

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 -

Western Outdoor Advertising Inc.
("Western Outdoor")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Michelle Alman

FILE No.: 2000/467

DATE OF DECISION: September 29, 2000

DECISION

OVERVIEW

This decision addresses an appeal filed pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Western Outdoor Advertising Inc. (“Western Outdoor” or “the Company”) from a Determination issued May 10, 2000 by a delegate of the Director of Employment Standards (“the Director”). The Determination concluded that Western Outdoor had contravened sections 16, 17(1), 18(2), 45 and 58(3) of the *Act* by failing to pay its employee, Phylis Dunning (“Dunning”), at least the minimum wage, vacation pay, and statutory holiday pay owing to her in the required time following termination of her employment. Pursuant to section 79(3) of the *Act*, the Director ordered Western Outdoor to cease contravening the *Act* and pay a total of \$4,950.89 (\$4,499.55 in wages plus \$451.34 in interest to May 10, 2000) owed to Dunning. As an attachment to the Determination, a second delegate of the Director, pursuant to section 98 of the *Act* and section 29 of the *Regulation*, also issued a \$0.00 penalty against Western Outdoor for its contraventions of the noted sections of the *Act*.

Western Outdoor appealed on July 5, 2000, well outside of the appeal time limits set out in section 112 of the *Act*, alleging that it was not properly served with the Determination and made aware of the “legal action,” and therefore was not able to make a submission in its defense. Ken Meiklejohn (“Meiklejohn”), on behalf of Western Outdoor, alleges that he is not a director of the Company but only “management,” and that he personally never received any piece of registered mail from the Employment Standards Branch concerning the Determination. Meiklejohn further alleges in Western Outdoor’s appeal that the registered mail copy of the Determination addressed to Western Outdoor’s sole named director at the Company’s Registered and Records Office address was signed for on May 12, 2000 by a person without authority to accept mail for the Company. Meiklejohn alleges that neither he nor the Company’s sole named director had actual notice of the existence of the delivered registered mail copy of the Determination until “weeks” after its delivery. Meiklejohn further alleges in a letter of July 4, 2000 to the Director’s delegate that the Company changed its Registered and Records Office address to Meiklejohn’s home address “years” prior to the registered mail delivery of the Registered and Records Office address. In a letter to the Tribunal dated July 5, 2000, Meiklejohn also alleges that the person listed as the Company’s sole named director had resigned from his office “some time ago,” and therefore had no authority to accept mail for the Company or Meiklejohn.

In his final appeal submissions to the Tribunal dated August 16, 2000, Meiklejohn denies that he is a director of the Company and that he had any responsibility to provide information to the Director’s delegate as to who currently might be the Company’s directors. Meiklejohn denied being a shareholder or “controlling mind” of the Company, and alleged his “only role was one of management.” He admitted to having signing authority on behalf of the Company with the Company’s bank and alleged he had that authority as a way to ensure that he would be repaid for a loan he had made to the Company.

The parties made written submissions on the issue of whether or not the Tribunal should exercise its discretion pursuant to section 109(1)(b) of the *Act* to extend the time period to allow Western Outdoor to appeal from the Determination. Western Outdoor provided written submissions in reply to those of Dunning and the Director.

PRELIMINARY ISSUE

Meiklejohn's denial of being a director of Western Outdoor raises the preliminary issue of whether he has authority to file an appeal on behalf of the Company. Meiklejohn acknowledges in Western Outdoor's appeal submissions that he has authority to bind the Company in its banking transactions, that the Company operates from his home, and that he has a "management role" in the Company. Further, in responding for Western Outdoor to Dunning's complaint prior to the issuance of the Determination, Meiklejohn stated that Dunning had to have his approval to bind the Company to any lease she negotiated.

Section 1(1) of the *Company Act*, R.S.B.C. 1996, c. 62, defines a "director" as follows:

"director" includes every person, by whatever name designated, who performs functions of a director;

Section 108 of the *Company Act* requires that every company must have at least one director, and section 113(1) states that every company must, within 14 days after the appointment or election of a director, file a notice with the Registrar of Companies of that director's appointment or election. Section 133(1) requires that every company must have a president and a secretary, who must be different persons unless the company has only one member. Furthermore, section 134 states:

Chair and president

134 A person must not be the chair of the directors or president of a company unless the person is a director of the company.

Additionally, a company may enter into contracts as stated in section 100(2):

Form and effect of contracts

100 ...

(2) Every contract, that, if made between individuals, would by law be required to be in writing and signed by the parties to be charged, may be made for the company in writing signed by a person acting under the company's authority, express or implied, and, in the same manner, may be varied or discharged.

And section 101 further sets out the authority of a director or officer to bind a company:

Authentication of documents

101 A document that requires authentication or certification by a company may be authenticated or certified by a director, or officer of the company, or by the solicitor for the company, and need not be under the company's common seal.

From the significant indicia of authority that Meiklejohn has cited himself as having and exercising in controlling the financial and business affairs of Western Outdoor, I find him to be

either a director or officer of Western Outdoor. Meiklejohn therefore does have legal authority to file Western Outdoor's appeal from the Determination.

ISSUE

Should the Tribunal exercise its discretion to extend the time period for Western Outdoor to request an appeal, even though the period has expired?

THE FACTS AND ANALYSIS

Western Outdoor is an enterprise engaged in securing and leases, obtaining permits for erecting billboards, and selling or renting billboard signs. Dunning was employed in 1998 by Western Outdoor as a sales representative to obtain land leases for the purpose of erecting billboards. She was paid on a commission basis. The parties disagree about the precise length of time Dunning was employed, and about whether she was entitled to be paid other than solely on the basis of her earned commissions. Dunning filed her complaint with the Employment Standards Branch in 1999. Meiklejohn made oral representations on behalf of Western Outdoor when discussing Dunning's complaint with a delegate of the Director during the investigation stage of the proceedings. Those discussions took place prior to the issuance of the Determination on May 10, 2000.

Canada Post provided the Director's delegate with confirmation of the successful delivery on May 12, 2000 of one of two copies of the Determination against Western Outdoor. That copy of the Determination was addressed to the Company, and to the attention of Aubrey McGinnis ("McGinnis"). McGinnis is still the sole principal and director listed as of June 28, 2000 on a Corporate Registry search conducted on July 4, 2000. The delivered copy was received at 818 Union Street, Vancouver, B.C.. That address is still the Company's Registered and Records Office address listed as of June 28, 2000 on a Corporate Registry search conducted on July 4, 2000. The person who signed for the May 12, 2000 delivery was Judy Cross ("Cross").

Meiklejohn alleges in a July 4, 2000 letter addressed to the Director, forwarded July 5, 2000 to the Tribunal, that Cross was not authorized to receive any mail on behalf of himself or the Company, and that she was merely McGinnis's landlady. Meiklejohn alleges further that Cross resided in another part of the house than did McGinnis, and that she never gave the registered letter copy of the Determination to McGinnis before she left on a vacation. This allegedly meant that McGinnis did not know about the Determination's existence for "weeks." McGinnis apparently called Meiklejohn "a few days" before July 4, 2000. This was likely in response to the successful registered mail delivery on June 15, 2000 to McGinnis at the Company's Registered and Records address of three copies of director determinations (including one addressed to Meiklejohn) subsequent to the Company's failure to pay the amount owing on the Determination by June 2, 2000.

In letters of July 4, 2000 to the Director's delegate and July 5, 2000 to the Tribunal, Meiklejohn alleges his personal address has been the Company's place of business and Registered and Records Office address "for years." He offered no documentary evidence of a legal change of the Company's Registered and Records Office address, though he should have been sent a filed copy of the change of address form by the Registrar of Companies.

The Director's delegate alleges in her timeliness appeal submissions that the Company was served at both Meiklejohn's home address and the Registered and Records Office address. There was no proof provided in the documentation from Canada Post, however, that registered mail copies of either the corporate Determination or the director determinations were successfully delivered to Meiklejohn at his personal address. For reasons that shortly will be apparent, this is of no moment.

Section 2 of the *Act* states, among others, that the purposes of the *Act* are:

- (b) *to promote the fair treatment of employees and employers;*
- ...
- (d) *to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act...*

Section 109(1)(b) of the *Act* permits the Tribunal to extend the time period for requesting an appeal even though the period has expired. Section 112 of the *Act* sets out the time limits for filing an appeal:

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...*

Section 122 of the *Act* addresses how a determination is deemed to have been served:

Service of determinations and demands

- 122** (1) *A determination or demand that is required to be served on a person under this Act is deemed to have been served if*
- (a) *served on the person, or*
 - (b) *sent by registered mail to the person's last known address.*
- (2) *If service is by registered mail, the determination or demand is deemed to be served 8 days after the determination is deposited in a Canada Post Office.*

Sections of the *Company Act* dealing with the requirements for Registered and Records Offices, and how a company may be served, are also relevant here. Section 39 of the *Company Act* states in part:

Registered and records offices

- 39** (1) *Every company, at all times, must maintain a registered office and, for the purposes of section 163, a records office, both in British Columbia and both at the locations set out in the latest Form 3 or Form 4 in the Second Schedules filed with the registrar.*
- (2) *The registered office and the records office may be located at the same place.*

Section 40 deals with changes of address for Registered and Records Offices:

Change of registered or records office

- 40** (1) *The directors of a company may change the location of its registered office or records office in British Columbia by*
- (a) *passing a resolution authorizing the change, and*
- (b) *filing with the registrar 2 copies of a notice of change in Form 4 in the Second Schedule.*
- (2) *No change in the location of the registered office or records office is effective until subsection (1) has been complied with.*
- (3) *When subsection (1) has been complied with, the registrar must forward to the previous registered office or records office one copy of the notice bearing evidence that it has been filed with the registrar.*
- (4) *If the records office or registered office is located at the place of business of a company's agent or solicitor and that agent or solicitor moves the agent's or solicitor's place of business to another location, the agent or solicitor must notify the registrar of the change of address and file with the registrar a notice of the change in Form 4 in the Second Schedule for each company having a records office or registered office at the agent's or solicitor's place of business, and subsections (1) to (3) do not apply.*
- (5) *A change in the location of the registered office or records office under subsection (4) is not effective until that subsection has been complied with.*

And section 204(1) of the *Company Act* indicates that one way a document may be served on a company is:

- (a) *by leaving it at, or mailing it by registered post addressed to, the registered office of the company...*

The foregoing provisions of the *Act* and the *Company Act* make it abundantly clear that service on a company of a document such as a determination may be accomplished by delivering the document by registered mail at the last Registered Office address of the company. Neither the *Act* nor the *Company Act* requires that any particular person at the company's Registered Office address must sign for a piece of registered mail. Meiklejohn's efforts to characterize delivery to Western Outdoor as not having been effected because Cross signed for the registered mail copy of the Determination have no merit.

It is also clear from the *Company Act's* section 39 and 40 provisions that it is a company's responsibility to maintain up-to-date Registered and Records Office addresses at all times with the Registrar of Companies, and that failure to do so makes any change of address of no legal effect. Accordingly, Meiklejohn's assertions that the Company changed its Registered and Records Office address "years ago" to his personal address are of no legal consequence. The Corporate Registry search for Western Outdoor done on July 4, 2000 indicates a different Registered and Records Office as of June 28, 2000. The Company could be and was legally served by registered mail with the Determination on May 12, 2000 at the address noted in the Corporate Registry search.

It is unfortunate for Western Outdoor if the person at their Registered and Records Office address who signed for the Determination failed to bring it to the attention of the Company's only registered director, who also resided at the same address. It is up to Western Outdoor, however, to arrange its business affairs so that reasonable actions will be taken by those at the Company's publicly registered address for receipt of legal process. In other words, Western Outdoor should have arranged for its Registered and Records Office address to be a place where receipt by anyone there of a document with potential legal consequences would have triggered appropriate efforts to defend the Company's interests. This is why Registered and Records Offices are so often located at corporate solicitors' firms.

Though Meiklejohn may not have actually received the pieces of registered mail sent to him in May and June, 2000 by the Employment Standards Branch at his home address, section 122(2) deems that he was served with the documents eight days after their deposit in the Canada Post Office in Burnaby on May 10, 2000 and June 14, 2000 respectively. This is so according to the plain reading of that section of the *Act*.

Meiklejohn's assertion that McGinnis had resigned as director of the Company prior to the delivery of the Determination is also of no value as support for an extension of the appeal filing timeline. Section 108 of the *Company Act* requires every company to have at least one director, while section 113(1) requires every company to maintain an up-to-date registration with the Registrar of Companies of new directors' appointments or elections. The July 4, 2000 Corporate Registry search for Western Outdoor indicates the McGinnis was still registered as the Company's only director as of June 28, 2000. McGinnis lived in the same house as Cross, and Western Outdoor used McGinnis's and Cross's shared house address as its Registered and Records Office address as of June 28, 2000. I find that service of the Determination on Western Outdoor, and on McGinnis as sole registered director of Western Outdoor, was accomplished on May 12, 2000 by registered mail. This means that Western Outdoor had until Monday, May 29, 2000, to deliver its appeal, given that the 15th day after service fell on a Saturday.

One of the express purposes of the *Act* is to provide for fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. Here, a complaint was filed in 1999 over wages claimed for work done in 1998. The Determination was legally and properly served on Western Outdoor in mid-May, 2000, and the appeal period ran out at the end of May, 2000. More than 30 days after the end of the 15-day appeal period, or more than 45 days after service on it of the Determination, Western Outdoor sought to file an appeal. I find that it would be unfair to Dunning and contrary to an express purpose of the *Act* to extend by that much the timeline for filing Western Outdoor's appeal where service was properly accomplished. See: *Metty M. Tang*, BC EST #D211/96 and *Liisa Tia Anneli Niemi*, BC EST #D099/96. If service of the Determination on Western Outdoor was ineffective, it was so only on the basis of the Company's choice of where to locate its Registered and Records Office or its failure to keep up-to-date registration information on file with the Registrar of Companies.

ORDER

Pursuant to section 109 of the *Act*, I decline to extend the time period for Western Outdoor to request an appeal.

Michelle Alman

Michelle Alman

Adjudicator

Employment Standards Tribunal