

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 -

Abraham Jones
("Jones")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/366

DATE OF DECISION: July 2, 1997

DECISION

OVERVIEW

This is an appeal by Abraham Jones (“Jones”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued by a delegate of the Director of Employment Standards (the “Director”) on April 15, 1997. The Determination found that Jones was not owed any compensation in lieu of notice nor any overtime wages.

The Tribunal notified Jones in a letter dated May 14, 1997 that his appeal would not be considered as it had not been submitted to the Tribunal within the proscribed time period. Jones requested the Tribunal to extend the time period within which his appeal could be submitted to the Tribunal. Jones’ former employer, McRae Waste Management Ltd., and the Director’s delegate oppose any extension of the time period for making an appeal.

ISSUE TO BE DECIDED

Should the Tribunal extend the time period within which Jones may submit an appeal to the Tribunal?

ANALYSIS

This decision deals solely with the question of whether the Tribunal should extend the time period within which Jones may request an appeal.

Section 122(1) of the *Act* sets out the requirements for service of a determination, as follows:

- 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.*

In this case, there is no doubt that the Determination was “served” by registered mail, as evidenced by the “Acknowledgment of Receipt” documents from Canada Post Corporation.

Section 112(2)(a) of the *Act* requires that an appeal of a determination must be delivered to the Tribunal within “...15 days after the date of service, if the person was served by registered mail.”

The Tribunal’s approach to extending the time periods for an appeal was set out in an earlier decision, *Metty M. Tang* [BC EST # D211/96], as follows:

(The) relatively short time limits are consistent with one of the purposes of the *Act* which is to provide for fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. It is in the interest of all parties to have complaints and appeals dealt with promptly.

Section 109 (1) (b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where there are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.

The following information was printed clearly on the Determination:

Appeal Information

Any person served with this Determination may appeal it to the Employment Standards Tribunal. The appeal must be delivered to the Tribunal within 23 days of the date of this Determination. Complete information on the appeal procedures is attached. Appeal forms are available at Employment Standards Branch offices.

When I review the facts of this appeal I find that the Determination was served properly, in accordance with Section 122 of the *Act*. I note in particular, that Jones does not deny or dispute that fact.

Jones offers no compelling reason why the appeal was not delivered to the Tribunal within the 23-day period described in the Determination.

I find there are no compelling reasons why the Tribunal should extend the time period for requesting an appeal.

ORDER

I order, under Section 115 of the *Act*, that the Determination dated April 15, 1997 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC/da