

An appeal

- by -

Josef Tanzil, a Director or Officer of Coast Millworks Ltd.
(the “appellant”)

- 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: Kenneth Wm. Thornicroft

FILE No.: 2002/415

DATE OF DECISION: October 4, 2002

DECISION

OVERVIEW

This is an appeal filed by Josef Tanzil (the “appellant”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). The appellant appeals a Determination that was issued, pursuant to section 96(1) of the *Act*, by a delegate of the Director of Employment Standards (the “Director”) on February 8th, 2002 (the “Determination”). Section 96(1) provides as follows:

Corporate officer’s liability for unpaid wages

96. (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months’ unpaid wages for each employee.

This appeal (and the submissions with respect to this appeal) is in essentially identical form to an appeal filed by Mr. George Tanzil (see E.S.T. File No. 2002/414). In separate reasons for decision, issued concurrently with these reasons, I dismissed George Tanzil’s application for an extension of the appeal period and, in the result, the appeal itself. Accordingly, it follows that Josef Tanzil’s identical application (and appeal) must similarly be dismissed.

A separate determination was issued against Coast Millworks Ltd. (“Coast Millworks”) on November 16th, 2001 in the amount of \$27,863.72 (the “Corporate Determination”). Coast Millworks entered bankruptcy on or about May 16th, 2001 and the Determination now under appeal was issued as a result of Coast Millworks’ failure to pay the amount due under the Corporate Determination.

By way of the Determination, the appellant was ordered to pay the sum of \$4,431.30 on account of unpaid wages (compensation for length of service and accrued vacation pay) and interest owed to eight former employees of Coast Millworks based on the appellant’s status as a Coast Millworks officer and director when the employees’ unpaid wage claims crystallized.

TIMELINESS OF THE APPEAL

This appeal was not filed within the time limit governing an appeal to the Tribunal. Accordingly, on July 31st, 2002 the Tribunal’s Vice-Chair wrote to all parties requesting their submissions regarding the appropriateness of the Tribunal granting an extension of the appeal period. The Vice-Chair’s July 31st letter also identified the relevant criteria governing such extensions as set out in the Tribunal’s jurisprudence.

As noted above, the Determination was issued on February 8th, 2002. This appeal, dated and signed by the appellant on July 30th, 2002, was filed with the Tribunal on that same date. A notice contained within the Determination indicated that the deadline for appealing the Determination was March 4th, 2002 [see section 112(2) of the *Act*]--this latter notice also set out various particulars with respect to how an appeal could be filed.

Thus, this appeal was filed nearly five months after the governing appeal period expired despite there being a clear direction given as to when and how an appeal should be filed. Accordingly, the Employer now seeks an extension of the appeal period pursuant to section 109(1)(b) of the *Act*.

The Director's delegate, in her submission dated and filed August 21st, 2002, opposes the appellant's application on the basis that:

- the Determination was served on the appellant, by registered mail, on February 15th, 2002;
- having been served with a Determination, the appellant essentially ignored the entire matter in the immediate months following--the appellant did not contact the delegate or the Tribunal in order to obtain further information about the appeal process; and
- the appellant appears to have filed an appeal only after the Director commenced enforcement proceedings under Part 11 of the *Act*.

In reply to the delegate's submission, counsel for the appellant asserts that the appellant attempted to file an appeal of the Corporate Determination on December 10th, 2001 but was advised that he was legally unable to do so in his own right, as a former Coast Millworks officer/director, by reason of the bankruptcy. The material before me indicates that the appellant was advised to contact the trustee with respect to an appeal of the Corporate Determination.

I infer from these latter circumstances that the appellant was knowledgeable about the appeal process and thus his failure to file an appeal of the Determination issued against him in his personal capacity is somewhat inexplicable. Very clearly, the Determination now under appeal was quite separate and distinct from the Corporate Determination--the Determination was issued at a later point in time, for a significantly lesser sum, and the basis for issuance is clearly described in the Determination itself, namely, the appellant's status as an officer or director of Coast Millworks. I do not accept the suggestion that the appellant was somehow confused as to the legal (or factual) import of the two separate determinations.

Counsel also, in effect, concedes that no action was taken with respect to any possible appeal until the appellant was faced with execution proceedings at the instance of the Director. It appears from the material before me that the appellant learned about the Director's execution proceedings on or about July 29th, 2002. This appeal was filed the very next day.

The appellant's "reasons for appeal" are very brief (3 short sentences only one of which speaks to the merits) and are not corroborated by any documentary evidence. In short, the appellant says that the employees were paid all of their earned wages as of their layoff date. Of course, even if that were so, this assertion does not address the issue of compensation for length of service. It would appear, based on the trustee's failure to file an appeal, that the trustee was satisfied with the correctness of the amounts set out in the Corporate Determination. The appellant does not deny that he was an officer or director of Coast Millworks at the relevant time nor does he assert that the amounts in question exceed the 2-month liability ceiling set out in section 96(1).

I consider the appellant's delay in filing an appeal to be unreasonable. I further consider that the appellant has not demonstrated an ongoing intention to appeal. The appellant's reason for appealing (the bald assertion that no wages are owing) does not appear to raise a serious question that would justify a full hearing on the merits.

In light of the foregoing circumstances, the appellant's application for an extension of the appeal period is **refused**.

ORDER

Pursuant to section 114(1)(a) of the *Act*, I order that this appeal be **dismissed**.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal