

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 -

Allan Altenburg
("Altenburg")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/234

DATE OF DECISION: June 20, 2000

DECISION

OVERVIEW

This is an appeal filed on March 31st, 2000 by Allan Altenburg (“Altenburg”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on February 23rd, 2000 under file number ER 080-024 (the “Determination”).

The Director’s delegate determined that Altenburg’s former employer, Medallion Developments Inc., owed four former employees a total sum of \$3,509.08 reflecting unpaid wages and interest. The delegate ordered Medallion to pay the sum of \$51 on account of Mr. Altenburg’s claim.

Altenburg appeals the award in his favour submitting that he ought to have been awarded something in excess of \$700. The present appeal was *not* filed within the statutory 15-day appeal period [see section 112(1)(a) of the *Act*] and, accordingly, Altenburg seeks an extension of the appeal period. This latter application is made pursuant to section 109(1)(b) of the *Act*. *These reasons address only the timeliness of this appeal.*

ANALYSIS

The following notice is set out at the foot of page 18 of the Determination (boldface in original):

Appeal Information

Any person served with this Determination may appeal it to the Employment Standards Tribunal. **The appeal must be delivered to the Tribunal no later than 4:30 PM on March 17, 2000.** Complete information on the appeal procedure is attached. Appeal forms are available at any office of the Employment Standards Branch.

As noted above, Altenburg’s appeal was not filed until March 31st, 2000, some 2 weeks after the appeal period had already expired. In his original appeal documents Altenburg stated that his appeal was late because “I have been working abroad and could not access my mail. This is the earliest opportunity I have had to respond.”

On April 4th, 2000, the Tribunal’s Vice-Chair wrote to all parties (including Altenburg) requesting that they file written submissions--by no later than April 24th, 2000--with respect to Altenburg’s application to extend the appeal period. The respondent employer filed a brief submission opposing Altenburg’s application for an extension of the appeal period. The Director’s delegate also filed a submission opposing the application. It should be noted that *Altenburg himself did not file any submission* regarding his application for an extension of the appeal period. Thus, all that I have before me is the wholly unsubstantiated assertion by Altenburg that his appeal was late because he was “working abroad” when the Determination was delivered to his address. Given Altenburg’s failure to produce any *evidence* to support his section 109(1)(b) application, for that reason alone, the application for an extension must fail.

More troublesome, however, is the apparent fact that Altenburg may have actively attempted to mislead the Tribunal. As noted above, Altenburg says that he filed his appeal (on March 31st, 2000) at the “earliest opportunity” he had to do so. This assertion appears to be a blatant misrepresentation. The delegate has provided evidence (to which Altenburg has not responded) showing that Altenburg received the Determination--evidenced by his signature on an “Advice of Receipt” (the Determination was forwarded by certified mail)--on March 2nd, 2000. The signature on the “receipt” is seemingly identical to Altenburg’s signature as it appears on his notice of appeal. Thus, Altenburg had the Determination in hand for more than 4 weeks before he actually filed his appeal; in my view, this appeal could easily have been filed by the March 17th appeal deadline and there is no credible explanation before me regarding Altenburg’s failure to do so.

In light of the foregoing circumstances, this application must be refused.

ORDER

Allen Altenburg’s request for an extension of the appeal period is refused. Accordingly, pursuant to subsections 114(1)(a) and (c) of the *Act*, this appeal is dismissed.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal