

An appeal

- by -

Jagjit Khotar, a Director or Officer of Quantum Industries Manufacturing Ltd.
("Khotar")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: William Reeve

FILE No.: 2002/237

DATE OF DECISION: August 7, 2002

DECISION

OVERVIEW

This is an appeal by Jagjit Khotar, a Director or Officer of Quantum Industries Manufacturing Ltd. (“Quantum”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued by the Director of Employment Standards (the “Director”) on February 17, 1999. The Determination found that Quantum had contravened sections 17 and 18 of the *Act* and had not paid wages determined to be owed to Yuon Maheux (“Maheux”). The Determination found that Khotar was a director or officer of Quantum and that pursuant to section 96 of the *Act* Khotar was liable for unpaid wages plus interest owing to Maheux in the total amount of \$1,080.13.

The deadline for appeal was March 12, 1999. Khotar filed an appeal that was received by the Tribunal on May 2, 2002. The implication of filing an appeal after the expiry of the deadline is that the appellant seeks an extension of the deadline to allow the appeal to be considered on its merits.

The issue of whether to extend the deadline for appeal is decided on the basis of the written submission from the parties.

ISSUE

The only issue to be addressed in this Decision is whether the Tribunal should extend the deadline for requesting an appeal in accordance with the powers of the Tribunal under section 109(1)(b) of the *Act*.

ARGUMENT

The Appellant in his appeal stated that he was unaware of the Determination against him until early in the year 2002 when he became aware of it as a result of a check of his credit rating. He also stated that if he received and opened any mail relating to Quantum that he would forward it to his nephew Rasvinderjit Tur. The argument that Khotar was unaware of the Determination against him, and therefore was unable to appeal the Determination in a timely manner, was repeated in the Appellant’s submission dated May 9, 2002. The Appellant made two further submissions both dated June 7, 2002.

The Respondent, Maheux, did not make any submission. His current address is unknown and he was therefore probably unaware of this appeal.

The Director, in a submission dated May 10, 2002, points out that there is no reason to believe that Khotar did not receive the Determination when it was issued and served. The Director also responds to the “merits” issues raised by the Khotar.

THE FACTS AND ANALYSIS

The *Act* imposes an appeal deadline to ensure that appeals are dealt with promptly. This 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 help it decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. They are the following:

1. is there a good reason why the appeal could not be filed before the deadline;
2. was there an unreasonable delay in appealing;
3. did the appellant always intend to appeal the determination;
4. were the other parties aware of the intent to appeal;
5. is an extension of the appeal deadline harmful to the interests of the respondent; and
6. does the Appellant have a strong case that might succeed if an extension were granted.

The main issue in this decision is this, “is there a good reason why the appeal could not be filed before the deadline”. It is conceivable that Khotar did not know or fully understand the contents of the Determination when it was issued and served. I am, however, not fully convinced that he was, in fact, ignorant of the Determination against him. Such ignorance, if indeed he was ignorant, does not, however, in itself, provide *a good reason* why the appeal could not be filed before the deadline. Where such ignorance is genuinely innocent or where circumstances not under the control of the Appellant caused such ignorance it might be considered to be a good reason for a modest extension of the deadline for appeal. In the present appeal, however, Khotar’s ignorance of the Determination, if he was ignorant, was probably wilful and largely of his own doing. Khotar chose, by his own admission, to forward to another party documents that were sent to him. He, if his submission is to be believed, apparently made no effort to ascertain the contents of the Determination or to inquire as to why it was sent to him. On these facts Khotar’s failure to appeal the Determination in a timely manner was of his own doing and does not constitute a good reason to extend the deadline.

The delay in filing an appeal of the Determination was well over three years from the expiry of the appeal deadline. To extend the appeal deadline by such a long period, even where there was uncontrovertible evidence that the Appellant was prevented from filing an appeal for reasons completely beyond his control, would be problematic. To do so would vitiate any expectation of finality by any party with respect to proceedings under the *Act*. Furthermore such an extension would seem to be inconsistent with the purpose of the *Act* “to provide fair and efficient procedures” as set out in section 2(d) of the *Act*. In the present instance the evidence that the Khotar was prevented from filing a timely appeal is far from uncontrovertible and the reasons given were not beyond his control.

There is no convincing evidence that Khotar always intended to appeal the Determination. In fact the appeal seems to have been initiated only when, long after the Determination was issued, Khotar found that it was affecting his credit record. There is also no evidence that he informed any of the other parties of an intention to appeal.

Khotar states that the extension of the deadline would not be harmful to the interests of the Respondent. Considering that the whereabouts of the Respondent are apparently unknown, Khotar may well be correct on this point since an appeal proceeding may not delay the receipt of any monies found owing to the Respondent.

The final factor that the Tribunal would usually consider on a timeliness matter is whether the Appellant has a strong case that might succeed if an extension were granted. Khotar claims in his appeal that he was originally not aware that he was a director of Quantum and that when he subsequently discovered that he was a director, he then resigned from that position. The evidence submitted in support of these contentions appears to be written statements signed by Khotar and a statement signed by another party. This could hardly be described as a strong case that might succeed if an extension were granted.

ORDER

Khotar's request to extend the time period allowed for making an appeal is denied. The appeal is dismissed pursuant to section 114(1) of the *Act*. Pursuant to section 115(1) of the *Act* the Determination dated February 17, 1999 is confirmed.

William Reeve
Adjudicator
Employment Standards Tribunal