

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 -

South Delta Motors Ltd.
("South Delta")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 97/344

DATE OF DECISION: July 2, 1996

DECISION

OVERVIEW

This is an appeal by South Delta Motors Ltd. (“South Delta”) 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 3, 1997. The time period for delivering the appeal to the Tribunal expired on April 28, 1997. The Tribunal received the appeal on May 1, 1997.

The parties were invited to make submissions on the question of whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* and extend the time period for requesting an appeal.

I have considered those written submissions and have made my decision based on the reasons which are set out below.

ISSUE TO BE DECIDED

The issue to be decided is whether the time limit for requesting an appeal, as set out in Section 112 of the *Act*, should be extended in this case.

FACTS

In November of 1996, South Delta was advised by a delegate of the Director that Richard Anderson (“Anderson”) had filed a wage complaint with the Employment Standards Branch (the “Branch”). In January of 1977, following an exchange of correspondence between the company and the delegate, South Delta advised the delegate it intended to appeal his decision that Anderson was owed wages.

On April 3, 1997, the delegate issued a Determination which found that South Delta owed Anderson \$7,572.22 in wages.

The Determination was sent by registered mail to South Delta. It is acknowledged by South Delta that the Determination was received on April 8, 1997.

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.

Counsel for South Delta filed an appeal on May 1, 1997, and in a letter dated May 5, 1997, he offered the following reasons for delivering the appeal to the Tribunal outside the 23-day time period:

I (was) contacted by the Appellant (on April 30, 1997) ... The next morning I met with Ms. Rowland the Appellant's book-keeper who advised that she understood that May 1, 1997 to be the last day for the filing of an appeal...(and) that she understood that South Delta Motors Ltd. had 23 days from the date of service of the Determination on it (i.e. April 8, 1997) in which to file an Appeal...(Subsequently) I contacted Ms. Rowland (and she) reiterated her honest, albeit mistaken, belief that the appeal period ended on May 1, 1997...Taking the above into account, I am writing to request that the appeal period be extended ...to May 1, 1997. I understand that Ms. Rowland faxed a request for an extension to the Employment Standards Branch at 210-9446 Canada Way on April 30, 1997 and in response received a fax that provided the appeal form. I enclose a copy of Ms. Rowland's letter and the fax cover sheet from the Employment Standards Branch sent to her that same day with the appeal form.

The April 30, 1997 letter from Barbara Rowland ("Rowland") to the Branch states:

We are requesting an extension for filing an appeal ...The reason ...is that I have sought legal advise and need to have a few meetings with the lawyer so I may present my appeal properly. This determination is very detrimental to our Company and will have a lasting affect on all employees as to the decisions that are made.

On May 7, 1997 the Tribunal advised the delegate and Anderson of the late appeal and provided them with an opportunity to make a reply on the timeliness issue.

Anderson and the delegate replied on May 26, 1997. They oppose any extension of the time period within which South Delta may request an appeal. Their submissions were forwarded to South Delta and its counsel. On June 3, 1997, South Delta filed a final submission on this issue.

ANALYSIS

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

Section 122(1) of the *Act* provides that a Determination that is required to be served on a person is deemed to have been served if either served on the person or sent by registered mail to the persons last known address. Section 122(2) of the *Act* states that if service is by registered mail, the Determination is deemed to be served 8 days after it is deposited in a Canada Post office.

Section 112(2) of the *Act* sets out the time periods for appealing a Determination. A person served with a Determination has only 8 or 15 days to file an appeal depending on the mode of service. In the case of service by registered mail, the time period is 15 days after the date of service.

These 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.

In the case at hand, I am not satisfied that an extension ought to be granted.

The Determination was served in accordance with Section 122(1) of the *Act*. The Determination clearly stated that an appeal of it had to be delivered to the Tribunal within 23 days of the date of the Determination, not 23 days from that date it was received by South Delta. That is, an appeal had to be delivered to the Tribunal no later than April 28, 1997.

There is no question that South Delta received the Determination well in advance of the appeal deadline. South Delta, however, did not contact the Tribunal on or before April 28, 1997 which would have resulted in a timely appeal. Rather, South Delta waited until April 30, 1997 to dispute the Determination and then it did so by requesting an extension to file an appeal because it needed time to consult with counsel. This request was made to the Branch and not, as it should have been, to the Tribunal.

In my view, South Delta was clearly advised that the deadline for an appeal was April 28, 1997 and that an appeal had to be made to the Tribunal and not the Branch. South Delta had the opportunity to file an appeal in a timely manner. It also had ample time to retain counsel in so far as it indicated three months earlier that it intended to appeal the decision of the delegate. The obligation is on the employer to exercise reasonable diligence in the pursuit of an appeal. In this case, South Delta has failed to persuade me that it has done so. I find no compelling reasons to allow this appeal.

For the above reasons, I have decided not to extend the time limit for requesting an appeal in this case.

ORDER

South Delta's request to extend the time period for requesting an appeal is denied. The appeal is dismissed pursuant to Section 114 of the *Act*.

I order, under Section 115 of the *Act*, that the Determination dated April 3, 1997 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal

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