

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Moen & Sagh Contracting Ltd.
("Moen")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/537

DATE OF DECISION: October 18, 1996

DECISION

OVERVIEW

This is an appeal by Moen & Sagh Contracting Ltd. (“Moen”) under Section 112 of the *Employment Standards Act* (the “*Act*”) against Determination CDET 003007 which was issued by Betsy Arnott (“Arnott”), a delegate of the Director of Employment Standards, on June 25, 1996. The time limit for filing an appeal of the Determination expired on July 18, 1996. The Tribunal received an appeal from Moen on September 12, 1996.

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

On November 23, 1995, the Employment Standards Branch (the “Branch”) received a complaint from Basil Anchikoski (“Anchikoski”) alleging that he was owed wages by Moen.

During the period February to June, 1996, Arnott investigated Anchikoski’s complaint. On May 16, 1996, she wrote Moen and advised that wages were owed to Anchikoski and if the matter was not resolved she would issue a Determination.

On June 25, 1996, Arnott issued Determination CDET 003007 against Moen. The Determination indicated that an appeal of it had to be received by the Tribunal no later than July 18, 1996. The Determination was sent by certified mail to 440 Grandview Bench Road, Salmon Arm, B.C. V1E 4M3, which is the operating address of Moen. A copy of the Determination was addressed to the Registered and Records office located in Enderby, B.C., but it was actually mailed to the operating address in Salmon Arm. Both documents were returned to the Branch by Canada Post on August 12, 1996 marked “unclaimed”. The documents indicate that Canada Post left cards at the Salmon Arm address on at least 2 occasions prior to returning the documents to the Branch.

On August 9, 1996, Arnott re-sent a copy of the Determination to the Registered and Records office in Enderby. This document was received on August 26, 1996.

James Moen, Director of Moen, and Sandy Moen claim that they received a call from the Registered and Records office on August 29, 1996, advising them of the Determination. In a letter to the Tribunal James Moen states: “ We never received any notice until August 29... (and) had no knowledge of a registered letter before this.”

On September 12, 1996, the Tribunal received an appeal from Moen which was dated September 9, 1996. The appellant Moen wants an extension on the time limits for filing an appeal to the Tribunal

ANALYSIS

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; the time period is only 8 days if the Determination is personally served.

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.

While it is claimed by James and Sandy Moen that they never received any notice of a Determination prior to August 29, 1996, they were made aware on May 16, 1996 that Arnott intended to issue a Determination. Further, the Determination was served in accordance with Section 122 (1) of the *Act*. Arnott sent the Determination to Moen's operating address by certified mail. This was the last known address of the employer. Moen was properly served and reasonable efforts were made to notify it of the Determination. Canada Post attempted to deliver the Determination. Moen was advised on at least two occasions that certified mail was available for pick-up at Canada Post. Moen, however, failed to take delivery of the mail or respond to the notices. Given these circumstances, I am not satisfied that a time extension ought to be granted to Moen.

Finally, the Moens did not file an appeal until 11 days after they allege they were notified of the Determination. By August 29, 1996, the Moens knew that the deadline for an appeal

had already passed and that an appeal had to be filed with the Tribunal, yet they chose not to exercise their option of disputing the Determination until September 9, 1996 when an appeal was forwarded to the Tribunal by regular mail, which ensured a further delay. The obligation is on the employer to exercise reasonable diligence in the pursuit of an appeal. In this case, Moen has failed to persuade me that it has done so. I am not convinced that Moen genuinely intended to file an appeal in a timely manner.

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

ORDER

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

Norma Edelman
Registrar
Employment Standards Tribunal