

An appeal

- by -

Dale G. Kubica
("Kubica")

- 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: Norma Edelman

FILE No.: 2000/238

DATE OF DECISION: May 17, 2001

DECISION

OVERVIEW

This is an appeal filed by Dale G. Kubica ("Kubica") pursuant to Section 112 of the Employment Standards Act (the "Act") of a Determination issued by a delegate of the Director of Employment Standards on January 19, 2001.

The delegate determined that Kubica's former employer, Westrock Timber Company Ltd. ("Westrock"), owed him wages in the amount of \$2,174.39.

TIMELINESS OF THE APPEAL

On March 23, 2001, Kubica filed the instant appeal. A notice, set out in the Determination, indicated that the deadline for appeal was February 12, 2001. Inasmuch as this appeal was filed after the governing appeal period expired Kubica now seeks an extension of the appeal period pursuant to Section 109(1)(b) of the Act.

This decision only addresses the application for an extension of the appeal period.

FACTS AND ANALYSIS

The Tribunal's appeal form specifically directs an Appellant to explain, if the appeal is being filed after the expiration of the appeal period, why the appeal was not filed within the governing time limit. In this case, Kubica says:

I was employed with Westrock Timber Company Ltd., in Fort Nelson B.C. when around the 16th day of January 2001, Westrock Timber Company informed me that they would no longer be in operation. At that time I pursued and found other employment in the same area. I was in Fort Nelson B.C. area until March 18th 2001, when I was laid off. I came back to my residence in Christopher Lake (Sask). Needless to say, I had no chance to see or look at this Determination document until I was home. Nor was I aware of this until just a couple of days ago when I retrieved my mail. I'm hopeful the right adjustments will be made to my claim with the Employment Standards Branch.

Kubica also says that the delegate overlooked one of his pay summary sheets which shows he is owed \$3,444.77 and not \$2,174.39.

Westrock and the delegate were invited to reply to Kubica's appeal. No response was received from Westrock. The delegate replied on April 11, 2001 stating she had no objection to the late appeal. She further said: "The issue raised by Dale Kubica is valid. There was an error made in

the original determination as the wages only reflect wages earned in 2000 and should also include wages earned in 2001." She agrees Kubica is owed \$3,444.77.

In my view, it is entirely appropriate in this case to extend the appeal period. I have nothing before me from Westrock to indicate it is opposed to the appeal period being extended and I have not been made aware of any prejudice it may suffer if the appeal is allowed to proceed. The delegate does not oppose the extension. The appeal is not obviously without merit and it appears that Kubica moved promptly to file an appeal as soon as he was aware that the delegate had issued a Determination.

In light of the foregoing circumstances, I think it appropriate to extend the appeal period in this matter to March 23, 2001.

ORDER

Pursuant to Section 109(1)(b) of the Act, I order that the appeal period governing the filing of an appeal of the Determination be extended to March 23, 2001. Accordingly, this appeal is properly before the Tribunal and will proceed to be adjudicated on its merits.

Norma Edelman
Vice-Chair
Employment Standards Tribunal