

**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 -

Dr. Vinod Chandra Tawar

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 99/229

**DATE OF DECISION:** June 10, 1999

**DECISION**

**OVERVIEW**

This is an appeal by Dr. Vinod Chandra Tawar pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination issued by a delegate of the Director of Employment Standards (the "Director") on December 21, 1998. That Determination directed Dr. Tawar to pay \$761.91 (including interest accrued to the date of the Determination) to Ms. Maureen Carr for contravention of Section 58 (vacation pay) and 63 (length of service pay) of the *Act*.

The time limit for filing an appeal of the Determination expired on January 13, 1999. The Tribunal received an appeal from Dr. Tawar on April 19, 1999.

Both the Director's delegate, Mr. Wayne Mackie, and Dr. Tawar have made submissions on this appeal. These submissions have been given due consideration.

**ISSUES TO BE DECIDED**

The issue to be decided is whether the time limit for requesting an appeal, as set out in Section 112 of the *Act*, should be extended in this case.

**FACTS**

Dr. Tawar was made aware of the complaint pursued by Ms. Carr for unpaid wages both by way of a letter from Mr. Mackie dated June 9, 1998 and in person. The letter provided Dr. Tawar with Mr. Mackie's tentative conclusions. Dr. Tawar subsequently responded to this letter in writing on June 30, 1998. In addition, Mr. Mackie visited Dr. Tawar's home in mid June 1998 and advised him of the complaint.

A Determination was issued against Dr. Vinod C. Tawar Inc. ("Tawar Inc.") on July 9, 1998. The Determination requires Dr. Vinod C. Tawar Inc. to pay \$742.09 (including interest accrued to the date of the Determination) for unpaid wages to Ms. Carr.

A Determination was issued against Dr. Vinod C. Tawar on December 21, 1998. The Determination requires Dr. Tawar, as Director of Dr. Vinod C. Tawar Inc., to pay \$761.91 (including interest accrued to the date of the Determination) to Ms. Carr.

Mr. Mackie conducted a company search on December 8, 1998, which revealed Dr. Vinod Tawar as a Director and Officer of the company with an address at 102-7343 Hurd St, Mission. The Determination was subsequently mailed to Dr. Tawar at his home address. It was returned "Unclaimed".

**ANALYSIS**

Pursuant to Section 112(2) of the *Act*, a determination may be appealed to the tribunal by written request. This request must be delivered to the Tribunal within 15 days after the date of service.

Pursuant to Section 109(1)(b) of the *Act*, the Tribunal may extend the time period for requesting an appeal even though the period has expired. The appellant bears the onus of satisfying the Tribunal that it should exercise its discretion. However, compelling reasons are required for an extension to be granted (*Moen & Sagh Contracting Ltd.* BC EST #D298/96). In deciding whether to grant an extension, the factors that an appellant must establish are set out in *Niemisto* (BC EST #D099/96). These factors are:

- i. There is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
- ii. There has been a genuine and on-going *bona fide* intention to appeal the Determination;
- iii. The respondent party (i.e. the employer or employee), as well the Director, must have been made aware of this intention;
- iv. The respondent party will not be unduly prejudiced by the granting of an extension; and
- v. There is a strong *prima facie* case in favour of the appellant.

This is not an exhaustive list. The Tribunal may consider other relevant criteria as they arise in each particular appeal.

In the situation at hand, Dr. Tawar contends that he was not able to request an appeal within the statutory time limit because he was unaware of the Determination against him. Pursuant to Section 122 of the *Act*,

- (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) *served 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.*

The Determination was sent by registered mail in accordance with Section 122(1) of the *Act*.

Three issues relating to service require mention. First, the specific mailing date of the Determination is not available. Despite this omission, it is clear on the evidence that the Determination was mailed in December 1998. The package was mailed to Dr. Tawar's home address at 35917 Stonecroft Place, Abbotsford and was subsequently re-directed by Canada Post to a Regina address. A stamp on the envelope indicates the Regina Office received the package on January 1, 1999. The package was returned "Unclaimed". Second, according to Dr. Tawar's submission received May 25, 1999, between August to December 1998 he "relocated to several destinations". Dr. Tawar has been aware of Ms. Carr's complaint since June 1998. His failure to inform the Director of his change of address and his failure to claim registered mail is not sufficient to warrant an extension of the time period.

Third, Mr. Mackie sent the Determination to the home address on Stonecroft. He sent it to this address knowing that a company search revealed Dr. Tawar's address as 102-7343 Hurd St., Mission. It is my opinion Mr. Mackie's actions were reasonable when he sent the Determination to the Stonecroft address despite the results of the company search. It was reasonable for him to assume that the Stonecroft address was Dr. Tawar's last known address. Mr. Mackie had visited Dr. Tawar at his home on Stonecroft in the summer of 1998. He had no reason to believe that the address had changed. Mr. Mackie had also sent the original corporate Determination dated July 9, 1998 against Tawar Inc. by certified mail to the Stonecroft address. It was returned marked "Unclaimed". On the other hand, when the same Determination was sent to the Hurd St. address, it was returned marked "Moved, Address unknown". This would suggest that no one was at the Hurd St. address to receive the Determination whereas it could have been claimed at the Stonecroft address. Therefore, it was reasonable for Mr. Mackie to conclude that Dr. Tawar's last known address was at the Stonecroft address.

I also find it questionable whether Dr. Tawar had a *bona fide* intention to appeal the Determination. Dr. Tawar has been aware of the complaint since June 1998. His efforts to appeal the Determination did not arise until attempts to collect the outstanding amount were made.

Furthermore, section 2(d) of the *Act* provides that one of the purposes of the *Act* is to provide fair and efficient procedures for resolving disputes. It is in the interest of all parties to have complaints and appeals dealt with promptly (*Dr. H. S. Bergman*, BC EST #D088/97). Therefore, extensions to time limits should not be given as of course. In this case, the Determination was issued on December 21, 1998. The time limit for filing an appeal of the Determination expired on January 13, 1999 and the Tribunal received an appeal from Dr. Tawar on April 19, 1999. Dr. Tawar's application is several months late. There is also no indication that either Ms. Carr or the Director was made aware of any intention on her part to appeal the Determination. As a result, there is concern that given that the wages owed date back to July 1998 and given the delay in submitting an appeal, Ms. Carr would be unduly prejudiced by the granting of an extension.

It is also necessary to consider the substance of the appeal in order to decide whether there is a strong *prima facie* case in favour of the appellant. This is not to consider and

decide the appeal itself. Instead, it necessary to assess whether there are compelling reasons to allow an extension of the appeal period.

The appeal by Tawar Inc of the July 9, 1998 corporate determination has been denied (See *Dr. V.C. Tawar Inc.*, BC EST #D239/99). As a result, Dr. Tawar's appeal is limited to the issue of whether or not he is a director of Tawar Inc. and hence liable for Ms. Carr's unpaid wages.

According to Section 96 of the *Act*,

*(1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.*

A company search dated December 8, 1998 reveals that Dr. Tawar is a Director and Officer of Tawar Inc and is therefore liable pursuant to Section 96 of the *Act*. Dr. Tawar has not provided any evidence that would suggest otherwise.

In light of the foregoing, it is my opinion that Dr. Tawar has not met the burden of illustrating that the Tribunal should exercise its discretion to extend the time period. The Determination was sent by registered mail in accordance with Section 122(1) of the *Act* and Dr. Tawar has not provided any notable evidence illustrating an error by the Director or a prima facie case in his favour.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated December 21, 1998 be confirmed in the amount of \$761.91 together with any interest that has accrued pursuant to Section 88 of the *Act*.

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**Norma Edelman**  
**Adjudicator**  
**Employment Standards Tribunal**