

An appeal

- by -

Regal Aluminum Products Co. Ltd.  
("Regal")

- 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:** William Reeve

**FILE No.:** 2002/75

**DATE OF DECISION:** May 15, 2002

## DECISION

### OVERVIEW

This is an appeal by Regal Aluminum Products Co. Ltd. (“Regal”) of a Penalty Determination issued by the Director of Employment Standards (the “Director”) on December 27, 2001. The deadline for filing an appeal of the Determination was January 21, 2002. The appeal was received by the Tribunal on February 15, 2002.

Receipt of the appeal was acknowledged by the Tribunal in a letter dated February 27, 2002. The letter offered the parties the opportunity to respond to the timeliness issue by March 27, 2002. Submissions on the issue were received from both Regal and the Director. These submissions were cross-disclosed with a letter from the Tribunal giving the parties until April 15, 2002 to make final replies. The Tribunal has decided that this matter will be decided based on the written submissions of the parties.

### ISSUE

The only issue to be decided is whether the appeal deadline should be extended from January 21, 2002 to February 15, 2002.

### ARGUMENT

In the appeal document Regal stated, “The Determination was made over the Christmas Holidays and did not come to the attention of management until mid-January when they returned from holidays.” In its submission dated March 24, 2002 Regal stated, among the other things included in a list of six points, that, “the filing of this appeal slipped between the cracks as a result of dealing with two Employment Standards Determinations and one Employment Insurance Appeal at the same time.”

On the subject of timeliness, the Director, in the submission dated March 8, 2002, stated that the Determination was delivered by registered mail to Regal’s business address on December 28, 2001. The Director also expressed the opinion that, “If Regal was seriously wanting to appeal the determination, it could have advised the Tribunal and the Director well before February 15, 2002.” The Director also mentioned that a Writ of Seizure and Sale was filed on February 12, 2002. The implication is that this was done pursuant to the Determination against Regal, though that was not stated.

### THE FACTS AND ANALYSIS

The Employment Standards Act (the “Act”) imposes an appeal deadline to ensure that appeals are dealt with promptly. That is consistent with one of the purposes of the Act, which is to

provide fair and efficient procedures for resolving disputes. Under section 109 (1)(b) of the Act, the Tribunal can extend the time for requesting an appeal, even though the appeal period has expired.

The Tribunal does not grant extensions automatically but it may extend a time limit if there are compelling reasons to do so. To decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. Appellants who are seeking a time extension for an appeal should satisfy the Tribunal on balance that:

1. there was a good reason why the person appealing could not meet the deadline;
2. there was not an unreasonably long delay in filing the appeal;
3. the party always intended to appeal the Determination;
4. the other parties were aware of the intent to appeal;
5. extending the appeal deadline would not unduly harm the Respondent;
6. the appellant has a strong case that might succeed if the Tribunal granted an extension.

In the present matter Regal has not made a convincing argument that it was not able to meet the deadline. The argument advanced suggests an attitude of casualness or carelessness towards the Determination. In the absence of compelling evidence that Regal was unable to meet the deadline, despite intending to do so, no delay in filing could be considered reasonable. No evidence or argument was advanced to suggest that Regal had always had serious intentions of appealing the Determination. In fact the filing of the appeal very shortly after the Director commenced collection proceedings might suggest that only then did Regal take the Determination seriously. As this is a penalty Determination there is no issue of prejudice to a Respondent to consider.

The issues in the Determination are whether Regal contravened section 28 of the *Act* by failing to keep proper records or contravened section 85(1)(f) of the *Act* by failing to produce those records. Regal's appeal submissions do not contain a compelling argument that the Determination is in error. On balance Regal has not satisfied me that the deadline for appeal should be extended.

## **ORDER**

The Appellant Regal's request for an extension of the deadline for appeal is denied. The appeal is dismissed pursuant to section 114 of the *Act*.

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**William Reeve, Administrator**  
**Employment Standards Tribunal**