



An appeal

- by -

Mark Woken
(the "Employee")

- 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: Ib S. Petersen

FILE No.: 2001/460 and 2001/461

DATE OF DECISION: August 23, 2001

DECISION

SUBMISSIONS:

Mr. Mark Woken	on behalf of himself
Mr. Kevin Molnar	on behalf of the Director

OVERVIEW

This is an application for extension of time under Section 109(1)(b) of the *Employment Standards Act* (the “Act”) in respect of an appeal by Woken pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on May 8, 2001 which determined that B.C. Environmental Liners Ltd. was Woken’s employer and owed him \$11,849.55 in wages. Woken makes the same application with respect to a Determination, also dated May 8, 2001, which concluded that Kevin Chambers was liable as a director or officer of the Employer.

Woken appeals the Determinations. The nub of his appeal is that his hourly rate was \$12.00 and not \$10.00 and that he worked more hours than the Delegate was prepared to accept.

FACTS AND ANALYSIS

Woken filed an appeal of both Determinations by letter dated June 8, 2001, attaching an “Appeal Form” dated June 11, 2001, after the May 31, 2001 deadline. From the date stamp, it appears that the appeal was received by the Tribunal on June 15, 2001.

In *Blue World It Consulting Inc.* (BCEST #D516/98), the Adjudicator summarized the considerations applicable to a request for an extension of the appeal period:

- “1) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
- 2) there has been a genuine and ongoing *bona fide* intention to appeal the Determination;
- 3) the respondent party (*i.e.*, the employer or the employee) as well as the Director of Employment Standards, must have been made aware of this intention;
- 4) the respondent party will not be unduly prejudiced by the granting of the extension; and
- 5) there is a strong *prima facie* case in favour of the appellant.”

Woken argues that he misunderstood the appeal information set out on the Determinations. He says he thought the deadline only applied to the Employer.

The Delegate opposes the request for an extension of time. The Delegate says that Woken was properly served by registered letter and made no effort to contact the Delegate until after the expiry of the deadline. In the circumstances, there is no valid reason for the delay.

I agree with the Delegate. The delay was 15 days. In my view, the Determination clearly sets out the date by which it must be appealed. There is nothing to indicate that the deadline only applies to the Employer and Chambers. In the circumstances, I am not prepared to accept that there is a reasonable and credible explanation for the failure to file the appeal in time.

While there may have been a genuine and *bona fide* intention to appeal, I note that the Delegate was not contacted by the appellant until after the expiry of the deadline. The issue of prejudice was not addressed by any party.

On balance, I am of the view, that there is not a strong *prima facie* case in favour of the appellant. The Determination against the Employer explains that the evidence from the Employer was that the hourly rate was \$10.00 and that Woken evidence was that the rate was \$12.00. The Delegate noted that there was no documentary evidence or past practice to support Woken's position and concluded, on the balance of probabilities, that the rate was \$10.00. As well, the Delegate concluded that due to contradictions in the evidence supplied by Woken, and a lack of documentation to support the hours claimed, he was not prepared to accept Woken's hours of work. The Delegate estimated that Woken worked an average of 10 hours per day, 5 days a week. Woken says that his wage rate was, in fact, \$12.00 per hour. He also says that the Delegate should have accepted as truthful, his information. The information provided with the appeal lacks particularity and, in essence, do not go much further than to suggest that Woken will attempt to assemble the relevant documentation in support of the appeal.

In brief, in the circumstances, I am not prepared to exercise my discretion to extend the time for filing the appeal.

ORDER

The application to extend time to file an appeal of the Determinations dated May 8, 2001 is dismissed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal