



An appeal

- by -

Randy & Laura Saueracker op. as RALA Associates
("RALA")

- 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: April D. Katz

FILE No.: 2001/21

DATE OF DECISION: April 26, 2001

DECISION

SUBMISSIONS:

Randy Saueracker and Laura Saueracker on behalf Randy Saueracker and Laura Saueracker
operating as RALA Associates.

Robert Turner on behalf of the Director

OVERVIEW

The Director of Employment Standards (the "Director") issued a Determination against Randy Saueracker and Laura Saueracker operating as RALA Associates ("RALA") on November 17, 2000 based on a complaint filed by James H. DeJong ("DeJong").

The appeal deadline was December 11, 2000. RALA's appeal was received on December 21, 2000.

ISSUE - TIMELINESS OF APPEAL

The Tribunal must decide whether to extend the appeal deadline from December 11, 2000 to December 21, 2000 and this decision deals only with that issue.

PRINCIPLES FOR EXTENDING AN APPEAL DEADLINE

The Tribunal has been asked to extend the time to file an appeal on many occasions. In each case the Tribunal is mindful of 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. Under section 109(1)(b) of the Act, the Tribunal may extend the time for requesting an appeal, even though the appeal period has expired.

The Tribunal must assess an appeal and ensure that there are compelling reasons to extend a time limit. Recently the Tribunal set out the six criteria for determining timeliness of appeals based on previous cases in Bravo Cucina Restaurante Italiano Ltd. BC EST #D343/00.

"Appellants who are seeking a time extension for an appeal, should satisfy the Tribunal on balance that:

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."

FACTS

RALA is resident in Edmonton, Alberta. RALA provides trained staff to perform air craft maintenance in Alberta and British Columbia. DeJong was employed by RALA in Edmonton to do work on a contract in Kelowna, BC as a sheet metal technician. DeJong required extensive help to pay his bills and relocate to Kelowna for work. RALA assisted him financially and agreed to pay his costs until RALA could be repaid from DeJong's earnings. DeJong started on September 9, 1999 and his employment ended on September 22, 1999.

RALA recovered the costs of sending and maintaining DeJong from his pay cheque for the two weeks employment. DeJong received no salary after statutory deductions. DeJong filed a complaint with the Director in the Kelowna office. There was a jurisdictional dispute between Alberta and British Columbia. The Director took jurisdiction and applied the *Employment Standards Act* ("Act") of British Columbia. RALA obtained a ruling in RALA's favour from the Alberta office of Employment Standards.

On November 17, 2000 the Delegate mailed the Determination to RALA in Edmonton. The Determination was received on December 1, 2000. At the conclusion of the Determinations the following appears.

"Appeal Information

Any person served with this Determination may appeal it to the Employment Standards Tribunal. The appeal must be delivered to the Tribunals not later than 4:30 on December 11, 2000. Complete information on the appeal procedure is attached. Appeal forms are available at any office of the Employment Standards Branch."

On December 6, 2000 RALA phoned the Delegate and left a message disputing the findings in the Determination. The Delegate phoned RALA and left two messages on December 7, 2000. On December 11, RALA faxed a note which starts as follows:

"I have been waiting since last Wednesday, December 6, 2000 for a return phone call or fax with the method of submitting an appeal to your office. To date I have not received any response. As I mentioned in the phone call we have every

intention of appealing this ruling. We have explained the circumstances of this issue repeatedly to the investigator from the Kelowna office. These are: . . .”

The Delegate replied to the submissions on December 15, 2000 stating that the appeal period had expired and he wanted the cheque. RALA faxed an appeal to the Ministry of Labour and the Employment Standards Tribunal on December 21, 2000 pointing out that the Delegate had not responded to the points raised in the fax of December 11, 2000.

RALA disputes the jurisdiction of the BC *Act* and the interpretation of RALA’s conduct.

LAW AND ANALYSIS

I will now apply the six factors described above to the facts in this appeal.

1. "There is a good reason they could not appeal before the deadline"

The Appellants' reason for filing the appeal late is that there was insufficient time after receiving the Determination on December 1, 2000 to consult a lawyer and prepare an appeal. RALA thought the communication with the Delegate on December 6, 2000 and December 11, 2000 preserved the right of appeal.

2. "There is not an unreasonably long delay in appealing"

The delay of 10 days was not unreasonable in view of the ongoing exchange of phone calls and faxes.

3. "They always intended to appeal the determination"

The evidence shows an intention to appeal from December 6, 2000.

4. "The other parties (the respondent and the Director) are aware of the intent to appeal"

There is no doubt the Director knew RALA wanted to appeal. There is no evidence about whether DeJong knew what was happening.

5. "The respondent will not be harmed by an extension"

There is a continuing harm to the Respondent as he waits to have this matter resolved.

6. "They have a strong case that might succeed, if they get an extension."

RALA has raised a jurisdictional question and a contractual question in this appeal. If RALA is successful on either point the Determination will be cancelled or varied.

There may be merit to this appeal.

CONCLUSION

RALA's right of appeal was frustrated by the delay in receiving the Determination and communicating effectively with the Delegate. RALA's intention to appeal has never been in doubt. I would allow an extension of time for this Appeal to be filed so that it may proceed on the merits.

ORDER

The Tribunal extends the appeal deadline and the appeal may proceed.

APRIL D. KATZ

April D. Katz
Adjudicator
Employment Standards Tribunal