

An appeal

- by -

Hannah Enterprises Ltd.
("Hannah")

- 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.: 2001/39

DATE OF DECISION: April 26, 2001

DECISION

SUBMISSIONS:

Debra Greg on behalf Hannah Enterprises Ltd.

David Oliver on behalf of the Director

OVERVIEW

The Director of Employment Standards (the "Director") issued a Determination against Hannah Enterprises Ltd. ("Hannah") on October 30, 2000 but it was not delivered until December 7, 2000. The Determination found that Sandy Casey ("Casey") was owed \$368.10 compensation for length of service.

The appeal deadline was January 2, 2001. Hannah's appeal was received on January 4, 2001.

ISSUE - TIMELINESS OF APPEAL

The Tribunal must decide whether to extend the appeal deadline from January 2, 2001 to January 4, 2001 and this decision deals only with that issue.

FACTS

Casey worked for Hannah as a support worker from December 2, 1999 until July 3, 2000. Hannah had some performance concerns and decided to change the responsibilities assigned to Casey. The new responsibilities were more limited and required Casey to work the night shift. Casey had 3 children at home and could not work the night shift. She advised Hannah that the shift was impossible for her. Hannah did not offer an alternative shift and Casey's employment ended.

Hannah indicated on Casey's Record of Employment that her employment ended because "not available for required shifts". Hannah argued that Casey was dismissed for cause and that she had declined reasonable alternative employment.

Hannah provided Casey with a probationary letter of warning on February 28, 2000, which extended her probation to April 2, 2000. No further letters were sent and the probationary period ended. Comments on performance in feedback sheets did not indicate Casey's performance was unacceptable to the extent that she failed to meet the standard required for continued employment.

Casey filed a complaint with the Director claiming a week of compensation for length of service. A Determination was delivered to Hannah on December 7, 2000 by fax and on December 12, 2000 by registered mail.

The Determination provided the following statement with respect to the Appeal.

“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 November 21, 2000. Complete information on the appeal procedure is attached. Appeal forms are available at any office of the Employment Standards Branch.”

The Appeal sets out the basis of delay as an error in reading the Determination and the Notice of Variance, which set out the deadline as January 2, 2001. Hannah understood the deadline for the Appeal to be January 8, 2001. The Appeal was filed on January 4, 2001.

LAW AND ANALYSIS

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. 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."

In *Suter (Re)*, BC EST #D177/00, the Tribunal considered a request for extension of time for filing an appeal where the Determination was made and mailed on November 23, 1999. The appeal was to be filed by December 16, 1999 and was actually filed December 23, 1999. The mail had not been claimed by the Employer and had been returned to the Employment Standards Branch on December 14, 2000. The appeal was filed when the Employer received a demand notice from her bank. An extension of time was denied after citing the statutory requirements for timeliness of appeals.

I will consider the six factors described as they apply to the facts in this appeal.

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

Hannah's reason for filing the appeal late is that they misread the appeal deadline. Hannah had received two copies of the Notice stating the deadline. The first was by fax and second by mail.

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

The delay of 2 days was not unreasonable.

3. "They always intended to appeal the determination"

There is no evidence that suggests Hannah expressed an intention to appeal to the Delegate or Casey.

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

Neither the Delegate or Casey have indicated they had prior knowledge of Hannah's intention to appeal.

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

There is a continuing harm to Casey as she waits to have this matter resolved.

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

The final factor is the greatest challenge to this appeal. Hannah's submission is that Casey quit when the only work that was offered to her was the night shift. Hannah's position is that Casey was not competent to perform the day shift for which she was hired. Casey's position is that she could only work night shift in an emergency situation and not on a regular basis. This is the same issue presented to the Delegate.

There is no new evidence to consider on an appeal and no suggestion of an error of law in the Determination. The letter of appeal states that the night shift was reasonable alternative employment. The Determination deals with the law on this matter and there is no reason to believe a Tribunal decision would find an error in the Determination.

The onus is on Hannah to provide the evidentiary basis for an appeal which would result in varying or canceling the Determination. There is nothing in the documentation filed by Hannah to suggest that the Determinations are in error.

CONCLUSION

Hannah has failed to provide compelling reasons to extend the time for appeal. I therefore deny the application for an extension of time to file an appeal.

ORDER

Hannah's request for an extension of the appeal period is denied. Accordingly, pursuant to subsection 114(1)(a) of the *Act*, this appeal is dismissed.

APRIL D. KATZ

April D. Katz
Adjudicator
Employment Standards Tribunal