

August 11, 2000

BC EST #D324/00

To: Interested Parties

Re: Employment Standards Act - Part 13

**Appeal of a Determination issued by the Director of Employment Standards on
May 8, 2000**

**The Penticton Hotel Company Limited and Harbans Randhawa, operating as
the Three Gables Hotel -and- Kelly Bishop
Tribunal File No. 2000/411 CDET**

ISSUE: TIMELINESS OF THE APPEAL

The Director of Employment Standards (the "Director") issued a Determination against The Penticton Hotel Company Limited and Harbans Randhawa operating as The Three Gables Hotel (the "Company") on May 8, 2000. The Determination awarded \$322.23 to Kelly Bishop, a former employee, (the "Respondent") for statutory holiday pay, minimum daily pay and compensation for length of service. The appeal deadline was May 31, 2000. Harbans Randhawa (the "Appellant") appealed on June 14, 2000.

The Tribunal must decide whether to extend the appeal deadline from May 31, 2000, to June 14, 2000 and this decision deals only with that issue.

PRINCIPLES FOR EXTENDING AN APPEAL DEADLINE

The *Employment Standards Act* (the "Act") imposes an appeal deadline to ensure appeals are dealt with promptly. That 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 decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. Appellants who are seeking a time extension for an appeal, should satisfy the Tribunal on balance that:

1. there is a good reason they could not appeal before the deadline,
2. there is not an unreasonably long delay in appealing,
3. they always intended to appeal the determination,
4. the other parties (the Respondent and the Director) are aware of the intent to appeal,

5. the Respondent will not be harmed by an extension, and
6. they have a strong case that might succeed, if they get an extension.

ANALYSIS

Applying the six factors described above, to this case:

1. In her appeal, the Appellant says that she could not file the appeal on time, because of circumstances beyond her control. She says that the Company is under a legal dispute as to ownership and the legal owners have not replied to inquiries by the Director or anyone else. No particulars or documents are provided regarding the legal dispute. Yet, the Appellant adds that she was in possession and control of the hotel as of September 1999 so now she is taking steps to see all issues are addressed. The Appellant does not explain how or why the ownership issue prevented her, or the Company, from filing an appeal on time.

In her submission, the Respondent says she was paid in full by Don Mohammed at the beginning of June 2000. She thought the matter was closed but if not, she wants to know, because she says the Appellant's submission is not accurate.

The Director's submission says the Determination was paid by The Penticton Hotel Company Limited on June 9, 2000 and the Appellant was advised of this by letter on June 13, 2000.

2. The appeal was 2 weeks late.
3. The late appeal itself is the only evidence of intent to appeal.
4. The other parties would have learned of the intent to appeal only when the Tribunal sent them notice of the late appeal.
5. There is no evidence of harm to the Respondent.
6. The Appellant takes no issue with the award for statutory holiday pay or minimum daily pay but says compensation for length of service should not have been awarded. Her reasons are as follows:
 - when the Appellant took over on September 1, 1999, the restaurant was losing money and she warned all employees that if it did not at least break even, she would have to close it down for the winter season;
 - in October 1999 the Appellant held a staff meeting with all staff present, where everyone was given oral notice; she submits that notice can be oral if there are witnesses to it, so this oral notice should be valid and means the Respondent had more than 2 weeks notice;
 - the Appellant offered the Respondent two other jobs which the Respondent declined;

- the hotel was found negligent based on a technicality—not giving an offer of employment in writing;
- the Appellant alleges that the Director was prejudiced in her decision and included statements that were irrelevant and not anyone's business.

The Appellant does not appear to have a strong case if the Tribunal extends the deadline because the *Act* requires written, not oral, notice of termination; further, there is no evidence that the other jobs offered to the Respondent were reasonable alternative employment, as required by the *Act*. The Appellant offers no evidence to support her allegation of prejudice. Finally, the Appellant's assertion that the Determination found the hotel negligent for not giving an offer of employment in writing is simply incorrect. The Determination concluded that there was no evidence that the Respondent was offered reasonable alternative employment.

CONCLUSION

The Appellant had a right to appeal the Determination before the deadline: she also had a matching responsibility to exercise that right before the appeal deadline. The Appellant did not discharge that responsibility. She did not exercise reasonable diligence in pursuing an appeal and did not provide a sufficient reason for being late. There is no explanation of how the circumstances beyond her control, as she describes them, caused a late appeal. Another person for the Penticton Hotel Company Limited has already paid the Determination. As well, the Appellant does not appear to have a strong case. The balance of these six factors does not establish any compelling reason to extend the appeal deadline.

ORDER

The Tribunal does not extend the appeal deadline and the appeal will not proceed.

Norma Edelman
Vice-Chair
Employment Standards Tribunal