

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 -

Fatemah F. Kashani

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/326

DATE OF DECISION: June 9, 1997

DECISION

OVERVIEW

This is an appeal by Fatemah F. Kashani, 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 April 3, 1997. The time period for delivering the appeal to the Tribunal expired on April 28, 1997. The Tribunal received the appeal on April 29, 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 Fatemah F. Kashani may request an appeal even though the period has expired?

FACTS

The Determination which was issued on April 3, 1997 found that Ms. Kashani was not owed any wages by her former employer, Eldorado Kingsway Hotel Ltd.

The Determination was sent by registered mail to Ms. Kashani and was received at her home address on March 7, 1997 as evidenced by Canada Post Corporation’s “Acknowledgment 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.

Arezoo Aliperti submitted an appeal, on behalf of Ms. Kashani, which was received by the Tribunal on April 29, 1997. Ms. Aliperti offered the following reasons for delivering it to the Tribunal outside of the 23-day time period:

- Ms. Kashani was out of the country and had requested Ms. Aliperti to file an appeal.
- Ms. Aliperti left Vancouver on April 27, 1997 and asked her aunt to deliver the appeal to the Tribunal on April 28, 1997.
- Ms. Aliperti's aunt was unable to deliver the appeal on April 28th because she had to take her daughter to the doctor for medical treatment.

The Tribunal requested submissions from Eldorado Kingsway Hotel Ltd. and the Director's delegate on the question of whether the appeal should be accepted outside of the permissible time period. In her submission, the Director's delegate provided the summary of events leading up to the Determination being issued:

- November 29, 1996 • Letter to Ms. Kashani explaining delegate's reasons.
 - Response required by December 13, 1996.
- December 10, 1997 • Ms. Kashani informed the delegate of desire to submit additional information.
 - Information to be delivered by January 10, 1997.
- January 13, 1997 • Letter from delegate to Ms. Kashani informing her that "the file was closed" because no additional information was provided.
- January 15, 1997 • Ms. Kashani spoke to the delegate and was granted an extension to February 7, 1997.
- February 12, 1997 • Message from Ms. Kashani to the delegate that documents would be faxed.
- February 20, 1997 • Ms. Kashani requested the Director's delegate to grant an extension for submission of documents until March 30, 1997.
 - Extension to March 17, 1997 granted by delegate.

- March 7, 1997
- Ms. Kashani's daughter spoke to the delegate by telephone to explain that Ms. Kashani had left the country on March 1, 1997 and her return date was unknown.
- April 3, 1997
- The Determination was issued.

Ms. Aliperti delivered certain documents to the Tribunal on June 2, 1997 including pre-printed statements in standard form (dated May 30, 1997 and May 31, 1997) by several persons who appear to have been co-workers of Ms. Kashani. The documents also included a grievance form dated April 10, 1996 and various other documents dated 1993. Ms. Aliperti offers no explanation of why these documents were not provided prior to the issuance of the Determination.

ANALYSIS

This decision deals solely with the question of whether the Tribunal should extend the time period within which Ms. Kashani 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*. I note, in particular, that submissions on behalf of Ms. Kashani do not deny or dispute that fact.

Ms. Kashani (or her agent) offers no compelling reason why the appeal was not delivered to the Tribunal within the 23-day period described in the Determination.

I find that Ms. Kashani 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 April 3, 1997 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC/da