

An appeal

- by -

Adrien Arthur Joseph Petit operating as Sattle Delivery  
(“Petit”)

- 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.:** 2002/196

**DATE OF DECISION:** June 6, 2002

## DECISION

### OVERVIEW

This is an appeal by Adrien Arthur Joseph Petit operating as Sattle Delivery (“Petit”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued by the Director of Employment Standards (the “Director”) on November 19, 2001. The Determination found that the *Act* had been violated and that \$2,507.07 in unpaid wages including unpaid regular wages, unpaid overtime and unpaid annual vacation plus interest was owing to employee Austin William Kinney (“Kinney”).

The deadline for appeal was December 12, 2001. Petit filed an appeal that was received by the Tribunal on April 8, 2002. In filing his appeal Petit gave reasons why his appeal was filed late, the implication being that he was asking for an extension of the deadline for the filing of an appeal.

The issue of whether to extend the deadline for appeal was 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 Appellant Petit in his appeal stated,

“I was not notified of any proceedings that were being processed against me, and was not given proper instructions on how to defend myself.”

Petit also gave information in his appeal concerning his contacts with the Delegate of the Director of Employment Standards (the “Delegate”) and the seizure of his vehicle. Petit stated that he moved away on August 1, 2001 from the last address that was known to the Delegate.

The Respondent, Kinney, in a letter responding to the appeal received by the Tribunal on April 16, 2002 objected strongly to the appeal in general and to the extension of the deadline in particular stating of the Appellant,

“This is just an attempt to delay the inevitable and I have waited long enough for my money...”

The Delegate, in a response to the appeal dated April 18, 2002, had a number of things to say on the issue of extending the appeal deadline including the following.

“The issue in question is whether this Corporate Determination was served as required in Sections 81 and 122 of the *Employment Standards Act* (the *Act*). I believe that it was served properly as required by the *Act*.”

The Delegate quotes the relevant section of the *Act*.

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.

The Delegate goes on to state,

“I submit that the requirements of Section 122 of the *Act* have been satisfied. The Corporate Determination was mailed to the last known address of the employer. The employer was aware that a complaint had been filed against his business and that it was being investigated. He also was aware that he had moved from the address that the initial letter from the ESB had been sent to and did not advise the ESB office of his new address or contact location.”.

The Delegate gave a short summary of his contacts with Petit noting that a letter sent to Petit's business address on August 23, 2001 was apparently delivered and it resulted in Petit coming to the Delegate's office on September 10 and September 14, 2001. On those occasions Petit did not mention any change of address to the Delegate. According to the Delegate, attempts to reach Petit by telephone in early October were not successful and a letter sent to Petit's last known address on October 22, 2001 was returned on October 25, 2001 marked by Canada Post as “Moved/Unknown”. Similarly the Determination sent by Canada Post's Priority Courier service on November 19, 2001 and addressed to the last known address for Petit was returned to the Delegate's office on November 21, 2001 also marked by Canada Post as “Moved/Unknown”.

## 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.

I shall address these criteria in reverse order. On the information to be gleaned from the submissions by Petit there do not appear to be the makings of a serious challenge to the correctness of the Determination. The extension of the appeal deadline would be, as argued by Kinney, quite prejudicial to the interests of the Respondent. As might be expected, there is no evidence that Petit intended to appeal the Determination or communicated such an intent to the other parties before the seizure of his vehicle brought the existence of the Determination to his attention in a manner that could not be ignored. The appeal was filed almost four months after the expiry of the deadline for appeal and about twelve days after the seizure of Petit's vehicle. Under almost any circumstance such a delay, no matter what the cause, would have to be considered unreasonable.

The main issue in this decision is this, "is there a good reason why the appeal could not be filed before the deadline". I am prepared to believe that Petit did not actually know the contents of the Determination and may not have known of the existence of the Determination before his vehicle was seized. Such ignorance however does not, in itself, provide *a good reason* why the appeal could not be filed before the deadline. Where such ignorance is genuinely innocent or where circumstances not under the control of the Appellant caused such ignorance it might be considered to be a good reason for a modest extension of the deadline for appeal. In the present appeal, however, Petit's ignorance of the Determination was wilful and of his own doing. Petit knew that the investigation that led to the Determination was underway yet after his last contact with the Delegate in mid-September 2001 he apparently made no further effort to cooperate in the investigation, to influence its outcome or to discover its conclusion. Petit had, by his own admission, already moved from his last known address at the time of his two meetings with the Delegate in September 2001 yet he failed to apprise the Delegate of this fact. Petit somehow received the Delegate's letter of August 23, 2001 sent to the last known address, even though Petit says that by then he had moved, however he apparently made no arrangement to continue to receive mail sent to that address or to have it forwarded to him at his new address. On these facts Petit's failure to receive the Determination in a timely manner was of his own doing and does not constitute a good reason to extend the deadline.

The provisions of section 122 of the *Act* concerning when a Determination is deemed to be served are intended to address issues related to the service of Determinations. The Delegate believes, "...the requirements of Section 122 of the *Act* have been satisfied." Though none of the parties raised the issue I note that the section refers to service by "registered mail". In the present instance the Delegate apparently sent the Determination to the Appellant using the Canada Post service known as "Priority Courier" commonly called "Priority Post". Functionally this satisfies the intention of section 122 of the *Act* in that it provides an impartial written record that the item for delivery was either delivered or that an attempt was made to deliver it. For purposes of this appeal I consider that the requirements of section 122 of the *Act* have been satisfied.

**ORDER**

The Appellant Petit's request to extend the time period allowed for making an 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 November 19, 2001 is confirmed.

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**William Reeve**  
**Adjudicator**  
**Employment Standards Tribunal**