

An appeal

- by -

Coreen French
("French or Employee")

- 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: Paul E. Love

FILE No.: 2001/91

DATE OF DECISION: April 2, 2001

DECISION

OVERVIEW

This is an application by Coreen French (the “employee”) to extend time to permit the filing of a late appeal. The deadline for filing the appeal was December 5, 2000. The employee filed her appeal as a “cross-appeal” after learning that the employer filed an appeal of the Determination. The cross-appeal did not identify any errors in the Determination related to findings concerning Ms. French’s employment. The employee advanced no reasonable excuse for the late filing of the appeal. I dismissed the application for an extension of time as there was no bona fide intention to appeal within the appeal period, there was no reasonable explanation for the delay in appealing, and the appeal was a frivolous appeal. Further, I am concerned that “cross-appeals” should not be permitted, as this is a procedure which is not provided for in the *Employment Standards Act* (the “Act”), and if granted, may tend to encourage frivolous and vexatious appeals.

FACTS

This is an application by the employee, Coreen French for extension of time to file an appeal. The Determination in this matter was issued on December 5, 2000 in the amount of \$328.14 for wages and interest in the amount of \$24.80. The deadline for the filing of the appeal was December 29, 2000. The appeal was filed on January 25, 2001 and is filed outside the 15 day time limit provided in s. 112(2) of the *Act*. The appeal was filed by Ms. French in response to an appeal filed by the employer.

The reason advanced for the late filing of the appeal is set out below:

This cross appeal is late because the ICBC involvement prompted me to get legal advise first. John Dafoe told me that Nancy was appealing so Cori & I let nancy get the paperwork going (sic)

This document was prepared by Mr. French, and submitted to the Tribunal in Tribunal File number 2001/90, in an appeal of a separate Determination issued on December 5, 2000. The appellant filed a further written submission on March 22, 2001, but this submission does not address the issue of why the appeal was filed late.

Ms. French was hired as a “detailer” by the employer, Al’s Custom Autobody Ltd. who operated an auto body repair shop in Smithers. Ms. French worked from September 3, 1999 to November 1, 1999 at an hourly rate of \$7.15. Ms. French’s hours were set out on time cards, punched by a time clock. The accuracy of the records was not in issue before the Delegate. Mr. French and Mrs. French along with their children moved from Nakusp to Smithers, so that Mr. French could

take up employment with the employer. Subsequent to Mr. French commencing employment, the employer also offered work to Ms. French.

The Delegate allowed a claim by Ms. French for overtime wages, regular wages and annual vacation pay, and found that the employer breached the *Act* by failing to pay these amounts to Ms. French. The Delegate also found that the employer made deductions from Ms. French's wages which were not permitted by section 21 of the *Act*. The deductions made related to moving expenses for moving from Nakusp to Smithers, for Mr. and Mrs. French to take up employment with the employer.

Ms. French filed 7 pages of "Reasons for Cross Appealing" plus supporting attachments. I have reviewed carefully the "Reasons for Cross Appealing", and find that the submission does not disclose any allegation of an error by the Delegate in findings made in respect of the claims advanced by Ms. French. Ms. French also supports a "cross appeal" filed by her husband wherein he claims that the Delegate erred in failing to find that the employer misrepresented to him, material terms and conditions of employment including availability of work, among other alleged errors.

The employer opposes the late filing of the appeal on the basis that there was no good reason for the late filing of the appeal, that the appellant did not form any intention to appeal until she saw the employer's appeal, and that if the time extension is granted the employee will be permitted to "confuse the issues in the determination". The Delegate also opposes an extension to permit the late filing of the appeal because no reason has been advanced by the appellant for the late filing, that there was no bona fide intention to file within the appeal period, that the evidence sought to be provided on appeal should have been provided at the time of the investigation.

ISSUE:

Should the Tribunal grant an extension of time to the employer to file this appeal?

ANALYSIS

The *Act* provides, in section 114(1) that the Tribunal may dismiss an appeal, without a hearing, if the Tribunal is satisfied that the appeal was not requested within the time limits provided, the appeal is not within the Tribunal's jurisdiction, or if the appeal is frivolous, vexatious, or not brought in good faith. I also have the power to extend the time for the filing of an appeal, to permit a late filing of the appeal, pursuant to s. 109(1)(b) of the *Act*.

In determining whether to grant an extension of time, I must consider whether the appellant formed the intention to appeal within the appeal period, that the appellant has a reasonable excuse for failing to file the appeal within the time limits set out in the Determination and that there is no prejudice to the respondent from the late filing of the appeal. I must also consider whether the appeal contains sufficient merit. The degree of merit required is that necessary to

raise a serious issue. The burden rests on the appellant to persuade me that there are compelling reasons to grant an extension of time to file an appeal.

I am not satisfied that the appellant formed any intention to appeal the determination within the appeal period. Further, the appellant has not advanced any reasonable excuse for failing to file the appeal within the time limit set forth in the *Act*. I am satisfied that the appellant filed this appeal because the employer filed an appeal.

I am concerned with the policy implications of permitting an extension of time for the appellant to file, what she has referred to as a “cross appeal”. The *Act* does not provide for cross appeals, it provides an appeal scheme which provides a time limit for the parties to consider the Determination and file an appeal. The *Act* is designed to provide an inexpensive, and efficient procedure to resolve employment standards issues. Both parties have in essence, a fairly short period in which to consider the Determination and form an intention to appeal, and submit an appeal. A policy which allows an appellant to chose to file an appeal only to file an appeal after first seeing if the other party appeals, may encourage frivolous and vexatious use of the appeal process.

This appeal is a “frivolous” appeal, within the meaning of s. 114(1)(c) as it discloses no error in the Determination, as it relates to findings made by the Delegate in respect of Ms. French’s employment. As a frivolous appeal, it has no prospect of success.

For all the above reasons, I therefore refuse to allow the late filing of the appeal.

ORDER

Pursuant to section 114(a) and (c) of the *Act*, I dismiss Coreen French’s application to extend time for the filing of this appeal.

PAUL E. LOVE

Paul E. Love
Adjudicator
Employment Standards Tribunal