



An appeal

- by -

Chris J. Bespalko dba Iron Works
("Bespalko")

- 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: M. Gwendolynne Taylor

FILE No.: 2001/54

DATE OF DECISION: April 26, 2001

DECISION

SUBMISSIONS:

For the Employer

Chris J. Bespalko (“Bespalko”)

For the Director

Rene Peloquin (“Director”)

OVERVIEW

The Director of Employment Standards (the “Director”) issued a Determination against Bespalko, operating as Ironworks, on December 1, 2000. This Determination awarded Bill Evans (“Evans”) \$711.36, plus interest, for termination pay and vacation pay. The Director found that Bespalko had fired Evans, without notice.

The Director sent the Determination by Registered Mail on December 1, 2000, which Bespalko says he did not receive. Canada Post records show that delivery was refused. The Director issued a Third Party Demand Notice to Mr. Bespalko’s bank on December 28, 2000. Bespalko submitted that he did not receive notice of a registered mail letter. The first he was aware of the Determination was when his bank contacted him. Also on December 28, the Director faxed a copy of the Determination to Bespalko.

Bespalko filed this appeal on January 9, 2001. The deadline for filing the appeal was December 24, 2000.

In a submission to the Director dated November 13, 2000, Bespalko indicated that he would continue to fight this claim on principle and that he would do everything legally possible to prevent Evans from extorting money from Bespalko.

ISSUE

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.

PRINCIPLES FOR EXTENDING AN APPEAL DEADLINE

The purpose of the *Employment Standards Act* (the “*Act*”) under section 2(d) is “to provide fair and efficient procedures for resolving disputes”. The *Act* imposes an appeal deadline to ensure appeals are dealt with promptly. The Tribunal requires parties to file their own appeals even if this means multiple appeals from one Determination.

Under section 109(1)(b) of the Act, the Tribunal can extend the time for requesting an appeal if there are compelling reasons. To decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria which Appellants must satisfy:

- (1) there is a good reason they could not appeal before the deadline;
- (2) there is not an unreasonably long delay in appealing;
- (3) they always intended to appeal the Determination;
- (4) the other parties (the respondent and the Director) are aware of the intent to appeal;
- (5) the respondent will not be harmed by an extension; and
- (6) they have a strong case that might succeed, if they get an extension.

THE FACTS AND ANALYSIS

Bespalko operates Ironworks, an iron fabrication and installation business. Evans worked as labourer, at the rate of \$12.00 per hour, for Ironworks from March 1999 to March 24, 2000. Evans filed his claim with the Director on July 31, 2000.

The issue before the Director was whether Evans was fired, laid off, or voluntarily left the employment.

ANALYSIS

- (1) Bespalko claims not to have had notice of a registered letter. He claims to have first received notice of the Determination on December 28. I have no reason to doubt the veracity of this claim.
- (2) I find that Bespalko filed the appeal in a timely manner.
- (3) Bespalko was clear in the letter of November 13, 2000, that he would appeal any adverse determination.
- (4) Evans would have been informed of the correspondence on the file, through the Employment Standards Tribunal.
- (5) If an extension is granted, Evans may have to prepare for another hearing and will continue to be at risk of an adverse monetary award.
- (6) Based on the information on file, I am of the view that the issue here is Bespalko's and Evans' credibility. There is nothing in the facts that leads me inescapably to the conclusion that Bespalko should not be believed. If he is believed, he has strong case that might succeed at hearing.

ORDER

The Tribunal extends the time to file the appeal.

M. GWENDOLYNNE TAYLOR

**M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal**