

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 -

Clive Corfield
(" Corfield ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: C.L. Roberts

FILE No.: 2000/116

DATE OF DECISION: April 20, 2000

DECISION

This is a decision based on written submissions by Clive Corfield ("Corfield"), Julie Brassington for the Director of Employment Standards, and Joe C. da Ponte, for Tri Durante Industries.

OVERVIEW

Corfield filed a complaint against Tri Durante Industries with the Employment Standards Branch claiming compensation for length of service. Following an investigation of the complaint, a delegate of Director of Employment Standards ("the Director") determined that Corfield was not owed compensation. On January 27, 2000, the Director's delegate advised the parties of this decision, and closed the file.

On February 25, the Tribunal received Corfield's notice of appeal of the Determination. The Registrar advised Corfield that the appeal was past the deadline for the receipt of an appeal. She noted that Corfield acknowledged that the appeal had been filed past the deadline, but did not provide adequate reasons why that was so. Corfield was given the opportunity to provide those reasons by March 6, 2000.

ISSUE TO BE DECIDED

Whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* and allow the appeal even though the time period for seeking an appeal has expired.

ARGUMENT

In his appeal letter, Corfield stated that he had recently encountered family problems that prevented him from filing the appeal earlier. He said that he had to care for his sister and mother, as well as be a single parent for his two daughters. In a further submission received March 24, Corfield offered his opinion that being three days late in filing the appeal was not a big issue, and that his family came first.

The Director's delegate argued that the Tribunal should not consider the late appeal. She contends that the Determination was received by February 2, and that Corfield had 19 calendar days to complete and submit the appeal. She contended that there were no legitimate grounds for extending the time.

Mr. de Ponte also argued that the Tribunal should not consider the late appeal, suggesting that there was no point in having the *Act* if it was going to be ignored.

ANALYSIS

Section 112 of the *Act* provides that a person served with a determination may appeal the determination by delivering a written request to do so, with reasons for the appeal, to the Tribunal within 15 days of service, if served by registered mail, or 8 days after service, if served personally.

Section 109(1)(b) provides that the Tribunal may extend the time for requesting an appeal even though the time period has expired.

In *Niemisto* (EST#D099/96), the Tribunal set out criteria for the exercise of discretion extending the time to appeal. Those are that the party seeking an extension must satisfy the Tribunal that:

- (1) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
- (2) there has been a genuine, ongoing *bona fide* intention to appeal the determination;
- (3) the respondent party as well as the director has been made aware of this intention;
- (4) the respondent party will not be unduly prejudiced by the granting of an extension; and
- (5) there is a strong *prima facie* case in favour of the appellant.

Furthermore, extensions will only be granted where there are compelling reasons present (*Moen and Sagh Contracting Ltd.*) BC EST #D298/96.)

Having reviewed Corfield's submissions, I decline to extend the time in which he may file an appeal.

In *Hnidan* (BC EST#D025/98), the employee filed his appeal one week out of time because, he stated, he had cancer and was under considerable stress. The Tribunal denied the extension request, finding that the employee could have contacted the Tribunal and sought an extension. While Corfield may be similarly burdened by personal matters, there is no explanation of why he did not contact the Tribunal to seek an extension. There was, additionally, no explanation of why Corfield was unable to file the appeal on time, other than that he placed his family first. I find little to distinguish this case from that of *Hnidan*.

Further, I find no strong *prima facie* case in Corfield's favor.

CONCLUSION

Pursuant to Section 114 of the *Act*, I decline to grant Corfield's application to extend the time for filing an appeal.

Carol Roberts
Adjudicator
Employment Standards Tribunal