

An appeal

- by -

Uniglobe Pacific Travel Ltd.

- 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: John M. Orr

FILE No.: 2001/365

DATE OF DECISION: July 5, 2001

DECISION

APPLICATION

This is consideration of an application by Uniglobe Pacific Travel Ltd. ("Uniglobe") pursuant to Section 109 of the Employment Standards Act (the "Act") to extend the time period for requesting an appeal from a determination dated April 10, 2001 by the Director of Employment Standards (the "Director") even though the time period for requesting an appeal has expired.

The main issue addressed in the determination was whether Uniglobe was entitled to withhold from wages certain agreed upon payments to cover assessments made against an employee by certain airlines for errors made by the employee in transactions with the airlines. In the determination a delegate of the Director decided that Uniglobe was not entitled to deduct the amounts and found Uniglobe liable for wages owing, annual vacation pay and compensation for length of service.

The determination was dated April 10, 2001 and included a notice that the appeal deadline was 4:30 p.m. on May 04, 2001. There is no issue raised around service of the determination.

The appeal herein by Uniglobe was received by the Tribunal on May 09, 2001 at 1:05 p.m.

The time limits for appeals are set out in Section 112 of the Act as follows:

Right to appeal director's determination

112. (1) *Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.*
- (2) *The request must be delivered within*
- (a) *15 days after the date of service, if the person was served by registered mail, and*
 - (b) *8 days after the date of service, if the person was personally served or served under section 122(3).*

The Tribunal has authority under Section 109(b) to extend the time period for requesting an appeal even though the period has expired. The Tribunal has developed certain basic principles to exercising the discretion granted in this section which include that:

1. there is a reasonable and credible explanation for the delay;
2. the employer has had a genuine and ongoing intention to appeal;
3. the respondent and the Director were aware of the intention to appeal;
4. the prejudice to the employee will be considered;
5. there is a *prima facie* case set out in the appeal.

In this case Uniglobe says that they made it known to the delegate that they intended appealing the determination but this is disputed by the delegate. The appeal was filed five days after the deadline and the reason given for the delay is that Uniglobe's president was out-of-town and he believed that the branch manager was handling the appeal. Through miscommunication, the manager thought that the president was handling it. The day that he returned, the president says that he drafted his appeal and filed it the same day.

At this stage in the proceedings I must comment on the merits of the appeal as there are significant issues raised that require consideration. It is not for me to decide those issues but suffice it to say that the delegate failed to address section 22 (4) of the *Act* that allows an employer to honour an employee's written assignment to meet a credit obligation. This is a significant omission given the facts of the case.

A second significant error is the delegate's reference to "progressive discipline". The *Act* has no such provisions or requirements and the Director's jurisdiction is circumscribed within the four corners of the legislation. There is no power to create requirements that exceed the minimum standards prescribed in the legislation.

While delay in and of itself can be prejudicial to one or more of the parties, in this case the delay was only a matter of five days. There is a very credible explanation for the delay and I do not find in this case that the delay results in significant prejudice.

I conclude that this is a proper case for the exercise of the discretion allowed in section 109 and therefore I grant the extension and the hearing of this appeal will be scheduled as soon as practicable.

ORDER

Accordingly, pursuant to section 109(1)(b), I extend the time for filing of the appeal herein.

John M. Orr
Adjudicator
Employment Standards Tribunal