

An appeal

- by -

Andrew Bower operating as DirtBusters
(“Bower”)

- 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/132

DATE OF DECISION: September 15, 2004

section 109(1)(b) applications and requested that the parties' submissions be filed by no later than August 13th, 2004.

The only submission filed in response to the Vice-Chair's July 22nd letter is a submission, dated August 16th, 2004, filed by the Director's delegate. The Director's delegate opposes Mr. Bower's application for an extension of the appeal period.

ANALYSIS AND FINDINGS

Summary dismissal pursuant to section 114(1)(c)

The Determination was issued following an oral hearing before the delegate that took place on November 20th, 2003. Although Mr. Eldridge attended this latter hearing, Mr. Bower did not.

Mr. Eldridge claimed that Mr. Bower employed him as a carpet cleaner and telephone sales representative during the period March 31st to July 6th, 2003. The delegate found Mr. Eldridge's testimony to be reliable and that he had a valid unpaid wage claim. I note that Mr. Eldridge conceded having been paid for certain work; he also conceded that he and Mr. Bower were roommates for a 2-month period—a situation that apparently ended acrimoniously.

In his "Reasons for the Determination", the delegate summarized Mr. Bower's steadfast efforts to avoid any and all attempts by the Employment Standards Branch to involve him in their adjudicative process. Mr. Bower refused to attend a mediation session. The notice of hearing was forwarded to him by registered mail on two separate occasions, however, one notice was unclaimed and the second was refused. The delegate delayed the commencement of the hearing by some 30 minutes and attempted to reach Mr. Bower by telephone, without success, before commencing the hearing. After the hearing concluded, Mr. Bower telephoned the delegate claiming he never received the hearing notices (this assertion may have been technically correct but that circumstance was entirely due to his own neglect) and that Branch staff were "lying" regarding the Branch's attempts to contact him.

Quite apart from the timeliness issue, I consider this appeal to have virtually no reasonable prospects of success. Mr. Bower's appeal is predicated on the ground that he has "new evidence" but he has not provided the Tribunal with *any* evidence that would call into question the correctness of the Determination.

Mr. Bower says that Mr. Eldridge "was never [an] employee" but that assertion seems highly problematic in that Mr. Bower actually paid Mr. Eldridge some wages.

Even if Mr. Bower did have some relevant evidence to tender to the Tribunal (for example, relating to the true relationship between Bower and Eldridge), it is clear that he could have provided this evidence to the Branch (for example, by mail or telephone) prior to the hearing. As for the delegate's hearing, Mr. Bower could have made arrangements to attend that hearing by teleconference if he was truly unable to attend in person (and, I might add, that latter assertion is wholly unsupported by anything in the record before me).

I consider this appeal to be frivolous and vexatious and even if I were inclined to extend the appeal period this appeal would, in all likelihood, be summarily dismissed pursuant to section 114(1)(c) of the *Act*. I now turn directly to the section 109(1)(b) application.

The timeliness of the appeal

The Tribunal's 2-page appeal form contains a separate section (numbered 7 on the form) directing an appellant to explain why their appeal is late if it will be filed after the appeal period has expired (as noted above, the last day for filing an appeal is set out in a notice in the Determination). Mr. Bower did not complete section 7 of the appeal form although it should have been obvious to him that his appeal would be untimely.

Mr. Bower did append a one-paragraph typed note to his appeal form. In this note, Mr. Bower states that he suffers from "agrophobia" [sic, agoraphobia?] and that Mr. Eldridge "was never a [sic] employee but my roommate for 2 months" before Mr. Bower "kicked Eldridge out". There is absolutely nothing in Mr. Bower's note explaining why his appeal was not filed within the statutory time limit. As noted above, Mr. Bower did not file any other submission regarding his late appeal although expressly invited to do by way of the Vice-Chair's July 22nd letter.

Further, it would seem that Mr. Bower was motivated to file an appeal only after the Branch commenced proceedings to enforce the Determination. The Employment Standards Branch filed a "writ of seizure and sale" in the Supreme Court of British Columbia on May 13th, 2004. This writ was subsequently served on Mr. Bower and, according to Mr. Bower, he then filed his appeal *the very next day after having been served with the writ*. Clearly, Mr. Bower did everything he could to avoid having to deal with Mr. Eldridge or the Branch and it was only when he was faced with judicial enforcement proceedings that he was motivated (and he then moved with great dispatch) to finally respond in some formal way to Mr. Eldridge's complaint.

I am not satisfied that Mr. Bower has put forth a reasonable justification for his tardy appeal. I consider Mr. Bower's appeal to be wholly devoid of merit. In my view, allowing this appeal to go forward would make a mockery of the Tribunal's mandate (set out in section 2 *Act*) to ensure that disputes are resolved in a fair and efficient manner that is fair to all parties.

In light of the foregoing, I would dismiss the application for an extension of the appeal period.

ORDER

Mr. Bower'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