

An appeal

- by -

627361 B.C. Ltd. operating as Eleven Stones Nightclub
("Appellant")

- 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: William Reeve

FILE No.: 2003A/141

DATE OF DECISION: July 23, 2003

DECISION

OVERVIEW

This is an appeal by 627361 B.C. Ltd. operating as Eleven Stones Nightclub (the “Appellant”) pursuant to section 112 of the *Employment Standards Act* (the “Act”), against a Determination issued by the Director of Employment Standards (the “Director”) on December 30, 2002. The Determination found that the *Act* had been contravened and that the Appellant owed employee Shane Hughes (“Hughes”) \$7,414.49 in wages, vacation pay and interest.

The deadline for appeal of the Determination according to the Determination was January 22, 2003. Counsel for the Appellant filed an appeal dated April 30, 2003. The Tribunal received it on May 6, 2003. The Appellant provided reasons why the appeal was filed late, the implication being that an extension of the deadline for appeal was being requested.

The issue of whether to extend the deadline for appeal is decided on the basis of the written submissions from the parties.

ISSUE

The only issue to be addressed in this Decision is whether the Tribunal should extend the deadline for requesting an appeal in accordance with the powers of the Tribunal under section 109(1)(b) of the *Act*.

ARGUMENT

The principal of the Appellant referred to his many financial and business problems over the recent past. He referred to the effect of these stresses on his health. He indicated that he did not agree with the amount of money deemed to be owing to Mr. Hughes. He acknowledged that he had not co-operated in the investigation.

The Delegate of the Director who conducted the investigation of the complaint by Mr. Hughes stated, in the Determination, that no response had been received in response to his demand for records or to the complaint. The Delegate to whom the matter was transferred after the Determination was issued, points out that there is no dispute that the demand for records and the subsequent Determination were properly served. The Delegate states that she corresponded with Counsel for the Appellant on March 13 and April 17, 2003 concerning payment of the Determination. Counsel informed the Delegate that instructions would be sought from the Appellant and subsequently advised the Delegate that, instead of payment, the Appellant was anticipating filing an appeal.

THE FACTS AND ANALYSIS

The *Act* imposes an appeal deadline to ensure that appeals are dealt with promptly. This is consistent with one of the purposes of the *Act*, which is to provide fair and efficient procedures for resolving disputes. Under section 109(1)(b) of the *Act*, the Tribunal can extend the time for requesting an appeal, even though the appeal period has expired.

The Tribunal does not grant extensions automatically but it may extend a time limit if there are compelling reasons to do so. To help it decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. They are the following:

1. is there a good reason why the appeal could not be filed before the deadline;
2. was there an unreasonable delay in appealing;
3. did the appellant always intend to appeal the determination;
4. were the other parties aware of the intent to appeal;
5. is an extension of the appeal deadline harmful to the interests of the respondent; and
6. does the Appellant have a strong case that might succeed if an extension were granted.

There is nothing in the submissions that would convince me that the Appellant was not able to appeal before the deadline. The fact that a party has other concerns is not a compelling reason for failing to meet a deadline. In the present instance there is a record of failure to co-operate during the investigation, failure to respond to lawful demands for records and failure to respond to the Determination when it was served. Only when it appeared that collection of the amount owing was imminent, did the Appellant respond to the matter and commence its appeal.

The appeal was received over three months after the deadline for appeal. Deadlines set by legislation should not be treated casually. The long delay in this case is unreasonable by almost any imaginable standard. There is no evidence that the Appellant intended to appeal, or that such an intention had been indicated to any of the other parties, until collection appeared imminent. Any delay in the matter can be assumed to be harmful to the interests of the Respondent, Mr. Hughes, in that it would delay his receipt of the money found owing.

The Appellant states that it does not agree with the amount of money determined to be owing. Reference is made to the “tab” that the employee, Mr. Hughes, is alleged to have had at the nightclub where the work took place. It is asserted that Mr. Hughes did not work the hours claimed. No records of the employee’s hours of work are provided by the employer and no evidence is produced to show that there was an agreement to offset wages owed against a bar tab. Nothing that could be described as “a strong case that might succeed” is put forward in the appeal. It appears that there is little likelihood of the Determination being overturned.

Since nothing has been provided that constitutes a compelling reason to extend the deadline I must decline to do so.

ORDER

The Appellant's request for extension of the deadline for appeal and for acceptance of the appeal is denied. The appeal is dismissed pursuant to section 114(1) of the *Act*. Pursuant to section 115(1) of the *Act* the Determination dated December 30, 2002 is confirmed, along with any additional interest calculated in accordance with section 88 of the *Act*.

William Reeve
Adjudicator
Employment Standards Tribunal