

An appeal

- by -

Ajay Bali operating as A Plus Maintenance Services  
(“Bali”)

- 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.:** 2002/162

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

## DECISION

### OVERVIEW

This is an appeal by Ajay Bali operating as A Plus Maintenance Services (“Bali”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued by the Director of Employment Standards (the “Director”) on February 20, 2002. The Determination found that the *Act* had been violated and that \$998.12 in unpaid wages including unpaid regular wages, unpaid overtime and unpaid annual vacation plus interest was owing to employee Darryl Hill.

The deadline for appeal was March 15, 2002. Bali filed an appeal that was received by the Tribunal on March 27, 2002. In filing his appeal Bali gave reasons why his appeal was filed late, the implication being that he was asking for an extension of the deadline for the filing of an appeal.

The issue of whether to extend the deadline for appeal was decided on the basis of the written submissions from the parties.

### ISSUE

The only issue to be addressed in this Decision is whether the Tribunal should extend the deadline for requesting an appeal in accordance with the powers of the Tribunal under section 109(1)(b) of the *Act*.

### ARGUMENT

The Appellant Bali in his appeal stated,

“The reasons I haven’t been able to submit my side of the story is that I’ve been going through a separation from my wife. Also at the same time I was heavily involved with a fundraiser with the Heart & Stroke Foundation as I promoted a Dinner & Dance to raise funds because I have personally lost my dad 21 years ago and just recently lost my oldest brother both died from heart attacks.”

In support of these assertions Bali submitted a copy of a handbill advertising a Dinner & Dance held on March 15, 2002 and a letter dated January 30, 2002 from the Heart and Stroke Foundation of B.C. & Yukon.

The Respondent, Darryl Hill (“Hill”), in a letter responding to the appeal received by the Tribunal on April 4, 2002 objected strongly to the appeal in general and to the extension of the deadline in particular stating of the Appellant,

“He had more than enough time to file but chose not to till the every end knowing this will slow the process.”

The Delegate of the Director, in a response to the appeal dated April 16, 2002, had a number of things to say on the issue of extending the appeal deadline including the following.

On the subject of when the Determination was received by Bali the Delegate reported that a first attempt was made to deliver it, presumably by registered mail, on February 21, 2002 and that a card was left at that time informing Bali that the item was available for pick up, though it was not claimed until March 8, 2002. That still left Bali with a week before the deadline to file an appeal.

The Delegate noted that Bali exceeded the deadline by 12 days even though the issues were not involved and the appeal should not have taken long to prepare. The Delegate also noted that the first knowledge that the Director had of an intention to appeal was a phone call received four days after the deadline for appeal had passed.

The delegate expressed serious doubts about the likelihood of the the appeal succeeding on its merits.

### **THE FACTS AND ANALYSIS**

The act imposes an appeal deadline to ensure that appeals are dealt with promptly. This 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 help it decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. They are the following:

1. is there a good reason why the appeal could not be filed before the deadline;
2. was there are unreasonable delay in appealing;
3. did the appellant always intend to appeal the determination;
4. were the other parties aware of the intent to appeal;
5. is an extension of the appeal deadline harmful to the interests o f the respondent; and
6. does the Appellant have a strong case that might succeed if an extension were granted.

There is nothing in the evidence that would convince me that Bali was not able to appeal before the deadline. That a party is busy or has other concerns is not a compelling reason for failing to meet a deadline. As the Delegate points out the delay was disproportionate to the relatively simple nature of the issues in the appeal. The first evidence of an intent to appeal appears to be the phone call received by an officer of the Employment Standards Branch after the deadline had already passed. The delay that an extension of the deadline would cause is clearly prejudicial to the interests of the respondent, as he has expressed. As the Delegate points out, the apparent failure of Bali to cooperate in the investigation makes it doubtful that any payroll evidence he might produce at the appeal stage would be accepted.

Nothing has been provided that constitutes a compelling reason to extend the deadline therefore I decline to do so.

**ORDER**

The Appellant Bali's request to extend the time period allowed for making an appeal is denied. The appeal is dismissed pursuant to section 114(1) of the *Act*. Pursuant to section 115(1) of the *Act* the Determination dated February 20, 2002 is confirmed.

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