

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 -

Steve H. Berg
("Berg")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE No.: 2000/502

DATE OF DECISION: September 21, 2000

DECISION

OVERVIEW

This appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”) and by Steve H. Berg (“Berg”, also, “the appellant”). Berg appeals a Determination by a delegate of the Director of Employment Standards (the “Director”) dated June 14, 2000.

The appeal was delivered a few days after the statutory period for appealing the Determination had expired. Berg claims that it was always his intention to appeal the Determination and he asks that the Tribunal waive the time limit for the appeal.

ISSUE TO BE DECIDED

The sole issue before me is whether the Tribunal should or should not exercise its discretion to extend the time period for appealing the Determination.

FACTS

Berg, an auto mechanic, was employed by North Star Motors Ltd. DBA North Star Chev Olds (“North Star” or “the employer”). Unhappy with his employer, he quit on December 3, 1999. Three months later he filed a complaint with the Employment Standards Branch claiming “severance pay” and that alone.

The Determination dismisses the complaint without explaining that an employer’s liability to pay compensation for length of service is discharged when the employee voluntarily resigns. What is considered is the matter of whether North Star did or did not violate section 66 of the *Act* and whether compensation for length of service is owed for the reason that a condition of employment was substantially altered. In that regard, the delegate has found that North Star did not substantially alter any term or condition of the employment, that Berg quit on his own accord when North Star cancelled its company Christmas party and he learned that he was not invited to an alternate party that was going to be held by some of his fellow employees.

The Determination advised Berg of his right to appeal. And it clearly advised him that the appeal had to be “delivered to the Tribunal no later than 4:30 PM on July 7, 2000”.

Berg’s appeal is dated July 13, 2000, and he dropped it in the mail the next day. According to the Berg, he was sure that he had somewhere read that he had 30 days to respond and that as such he thought he had until July 14, 2000, to appeal.

The Tribunal, through a letter dated July 18, 2000, notified the parties that the Tribunal would consider exercising its discretion under Section 109(1)(b) of the *Act* and that if they wished to make a submission on the matter that they should do so by August 9, 2000. Only the Director objects to proceeding with the appeal. A submission was received from North Star but it deals

only with the merits of the appeal, not the matter of whether the time period for appealing the Determination should be extended.

CLAIMS AND ANALYSIS

Section 112 of the *Act* establishes a 15 day period for appealing Determinations.

- 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).*

But the Tribunal is expected to waive the time limit for requesting appeals in certain circumstances.

- 109** (1) *In addition to its powers under section 108 and Part 13, the tribunal may do one or more of the following:*
- (b) *extend the time period for requesting an appeal even though the period has expired;*

... .

The Director's delegate argues that the time limit for the appeal should not be waived in this case, that the time period should only be extended in "very rare situations where the reason(s) that the appeal was not in time were insurmountable" and/or "compelling circumstances".

The Tribunal requires that reasonable diligence be exercised in filing appeals and it has indicated through decisions that the statutory period for appeals will not be overridden lightly but only where there is a compelling reason to do so. Underlying those decisions is a concern for fair and efficient procedures, a purpose of the *Act*.

- 2** *The purposes of this Act are as follows:*
- (d) *to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act;*

Where the time limit for an appeal is missed by only a few days, as here, the Tribunal has in the past year or so indicated that it will be inclined to exercise its discretion to extend the period for the appeal where there is a reasonable explanation for the delay, no apparent prejudice results from doing so, and a preliminary analysis of the appeal material indicates that there is a fair

question to be addressed [716318 *Alberta Ltd. et al*, BC EST #D144/99, also *Bernardi Humidors Ltd.*, BC EST #D141/00].

I am inclined to believe that Berg exercised reasonable diligence in filing his appeal and that the appeal would have been delivered to the Tribunal by the 7th of July but for the fact that Berg got mixed up on his dates or failed to appreciate the deadline for appeals. And I am prepared to make some allowance for the latter because Berg is an auto mechanic and not a person that is used to dealing with courts and administrative tribunals and filing appeals. However, on examining Berg's appeal, I find that the Determination is not challenged in any important way, in other words, there is not a fair question to be addressed. As such, it is my conclusion that the time limit for requesting the appeal should not be extended in this case.

An employer does not have to pay compensation for length of service if the employee voluntarily resigns his or her employment.

63 (3) *The liability is deemed to be discharged if **the employee***

(c) ***terminates the employment, retires from employment, or is dismissed for just cause.*** (my emphasis)

And it is Berg that terminated the employment. In filling out his complaint form, Berg indicated that he had quit. The Director's delegate was satisfied that Berg had in fact resigned. And the point is not argued on appeal. Berg advises the Tribunal that, "At 3:30, I decided to quit and left the job site. I was not contacted by the owner, D. Spring, after I quit" (page three, Reasons for this appeal).

Where an employee quits and a condition of his or her employment is altered in a substantial way, the Tribunal accepts that the Director may determine that the employee was constructively dismissed and award compensation for length of service.

66 *If a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated.*

In this case, the delegate has concluded that the employer did not substantially alter a term or condition of the employment, that Berg voluntarily quit because he was unhappy with his employment. As such, for the appeal to be successful, Berg must show that at least the delegate's first conclusion is in error, that in fact North Star did substantially alter a condition of employment.

On reviewing Berg's appeal, I find that he does not address the matter of whether a condition of employment was substantially altered. Berg does nothing more than list the many reasons that he had for quitting. He complains of the two Christmas parties; that he was consistently exposed to a toxic shampoo; that the employer did not buy a pressure washer; that North Star did not to pay him for overtime, for car repairs in Kimberly and \$400 in bonuses; that it accused him of being unproductive without ever showing him that he was; that it failed to explain how a low customer satisfaction index (CSI) was the fault of mechanics, to enroll him in a technical guild program, to re-hire his daughter, and to make him foreman when the regular foreman was absent; that he was expected to cheat and lie; and that his supervisors never seemed to want to discuss any of his

concerns. That is not to claim that an employment condition was altered or to make an arguable case for length of service compensation. The fact that he may have had a good reason or even several good reasons for quitting is simply immaterial.

In summary, I have considered the matter of whether or not to extend the time limit for appealing the Determination dated June 14, 2000. I have decided against doing so. On examining the appeal, I have found that there is not a fair question to be addressed.

ORDER

I order, pursuant to section 115 of the *Act*, that the appeal be dismissed and that the Determination dated June 14, 2000, be confirmed.

Lorne D. Collingwood

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal