

An appeal

- by -

ScottLynn Contracting Ltd.
(the "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/149

DATE OF DECISION: July 23, 2003

DECISION

OVERVIEW

This is an appeal by ScottLynn Contracting Ltd. (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 February 25, 2002. The Determination found that the Act had been contravened and that the Appellant owed employee Christine Gaw (“Gaw”) \$284.92. The amount was calculated as \$250.90 in wages including vacation pay and \$34.02 in interest in accordance with section 88 of the Act.

The deadline for appeal of the Determination was April 4, 2003. The appeal was received by the Tribunal on May 26, 2003 along with a copy of an envelope that was apparently intended to show that an attempt had been made to mail the appeal earlier but that it had been sent to an incorrect address. The implication of filing a late appeal is that the party is requesting an extension of the deadline for filing an appeal.

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 appeal contained a copy of the cover of a returned postal item showing that it had been postmarked at Telkwa, BC on May 6, 2003 and addressed to the Tribunal at an incorrect address. The appeal form is dated April 29, 2003. In a subsequent submission, on the subject of why the appeal was late, the Appellant stated,

“The late appeal was delayed, due to an incorrect address and returned. It was originally sent Ap 29th, 2003. Enclosed original with 2nd mailing to you.

“It was stated to Mr. Dafoe, Jan 16th/02 in response to his email Jan 13/03, that I would appeal the determination and collection he (threatened) was to forward.

....

“Company dissolved. Mar 2001. Records and copies of faxes, e-mail and letters had to be re-searched for purposes of ‘Late Appeal’.”

Some of these points were re-stated in the Appellant’s final reply. The Appellant also provided a copy of a fax message dated January 16, 2003 addressed to the Director’s Delegate in which dissatisfaction is expressed and the word “appeal” is mentioned, though the reference seems somewhat unclear.

The Respondent employee, Ms. Gaw, responded to the appeal but did not address the timeliness issue except to provide a chronology of events.

The Delegate of the Director provided a detailed response to the timeliness issue. He confirmed that the Determination was mailed on February 25, 2003 with an appeal deadline of April 4, 2003. He provided evidence that the Appellant received the Determination on March 6, 2003.

THE FACTS AND ANALYSIS

In the Determination and in the submissions of the parties there is reference to an earlier attempt at settlement of the matter. It is apparent that the proposed settlement was never completed. The employee, Ms. Gaw, did not accept the offer, despite an apparently mistaken impression on the part of the Director's Delegate that it had been accepted, nor did the proffered settlement amount change hands. The uncompleted settlement is not an issue here. It is not relevant to the timeliness issue before the Tribunal.

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.

In this appeal the deadline for appeal was April 4, 2003. The appeal form is dated April 29, 2003, twenty-five days after the deadline. The evidence of the Appellant seems to be that the appeal was mailed initially on or about May 6, 2003, about thirty-two days after the deadline. After the unexplained error of mailing the appeal initially to a wrong address it finally reached the Tribunal on May 26, 2003, fifty-one days after the deadline. The only explanation for all of this is the statement that, "Records and copies of faxes, e-mail and letters had to be re-searched for purposes of 'Late Appeal'." Little evidence of research was provided with the appeal beyond a copy of a cheque stub. There is, essentially, no good reason provided as to why the appeal was filed after the expiry of the deadline.

In the absence of any good reason why the appeal was filed late the long delay involved can hardly be judged reasonable.

The argumentative tone, and the use, twice, of the word “appeal” in the Appellant fax message to the Director’s Delegate of January 16, 2003, should have brought to the attention of the Delegate that there was a high probability that the Determination would be appealed, once it was issued. Nevertheless there was no appeal within the deadline. There is no indication that Ms. Gaw was informed of any intention to appeal. As the Delegate points out, the only prejudice to the interests of the employee is the further delay that would result if the appeal were accepted.

The final factor to be considered is whether the Appellant has a strong case. The only ground that the Appellant seems to have for disagreeing with the Determination is the belief that the employee’s failure to accept the earlier offer of settlement, and to cash the cheque that was proffered, somehow exempts the employer from liability for that amount of money. This is not a tenable argument.

It is understandable that the Appellant would be annoyed that the matter was apparently forgotten and left unresolved for almost two years after the failure of the attempt at settlement. This lapse by the Director’s Delegate is unexplained, however it does not vitiate the essential correctness of the Determination. Furthermore, the lapse by the Director’s Delegate, regrettable though it may be, does not excuse the failure of the Appellant to file its appeal within the deadline.

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 February 25, 2003 is confirmed, along with any additional interest calculated in accordance with section 88 of the *Act*.

William Reeve, Adjudicator
Adjudicator
Employment Standards Tribunal