

An appeal

- by -

Tony Kozic operating Sylvan Court Motel
("Kozic")

- 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.: 2003A/136

DATE OF DECISION: July 22, 2003

DECISION

OVERVIEW

This is an appeal by Tony Kozic operating as Sylvan Court Motel (“Kozic”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination issued by the Director of Employment Standards (the “Director”) on March 3, 2003. The determination found that the *Act* had been contravened and that \$5,845.64 in wages, vacation pay and interest were owing to employee Mary Reimer (“Reimer”). The Director subsequently, on May 22, 2003, varied the amount of the Determination to a revised figure of \$4,694.23 in wages, vacation pay and interest.

The deadline for appeal of the Determination was April 2, 2003. Kozic filed an appeal that was dated May 7, 2003 and was received by the Tribunal on May 8, 2003. The appeal contained an explanation for why the appeal was filed late, the implication being that Kozic was asking for an extension of the deadline for filing an appeal.

The issue of whether to extend the deadline for appeal is 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, Kozic, in his appeal, stated,

“I am a sole proprietor operating a small motel on my own. I had set the determination aside and overlooked the deadline for filing the appeal. I now realize I only had thirty days to appeal even though this entire process has taken some five months since its inception in November 2002. I approached my accountant in April 2003 to discuss the determination and the appeal process. It was decided to file an appeal after the personal income tax season ended on April 30, 2003. I do not have the internet and it was not known what was involved with the appeal process. The appeal is being filed late to bring to the Tribunal’s attention the numerous errors arising in the determination and injustice in determining the wages owed to the employee in my absence.”

In his final submission Kozic stated that it was always his intention to appeal the Determination, and that information he had provided to the Delegate did not seem to be taken into account in the Determination. He disputes the employee’s hours of work as calculated in the Determination, the several adjustments included in the revised calculation, and he also reiterates his concern about money unaccounted for during a period when he was absent from the motel.

The response from Ms. Reimer on the topic of timeliness stated,

“Mr. Kozic had plenty of time to decide one way or the other to appeal. According to the letter, he had no idea what to do when it was time to appeal. [The Director’s Delegate] has explained to

both of us that we had thirty days from the time we received the Determination, and where we can get forms. Mr. Kozic has a lawyer and a book-keeper that knew exactly what to do.”

Later she went on,

“I feel very strongly that he gave up that right [to appeal] when he did not appeal before April 2/03 at 4:30 p.m. Giving him another chance is just another delay to avoid paying me. ... I would like you to take into consideration the financial problems, and my health has taken its toll on me. I wouldn't have these problems if Mr. Kozic would have paid me to begin with.”

....

“I am requesting that there should be no late appeal because he gave up that right the first time.”

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 an 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 of the respondent; and
6. does the Appellant have a strong case that might succeed if an extension were granted.

Mr. Kozic has not provided any evidence that he was unable to file an appeal within the time limits. His submissions suggest that he chose to disregard the appeal deadline until it was convenient for him to turn his attention to the matter.

The appeal was filed thirty-six days after the deadline, more than nine weeks after the Determination was first issued. The argument of Mr. Kozic seems to be that since the investigation took a long time he should not be expected to file an appeal in a timely manner. In the absence of any evidence that it was not possible to file within the deadline, no delay of such a length could be considered reasonable.

Although Mr. Kozic states that he always intended to file an appeal he has produced no evidence to that effect and some of his other statements carry the implication that he may not have made this decision until meeting with his accountant after the deadline had already passed.

No evidence has been produced that suggests that the other parties were informed of an intention to appeal before the deadline had passed.

The Respondent employee, Ms. Reimer, makes strong arguments that any further delay is detrimental to her interest.

The arguments that there were errors in calculation in the Determination seem to have been largely addressed when the Delegate varied the Determination amount. The other challenges to the calculation seem to have been answered by the Respondent, Ms. Reimer, or to be quibbles about matters that the Delegate has already addressed convincingly. The issue of the unaccounted for money is clearly not relevant and has rightly been ignored in the calculation. On the face of it, the case put forward by Mr. Kozic could not be called a strong case, or one likely to succeed if the appeal was accepted.

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

ORDER

The Mr. Kozic's request for extension of the deadline and acceptance of the 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 March 3, 2003, as varied on May 22, 2003, is confirmed, along with any additional interest calculated in accordance with section 88 of the *Act*.

William Reeve
Adjudicator
Employment Standards Tribunal