



An appeal

- by -

United Used Auto & Truck Parts Ltd.
("United or employer")

- 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.: 2001/29

DATE OF DECISION: April 23, 2001

DECISION

OVERVIEW

In this decision I consider whether United Used Auto & Truck Parts Ltd. (the “employer” or “United”) should be granted a time extension to file a late appeal of a Determination issued by a Delegate of the Director of Employment Standards. The Determination in this matter was issued on October 20, 2000 in favour of a number of employees in the amount of \$261,199.39, inclusive of interest. The time deadline for the filing of the appeal was November 14, 2000. The company did not file an appeal. The company apparently went bankrupt at some point in time after the issuance of the determination. The Trustee in Bankruptcy did not file an appeal.

The appeal in this matter was filed by Julien Dawson on behalf of the employer on December 27, 2000. After the appeal was filed, the appellant, Julien Dawson, was advised by the Vice Chair of the Tribunal that the appeal was filed late, and that the Tribunal had authority to extend the time for filing an appeal. The parties were asked to provide submissions and information to the Tribunal so that the Tribunal could decide whether to extend the appeal deadline. No submission was received from Mr. Dawson, or from the Company. The appeal was dismissed as a late appeal.

Further, there was no evidence before me that Mr. Dawson was an officer or director of the company, a person served with the Determination, or a person authorized by the Trustee in Bankruptcy to file an appeal.

I dismissed this matter on the basis of timeliness, that the appeal was frivolous, and on an alternate basis that the appellant Mr. Dawson did not have any standing to file the appeal.

FACTS

I am treating this matter as an application to extend time for the filing of an appeal by United Used Auto & Truck Parts Ltd. (the “employer” or “United”). This application was decided upon the written submissions, filed by the parties. The Determination in this matter was issued on October 20, 2000 in favour of a number of employees in the amount of \$261,199.39, inclusive of interest. The Delegate found that the employer had not paid wages owing at the date of service, compensation for length of service, union dues or pension contributions. The amounts were owing to Colin W. Beck, Terrence Coates, Edward Couture, Donald Harold Eckel, Gordon W.J. Gibson, Gordon W. Gilbert, Howard R. Henderson, Laura L. King, Jeff B. Levinsky, David R. Parker, Jeff B. Podskalny, Morrie Roegele, Charles D. Ruzich, Barry C. Scriver, Alan G. Chirley, Frank Spear, Andreas W. Tielen, Einar A. Vennberg, Robert J. Ward, Anne Murney and Bonita Wilson. It is unnecessary for the purposes of this application to set forth the entitlement of each employee.

The time deadline for the filing of the appeal was November 14, 2000. The company did not file an appeal. The company apparently made an assignment into bankruptcy at some point in time

after the issuance of the determination. The Trustee in Bankruptcy, Price Waterhouse Coopers Inc. did not file an appeal. There are no particulars of the date of the bankruptcy before me. The Director's submission alleges an assignment into bankruptcy by United.

The appeal in this matter was filed by Julien Dawson on December 27, 2000. There is no evidence before me of Mr. Dawson's connection to the employer, directors or officers of the company. There was no evidence before me that Mr. Dawson was authorized to proceed with the appeal by the Trustee in Bankruptcy. Mr. Dawson advanced a number of grounds for an appeal including the following:

1. The Director failed to comply with the principles of natural justice in rendering the Determinations;
2. The Director fettered her discretion in failing to take into account relevant circumstances such as the solvency of the Appellant company;
3. The Director erred in her determination that the Appellant company had not paid the complainant's wages;
4. The Director's calculation of the monies owed by the Appellants was patently unreasonable and mathematically incorrect. As a result the Appellants seek a new hearing before a different Adjudicator.

I note that no particulars are offered, and no evidence was attached to the notice of appeal in support of the allegations. The appellant advance reasons for making the appeal, which again were unsupported by particulars and evidence.

Under reasons for appeal, the appellant referred to a bankruptcy which occurred subsequent to the issuance of the determination.

The appellant characterized the facts in disputes as follows:

The Director erred in determining the monies owing by the Appellants, and in characterizing the monies that the Appellant company had paid to its employees, By its own account, in its Determination dated December 14, 2000 the Director has erred in the tabulation of these figures and, as a result, the Appellants request that there be a full and proper accounting.

I note that no particulars are offered and no evidence was attached to the notice of appeal in support of these allegations.

The remedy sought was cancellation or in the alternative variation of the October 20, 2000, December 1, 2000 and December 14, 2000 determinations from the Tribunal. I note that the only Determination attached to the appeal was the Determination dated October 20, 2000.

On January 9, 2001, the Tribunal issued a letter to Julien Dawson and the employer indicating that the appeal period had expired, and informed these parties of the right to apply to extend time pursuant to section 109(1)(b) of the *Act*. The appellant did not file an application to extend time

or provide any reasons for the late appeal. The Tribunal did receive submissions from the Delegate and a number of employees.

ISSUE:

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

ANALYSIS

This case is somewhat unusual, as there is no application before me by the person filing the appeal to extend the time for the filing of the appeal which was not filed within the prescribed time limit. I have, however, received submissions from the Director, and a number of employees. I will therefore treat this matter as an application for an extension of time, as the Vice Chair of the Tribunal wrote to Julien Dawson and the employer on January 9, 2001 indicating that the Tribunal would consider whether to extend the deadline and accept the late appeal.

In determining whether to grant an extension of time, I must consider the following issues:

- Did the appellant form the intention to appeal within the appeal period?
- Does the appellant has a reasonable excuse for failing to file the appeal within the time limits set out in the Determination?
- Is there any prejudice to the respondent from the late filing of the appeal?
- Is there is a “strong prima facie case” or a serious issue on the merits?

I must bear in mind the unique factors of this case, and the purposes of this *Act*, which include fair and efficient procedures for resolving disputes under the *Act*.

I note that in reviewing this matter, there is no information before me from which I can conclude that the appellant formed any intention to appeal this matter within the appeal period. The appellant advances no reason for the delay in this matter. The appellant has filed bare allegations, without any supporting details. I conclude on the basis, of the information before me, that this appeal has little chance of success. The bare allegations lead me to the view that this is a frivolous and vexatious appeal: *Rhein, BCEST #D561/97 (Collingwood)*. The Delegate found that a substantial amount was owing by the company to employees for unpaid wages, compensation for length of service, and for unpaid union due contributions, and unpaid pension contributions. The employees have not been paid since July 29, 2000, and in the meantime the employer is in bankruptcy. In light of the limited prospects for a successful appeal, I find that there is substantial prejudice to the employees from letting this frivolous matter go forward. I dismiss this matter on the basis that the appeal was not filed within the time limit set out in the *Act*, and it is a frivolous appeal.

I note that if I did not dismiss this application on the basis of lateness and frivolous appeal, as a separate reason for dismissing this application I would dismiss this appeal on the basis of standing. Section 112 of the *Act*, provides that a person served with a determination may appeal the Determination. There is no evidence before that Julien Dawson is an officer or director of the company, or a person authorized by the Trustee in Bankruptcy to file an appeal of the Determination. Mr. Dawson has no standing or entitlement to file an appeal.

The Director refers to the decision of the Tribunal, *Re Fyfe, BC EST #D080/00*, where the Tribunal stated:

Section 71(2) of the Federal Bankruptcy and Insolvency Act states that: "on an assignment [into bankruptcy], bankrupt has ceases to have any capacity to dispose of or otherwise deal with his property, which shall, subject to this Act and to the rights of secured creditors, forthwith pass and vest in the trustee named in the . . . assignment." The trustee in turn is given wide authority to deal with the bankrupt's property. For example, the trustee may, with the permission of the inspectors 'bring, institute or defend any action or other legal proceeding relating to the property of the bankruptcy [see s. 30(1)(d)]. Thus, on bankruptcy, the bankrupt's property (subject to certain conditions that have no application in this case) vests in the trustee who is given, for the most part, exclusive authority to deal with that property. Accordingly, Canadian Neon does not have the legal authority to appeal the Determination as that right lies solely with Canadian Neon's licensed trustee - in this case, KPMG Inc. Whether Fyfe filed this appeal in his personal capacity, or as an agent of Canadian Neon, the same result holds: the appeal is simply not properly before the Tribunal and thus this appeal is dismissed.

I accept the reasoning in *Fyfe*, and as an alternative basis, dismiss this appeal on the basis of lack of standing to file the appeal, pursuant to s. 114(1)(b) of the *Act*.

ORDER

Pursuant to section 109(1)(b) of the *Act*, I do not extend the time for the employer to file the appeal. I dismiss this appeal pursuant to s. 114(1)(a) (b) and (c) of the *Act*. Pursuant to s. 115 of the *Act* I order that the Determination dated October 20, 2000 is confirmed.

PAUL E. LOVE

Paul E. Love
Adjudicator
Employment Standards Tribunal