

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-

KCC 179 Holdings Ltd.

(“KCC”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/14

DATE OF DECISION: June 23, 1998

DECISION

OVERVIEW

This is an appeal brought by KCC 179 Holdings Ltd. (“KCC”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on October 20th, 1997 under file number 085776 (the “Determination”).

The Director determined that KCC owed 32 former employees unpaid wages and interest in the amount of \$23,655.19.

FACTS

Based on the information set out in the Determination, which has not been contradicted by the appellant, KCC operated an “ABC Family Restaurant” franchise. On or about August 12th, 1997, the franchisee’s landlord exercised its right of distraint for unpaid rent. The restaurant closed down and did not reopen until approximately September 18th, 1997 under the auspices of a new franchisee. The monies set out in the Determination represent unpaid regular hourly wages, vacation pay and termination pay owed to KCC’s former employees.

ISSUE RAISED ON APPEAL

KCC asserts that the Director’s delegate erred in calculating the amount of unpaid wages owed to 21 of the 32 former KCC employees. Specifically, KCC says that the Director erred “in calculating the number of hours worked by certain employees and has erred in making certain assumptions with regards to statutory holiday pay and vacation pay entitlements of certain employees”. However, prior to addressing the substantive merits of the appeal, I must first turn my attention to the timeliness of the appeal.

ANALYSIS

The present appeal was filed on January 5th, 1998--well beyond the statutory time limit for appealing determinations set out in section 112(2) of the *Act*. I note that information with respect to the filing of an appeal was specifically contained in the Determination along with the following notation (contained in boldface type):

“An appeal of this Determination must be received by the Employment Standards Tribunal not later than November 12, 1997.”

While it is within the Tribunal's authority to extend the time for filing an appeal [see section 109(1)(b)], I do not believe that this is an appropriate case to do so. There is no evidence before me as to why KCC delayed in filing its appeal. KCC's solicitors maintain, in a letter dated February 11th, 1998 addressed to the Tribunal, that when an earlier appeal was filed on behalf of Ms. Varinder Chohan (who was named in a section 96 determination arising out of the same facts as the present appeal) "the intention of Ms. Chohan was to appeal on behalf of the company and all directors".

Ms. Chohan's intention may well have been to file on behalf of KCC as well as all of the directors but that is not what happened. Ms. Chohan's solicitors--the same solicitors who filed the within appeal--in their letter dated November 12th, 1997 accompanying Ms. Chohan's appeal, clearly indicated that Ms. Chohan was appealing the determination naming her as an officer and director of KCC and finding her liable for unpaid wages. There is absolutely nothing, I repeat nothing, contained in the solicitors' November 12th, 1997 letter to the Tribunal that even remotely suggests that the appeal was being filed on behalf of "the company and all directors". Ms. Chohan's appeal form itself similarly identifies only her as the appellant and she is the sole signatory to the appeal form.

It should also be noted that in their letter dated January 5th, 1998 accompanying KCC's notice of appeal, his solicitors stated:

"Please find enclosed herewith an Appeal of Determination form in respect of each of KCC Holdings Ltd., Amarjit Bains and Dalbagh (Don) Chohan.

We are enclosing a copy of the Determination issued by the Director in respect of KCC Holdings Ltd. In the interest of avoiding unnecessary paper work, we have not attached the Determination in respect of the others as the Determinations appear to be identical.

We confirm that the reasons for appeal are identical to those filed in respect of Varinder Chohan."

I fail to comprehend how it can be argued that Ms. Chohan's appeal was filed with respect to, *inter alia*, KCC, when a subsequent and separate appeal was filed on behalf of that company. KCC's solicitors cannot have it both ways--either the first appeal (Ms. Chohan's) encompassed the company and all of the directors or it did not. I do not believe that Ms. Chohan filed an appeal on behalf of the company and all of the directors and, apparently, neither did her solicitors (otherwise, the subsequent appeal filed on behalf of KCC would have been entirely unnecessary).

It may be that KCC's solicitors were instructed to file a timely appeal on behalf of the company and failed to do--that is a matter between KCC and its solicitors; it is not a matter for the Tribunal.

It follows that this appeal must be dismissed because it was not filed within the time limit set out in section 112 of the *Act*.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination be confirmed as issued in the amount of **\$23,655.19** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal