

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 -

Gas Mart Plus Auto Repair Centre Ltd.
(“Gas Mart”)

- of a Determination issued by -

The Director of Employment Standards
(the “Director”)

ADJUDICATOR: Lorne D. Collingwood

FILE No.: 2000/535

DATE OF DECISION: October 17, 2000

DECISION

OVERVIEW

This appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”) and by Gas Mart Plus Auto Repair Centre Ltd. (“Gas Mart”, also, “the appellant”). Gas Mart appeals a Determination by a delegate of the Director of Employment Standards (the “Director”) dated April 19, 2000. The Determination orders Gas Mart to pay Saten Sambhu \$345.51 in regular wages, vacation pay and interest.

The appeal was received more than three months after the statutory period for appealing the Determination had expired. Gas Mart asks that the Tribunal extend the time limit for filing an appeal.

ISSUE TO BE DECIDED

What I must decide is whether the Tribunal should or should not exercise its discretion to extend the time period for appealing the Determination.

FACTS

Saten Sambhu (“Satan Prasad” in some documents) was referred to Gas Mart under a wage subsidy program operated by the Youth Employment Opportunities Centre. Sambhu was given a job but he quit after working only a few days. According to Sambhu, Gas Mart did not pay him for his work.

The Determination is that Sambhu worked five days and was paid for his work on two days. It reflects evidence supplied by Janice Huber of the Youth Employment Opportunities Centre, the person who referred Sambhu to Gas Mart. Huber was in the process of arranging for Gas Mart to receive a wage subsidy and was meeting with the parties in the period of the employment. She said Gas Mart, to her chagrin, had Sambhu opening the gas station by himself. And she said that it was her belief that Sambhu worked at least from the 19th to and including the 23rd of December, 1999, if not longer. The delegate also reports that Gas Mart changed its story in that it initially said that Sambhu worked only two days and that it then changed that to three days.

It is stated on the surface of the Determination that the decision could be appealed to the Employment Standards Tribunal. The Determination clearly advised Gas Mart and Sambhu that if they wished to appeal the decision, the appeal had to be “delivered to the Tribunal no later than 4:30 PM on May 12, 2000”.

In a letter dated May 10, 2000, which was received May 12, 2000, Paramjit Gill requested that the time limit for an appeal by Gas Mart be extended. She explained that her husband, Darshan Gill, was travelling abroad and would not return until the last week of June.

The Tribunal’s Vice-Chair, in a letter dated May 12, 2000, advised Gill that she could file the appeal or, if she was unable to do so, her husband could file an appeal when he returned to

Canada. She explained that the Tribunal has the discretion to allow an appeal which is late but will consider the reasons why the appeal is late.

July passed, yet the Tribunal had not received an appeal, nor had anything more been heard from Gas Mart. The Director acted to enforce the Determination.

Gas Mart then filed its appeal. An appeal form was received on the 4th of August but as the employer had not provided any reasons for the appeal, nor explained why the appeal was late, it was asked to supply that information. Paramjit Gill did that in letters dated August 18, 2000.

The explanation for why the appeal is late is that “Darshan Gill was out of the country and is still out of the country”.

In filing the appeal, Gas Mart claims that the Determination is wrong in that it has the employee working more hours than Gas Mart was open for business. The appellant does not submit any evidence in support of what is alleged.

The Tribunal, by letter dated August 18, 2000, invited submissions on the matter of whether it should or should not exercise its discretion under Section 109(1)(b) of the *Act* to extend the time limit for the appeal. Only the Director chose to respond. The Director objects to proceeding with the appeal on the basis that her office would be unduly and significantly prejudiced by an extension in that wages have been disbursed to Sambhu and that cannot be reversed.

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 has a discretionary power to waive the time limit for an appeal.

- 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 Tribunal has said, through various decisions, that parties must exercise reasonable diligence in filing appeals and that it will not extend the time limit for an appeal unless there is a

compelling reason to do so and no actual prejudice to the other parties. Those decisions reflect a concern for the *Act's* purposes, in particular, the need to provide fair and efficient procedures.

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;*

This is not a case in which the deadline for the appeal is missed by what is a matter of days. In this case, the appeal is more than three months late. While the sheer length of the delay in filing the appeal is not reason to dismiss the appeal, it does in my view, demand that, not only must there be no actual prejudice to the other parties, there must be a compelling explanation for the delay and a fair question to be addressed.

I am satisfied that to proceed in this case would be prejudicial to the Director in that the Determination has been enforced and Sambhu has been paid. And, I note, that is because there was no appeal in June or July, nor was anything more heard from the employer in June or July, even though Paramjit Gill had indicated, in her letter dated May 10, 2000, that Gas Mart wanted to file an appeal when Darshan Gill returned to Canada at the end of June.

I find that Gas Mart's explanation for the delay in filing the appeal is not at all compelling. The appeal is said to be late because Darshan Gill was and is out of the country. But that cannot be. Paramjit Gill filed the appeal in Darshan Gill's absence. That, and the appeal itself, demonstrate to me that Gas Mart could have filed the appeal in May but did not only for reason of a lack of diligence. Clearly, someone has to be running the company in Darshan Gill's absence.

The appeal itself is that Sambhu did not work as set out in the Determination. But Gas Mart does not submit evidence in support of what it claims. And the appeal ignores Huber's evidence, that Sambhu was opening the gas station all by himself. The Tribunal is given no reason to believe that Sambhu may not have worked as set out in the Determination: There is not a fair question to be addressed.

For the foregoing reasons, I have decided that this is not a case in which the Tribunal should extend the time limit for an appeal.

ORDER

I order, pursuant to section 115 of the *Act*, that the appeal be dismissed and that the Determination dated April 19, 2000 be confirmed.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal