

An appeal

- by -

Gateway File Systems Inc.
("Gateway")

- 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: M. Gwendolynne Taylor

FILE No.: 2001/224

DATE OF DECISION: May 16, 2001

DECISION

SUBMISSIONS:

Brian Harper	For Gateway File Systems Inc. (“Gateway”)
Tracey Lee Lorenson	Counsel for Calvin Lee (“Lee”)
Karyn Luttmer	For the Director of Employment Standards (the “Director”)

OVERVIEW

The Director issued a Determination on January 9, 2001 on a claim by Lee against Gateway. The Director found that Lee was an employee but that the evidence did not establish the hours he worked or the wages he was owed. The Director determined that the quantum of Lee’s claim was undetermined and advised that the file would be closed.

Gateway filed an appeal on February 21, 2001 in response to an appeal filed by Lee. Lee’s appeal was filed on time, February 1, 2001.

ISSUE

Whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* and allow the appeal even though the time period for seeking an appeal has expired.

PRINCIPLES FOR EXTENDING AN APPEAL DEADLINE

The purpose of the *Employment Standards Act* (the “*Act*”) under section 2(d) is “to provide fair and efficient procedures for resolving disputes”. The *Act* imposes an appeal deadline to ensure appeals are dealt with promptly. The Tribunal requires parties to file their own appeals even if this means multiple appeals from one Determination.

Under section 109(1)(b) of the *Act*, the Tribunal can extend the time for requesting an appeal if there are compelling reasons. To decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria which Appellants must satisfy:

- (1) there is a good reason they could not appeal before the deadline;
- (2) there is not an unreasonably long delay in appealing;
- (3) they always intended to appeal the Determination;
- (4) the other parties (the respondent and the Director) are aware of the intent to appeal;
- (5) the respondent will not be harmed by an extension; and
- (6) they have a strong case that might succeed, if they get an extension.

FACTS

Lee commenced work with Gateway on September 15, 1997. In June 1998, Gateway gave termination notices to all employees due to insolvency. Lee continued to go to the office with Gateway's permission. As of March 1, 1999, Gateway and Lee entered into an employment contract.

The issue before the Director was Lee's claim for wages between June 1998 and February 28, 1999. Lee claimed he continued to be employed and Gateway claims that he was not and that allowing him use of the office was for his convenience only. The Director found some evidence that Lee performed work for the company, and for himself.

SUBMISSIONS

Gateway

Gateway maintains that it operates on written contracts and provided some samples in the submission of March 15, 2001. According to Gateway, all employees were terminated, Mr. Lee was issued a Record of Employment and that there were no contractual obligations between June 1998 and March 1, 1999. Gateway acknowledges that the parties entered into an employment contract as a convenience to Mr. Lee, who was seeking to redress a garnishee order.

Gateway maintains that although it disagreed with the Director on the finding of employee status, it engaged in without prejudice settlement discussions with Mr. Lee. Because of these discussions, Gateway was not anticipating an appeal by Lee nor contemplating filing an appeal. Gateway had made an offer during the appeal period which was not responded to.

Lee

Both parties were given until February 1, 2001 to file an appeal. Gateway did not request an extension prior to the deadline and has not adduced evidence to justify extending the appeal deadline. Gateway made an offer to settle through the Director's office, prior to the deadline. Lee did not indicate any intention to forego the appeal rights and advised the Director that he would file an appeal.

The appeal timeframes are intended to ensure expeditious remedies. This dispute arises out of circumstances which occurred three years ago. If the Tribunal allows the late appeal, Lee will be put additional legal and other expenses.

The Director

The Director recommends that the Tribunal allow the late appeal because of Gateway's claim that it did not appeal because of the settlement discussions.

ANALYSIS

The Respondent Lee presents a forceful argument against allowing a late appeal, by addressing each of the factors outlined above. The arguments are reasonable, but I find that the reason for the delay – settlement negotiations – is sufficiently compelling to warrant granting an extension.

I find that the prospect of settlement is reasonable excuse for not filing the appeal. I appreciate that the need for timely dispositions argues against extending the time to appeal. However, I also note that timely disposition can occur through settlement without the need for appeals and hearings. It is in the public interest to encourage settlements.

I also find that the delay is not substantial, that Gateway intended to appeal if it was not settled, that Lee probably knew that Gateway did not accept the Director's finding but was willing to discuss settlement, and that Gateway has presented some evidence which could substantiate the claim that there was no contract. The Respondent Lee will have to prepare for hearing, but he would have in any event because of his own appeal.

The Director was involved in discussion with both parties during the investigation and the settlement discussions. I give weight to the Director's view that the time should be extended.

ORDER

The Tribunal extends the time to file an appeal.

M. GWENDOLYNNE TAYLOR

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal