the present matter no convincing reason has been advanced as to why the appeal could not be filed by the deadline. The reason the appeal was not filed within the time limit seems to be that Vekeman submitted an appeal to the office of the Director’s Delegate but, for some reason, failed to file it with the Tribunal. The appeal form in use at the time states at the top of the first page,

“This Appeal Form must be delivered to the office of the Tribunal by the deadline for appeal as stated on the Determination.”

Only after the expiry of the appeal deadline, when collection action was commenced by the Delegate, did Vekeman correct his omission and file an appeal with the Tribunal.

As a result of these circumstances the appeal was received by the Tribunal almost six weeks after the Decision was issued and over two weeks after the expiry of the deadline for appeal. In the absence of a good reason why the appeal could not be filed earlier this delay could be considered as unreasonable.

The fact that Vekeman filed some form of appeal with the office of the Delegate within the time limit leads to the conclusion that he did intend to utilize the appeal process. The Delegate was aware of this intention even if the Respondent, Kucharik, was not.

Kucharik makes a good case that extension of the deadline is harmful to her interests.

It is clear that Vekeman does not have a strong case that might succeed if an extension were granted. No evidence has been produced that would cast doubt on the calculations of the Delegate as to wages owed, nor has Vekeman taken advantage of the earlier opportunities that he was given to produce such evidence. The evidence that neither Vekeman nor his employees performed their duties as well as expected is not relevant to the question of whether Vekeman owes the wages determined to be owing.

After considering all the submissions and the criteria listed above, two issues are particularly significant. First, the onus is on the party filing an appeal to meet the requirements of the *Act* including filing within the deadline, in the correct form and with the correct agency. Vekeman failed to meet these minimal requirements and has not provided a compelling argument or evidence that would explain and justify this failure. Second, there is the issue of whether Vekeman has a strong case. Nothing has been submitted that would cast doubt on the correctness of the Determination.

In these circumstances it cannot be said that a compelling reason exists to extend the deadline, therefore I decline to do so.

ORDER

The request to extend the time period allowed for making an appeal is denied. The appeal is dismissed pursuant to section 114(1) of the *Act*. Pursuant to section 115(1) of the *Act* the determination dated February 6, 2003 is confirmed.

William Reeve
Adjudicator
Employment Standards Tribunal