

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

The Zoo Wildlife Boutique Inc.
("Zoo Wildlife")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/337

DATE OF DECISION: June 5, 1997

DECISION

OVERVIEW

This is an appeal by The Zoo Wildlife Boutique Inc. (“Zoo Wildlife”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination which was issued by a delegate of the Director of Employment Standards (the “Director”) on February 27, 1997. The time period for delivering the appeal to the Tribunal expired on March 24, 1997. The Tribunal received the appeal, by facsimile, on April 30, 1997.

The parties were invited to make submissions on the question of whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* and extend the time period for requesting an appeal.

I have considered those written submissions and have made my decision based on the reasons which are set out below.

ISSUE TO BE DECIDED

Should the Tribunal extend the time period within which Zoo Wildlife may request an appeal even though the period has expired?

FACTS

The Determination which was issued on February 27, 1997 found the Zoo Wildlife was required to pay \$409.85 to Darlene Lundy on account of compensation for length of service (\$392.30), annual vacation pay (\$15.69) and interest (\$1.86).

The Determination was sent by registered mail to Zoo Wildlife (Attention: Lisa DeMarni) at the store in Surrey, BC where Ms. Lundy had worked and to the Company’s Registered and Records Office in Victoria, BC. Both pieces of mail were received at the respective addresses on March 3, 1997, as evidenced by Canada Post Corporation’s “Acknowledgement of Receipt” documents.

The following information was printed clearly on the Determination:

Appeal Information

Any person served with this Determination may appeal it to the Employment Standards Tribunal. The appeal must be delivered to the Tribunal within 23 days of the date of this Determination. Complete information on the appeal procedures is attached. Appeal forms are available at Employment Standards Branch offices.

Lisa DeMarni submitted an appeal, on behalf of Zoo Wildlife, which was dated and received by the Tribunal (via facsimile) on April 30, 1997. When making the appeal, Ms. DeMarni offered the following reasons for delivering it to the Tribunal outside of the 23-day time period:

(The) Determination was sent to Victoria and then made its way back to me when I returned from holidays April 1st. I talked to Steve Mattoo about definitions on constructive dismissal and received a fax from the tribunal on April 3rd with the definitions.

I again was on holidays and out of town on business from April 18 until April 26. I am now doing my best to expedite the appeal and ask your leniency in this matter.

In her submission dated May 15, 1997 Ms DeMarni offered the following reasons for not delivering the appeal within the 23-day time period:

- she spoke with the Director's delegate on April 1 and April 3, 1997 concerning the Determination;
 - she explained to him that she had received the Determination by way of the Registered and Records Office in Victoria;
 - following her conversation on April 3, 1997 she was "under the distinct impression" that she had time to work on an appeal;
- and
- she had the opportunity, on short notice, to take an "impromptu trip" and availed herself of that opportunity.

The fax which Ms. DeMarni received on April 3, 1997 was sent to her by the Director's delegate (Mr. Mattoo), rather than the Tribunal, following a conversation between Mr. Mattoo and Ms. DeMarni concerning payment of the amount set out in the Determination.

Mr. Mattoo contacted Ms. DeMarni again on April 29, 1997 and was advised that an appeal would be filed on that day. A Demand Notice was issued on May 6, 1997.

Ms. Lundy and the Director's delegate oppose any extension of the time period within which Zoo Wildlife may request an appeal.

ANALYSIS

This decision deals solely with the question of whether the Tribunal should extend the time period within which Zoo Wildlife may request an appeal.

Section 122(1) of the *Act* sets out the requirements for service of a determination, as follows:

- 122.(1) A determination or demand that is required to be served on a person under this Act is deemed to have been served if*
 - (a) served on the person, or*
 - (b) sent by registered mail to the person's last known address.*
- (2) If service is by registered mail, the determination or demand is deemed to be served 8 days after the determination or demand is deposited in a Canada Post Office.*
- (3) At the request of a person on whom a determination or demand is required to be served, the determination or demand may be transmitted to the person electronically or by fax machine.*
- (4) A determination or demand transmitted under subsection (3) is deemed to have been served when the director receives an acknowledgment of the transmission from the person served.*

In this case, there is no doubt that the Determination was “served” by registered mail, as evidenced by the “Acknowledgment of Receipt” documents from Canada Post Corporation.

Section 112(2)(a) of the *Act* requires that an appeal of a determination must be delivered to the Tribunal within “...15 days after the date of service, if the person was served by registered mail.”

The Tribunal’s approach to extending the time periods for an appeal was set out in an earlier decision, *Metty M. Tang* [BC EST # D211/96], as follows:

(The) relatively short time limits are consistent with one of the purposes of the Act which is to provide for fair and efficient procedures for resolving disputes over the application and interpretation of the Act. It is in the interest of all parties to have complaints and appeals dealt with promptly.

Section 109 (1) (b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where there are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.

When I review the facts of this appeal I find that the Determination was served properly, in accordance with Section 122 of the *Act*, and was received at the store in Surrey, BC as well as the company's Registered and Records Office in Victoria, BC. I note, in particular, that Ms. DeMarni's submissions on behalf of Zoo Wildlife do not deny or dispute that fact. I note, in particular, that no mention is made by Ms. DeMarni of the Determination which was received at the store in Surrey, BC. (Ms. Lundy's workplace).

Ms. DeMarni offers no compelling reason why the appeal was not delivered to the Tribunal within the 23-day period described in the Determination. All of her reasons are focused on events which transpired after April 1, 1997 rather than events which transpired between February 27, 1997 and March 24, 1997.

When the appeal was received by the Tribunal, Ms. DeMarni offered the following reason for the appeal being late:

“(The) Determination was sent to Victoria and then made its way back to me when I returned from holidays April 1.”

However, in her submission of May 15, 1997 Ms. DeMarni first acknowledges that she spoke with the Director's delegate on April 3, 1997 and, subsequently, had the opportunity to take an impromptu trip. She goes on to state:

“Since I hadn't taken holidays in 1996 I took this opportunity. My taking holidays did further delay the Appeal.”

These two statements are inconsistent with each other.

I find that Ms. DeMarni has offered no compelling reasons why the Tribunal should extend the time period for requesting an appeal.

ORDER

I order, under Section 115 of the *Act*, that the Determination dated February 27, 1997 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC/da