

**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 -

Canadian Auto Workers  
("CAW")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 97/546

**DATE OF DECISION:** September 30, 1997

## DECISION

### OVERVIEW

This is an appeal by the Canadian Auto Workers (the “CAW”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination which was issued by a delegate of the Director of Employment Standards on June 18, 1997. The time limit for delivering the appeal to the Tribunal expired on July 11, 1997. The Tribunal received an appeal on July 18, 1997.

The parties were invited to make submissions on the question of whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* and extend the time period for requesting an appeal.

I have considered those written submissions and have made my decision based on the reasons which are set out below.

### ISSUE TO BE DECIDED

Should the Tribunal extend the time period within which the CAW may request an appeal even though the period has expired?

### FACTS

The Determination which was issued on June 18, 1997 found that White Spot Limited (“White Spot”) had not contravened the group termination provisions of the *Act* as a result of the closure of the Granville House Commissary.

The Director’s delegate sent the Determination by certified mail to the CAW, the representative of employees affected by the closure of the Commissary, at 707-12 Street New Westminster, B.C. V3M 4J7. The Determination was returned to the Director’s delegate, and on June 26, 1997 he sent a certified letter to the CAW at 326-12 Street New Westminster, B.C. V3M 4H6 which read:

Enclosed is a copy of a Determination dated June 18, 1997 which was sent to you at your former address, and which was returned to us since you have moved.

It is resent herewith and all information, including time frames set out therein, are in effect as noted and still apply.

The CAW acknowledges receiving the Determination “on or around June 27, 1997”. Canada Post Corporation’s “Acknowledgement of Receipt” card indicates the Determination was received on June 30, 1997.

On the Determination it is printed clearly that an appeal of the Determination must be delivered to the Tribunal within 23 days of the date of the Determination.

The CAW submitted an appeal on July 18, 1997. In a submission dated August 20, 1997, the National Representative for the CAW Canada stated:

The purpose of time limits are intended to provide a reasonable period for considered review of a decision balanced against the need to make reasonable haste in either accepting or appealing a decision so as not to leave the parties in legal limbo for unreasonable time frames. In the instant circumstances the Legislature has decided that 23 days from the date of Determination is the proper balance. Before the clock starts ticking “a person” must first be “served” by the Branch.

Due the circumstances noted above we were not “served” until June 26, 1997 at the earliest, therefore 23 days from June 26, 1997 keeps our appeal within time limits which ran out on July 19, 1997. Our appeal was received by the Tribunal on July 18, 1997 and is therefore timely and must be considered on its merits. Failure to do so will constitute a denial of natural justice.

In a submission dated September 17, 1997, counsel for the Director of Employment Standards stated that “in the circumstances of this case” the Director does not oppose the position of the CAW.

Counsel for White Spot opposes any extension of the time period within which the CAW may request an appeal. In a submission dated September 12, 1997, counsel stated:

The appeal was not filed in a timely manner as asserted in the Union’s submissions. Such an assertion is not supported by the statutory language. The Union’s alternative position is to request the Tribunal to exercise its discretion to extend the time limit for filing. The Union has failed to present any compelling reason why the Tribunal should so exercise its discretion. The Employer submits that the request for an extension of time limits under the *Act* be denied.

In a further submission dated September 18, 1997, counsel for White Spot stated:

We object to the Director of Employment Standards expressing any view, much less a partisan view, respecting whether the Tribunal should exercise its discretion to extend the time limits for filing the appeal.

The Tribunal's determination in this regard ought not be a matter of concern to the Director of Employment Standards and the Director's participation in this manner is unseemly and partisan.

## **ANALYSIS**

This decision deals only with the question of whether the Tribunal should extend the time period within which the CAW may request an appeal.

Section 122(1) of the *Act* provides that a Determination that is required to be served on a person is deemed to have been served if either served on the person or sent by registered mail to the person's last known address. If service is by registered mail, the Determination is deemed to be served 8 days after it is deposited in a Canada Post Office.

Section 112(2) of the *Act* sets out the time periods for appealing a Determination. A person served with a Determination has only 8 or 15 days to file an appeal depending on the mode of service. In the case of service by registered mail, the time period is 15 days after the date of service; the time period is only 8 days if the Determination is personally served.

On the Determination it states that an appeal must be delivered to the Tribunal within 23 days of the date of the Determination. Accordingly, in the case of a Determination served by registered mail, the parties are given the maximum time to deliver an appeal to the Tribunal: the full 8 days allowed for service plus 15 days after service for a total of 23 days.

The Tribunal's approach to extending the time periods for an appeal was set out in an earlier decision, *Metty M. Tang* [BC EST #D211/96], as follows:

(The) relatively short time limits are consistent with one of the purposes of the *Act* which is to provide for fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. It is in the interest of all parties to have complaints and appeals dealt with promptly.

Section 109(1)(b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.

When I review the facts of this appeal I find that the Determination was served properly, in accordance with Section 122(1) of the *Act*, and was received by the CAW well in advance of the deadline for an appeal.

There is no dispute that the Determination was initially sent to the former address of the CAW. However, there is no evidence before me to establish that the Director's delegate was aware at that time of the new address of the CAW. The Determination was re-sent to the new address of the CAW on June 26, 1997 and it was received 11 days prior to the expiry of the appeal period. Enclosed with the Determination was a letter from the Director's delegate which clearly stated that the time frame set out on the Determination remained in effect and still applied. That time frame indicated that an appeal of the Determination had to be delivered to the Tribunal by July 11, 1997.

The CAW, however, did not contact the Tribunal on or before July 11, 1997 which would have resulted in a timely appeal. During the 11 days prior to the expiry of the appeal deadline the CAW did not advise the Tribunal that it intended to appeal the Determination, nor did it request additional time to file an appeal. The CAW was clearly advised that the deadline for an appeal was July 11, 1997 yet it chose not to exercise its option of disputing the Determination until after the appeal period had expired.

The CAW offers no reason why an appeal was not delivered to the Tribunal by July 11, 1997. Rather, it takes the position that it filed a timely appeal on July 18, 1997. It argues that it was served the Determination on June 26, 1997 and had 23 days from that day to file an appeal (which it says is July 19, 1997) and, as its appeal was received by the Tribunal on July 18, 1997, it is in time. I do not agree with this position. I accept that the Determination was properly served in the first instance and, in accordance with the 23 days indicated on the Determination in which to deliver an appeal to the Tribunal, the service date was 8 days after June 18, 1997 and an appeal had to be filed within 15 days after this date or by July 11, 1997.

Counsel for the Director of Employment Standards takes the position that in the circumstances of this case the appeal should be allowed. Counsel for White Spot objects to the Director expressing any view on the timeliness issue. The role and status of the Director in the appeal process has been addressed in previous Tribunal decisions (BWI Business World Inc. [BC EST #D050/96]; Traderef Software Corporation [BC EST #0269/97]). In accordance with those decisions, the Director is entitled to make submissions on the issues raised on an appeal. By providing clarity on issues that need to be decided by the Tribunal, the Director can assist the Tribunal to achieve fairness and efficiency in the appeal process. Specifically, in a case where the timeliness of an appeal is at issue, the Director can provide important information on how and when a Determination was served on the parties. The provision of such information does not, in my view, compromise the Director in any way. Having concluded that the Director's participation in the appeal process is not prohibited, the remaining matter concerns the specific position by counsel for the Director. In the absence of particulars or reasons for her conclusion that this appeal should be allowed, and given proper service of the Determination with sufficient time to make a timely appeal, as well as what I consider to be a very clear statement by the Director's own delegate to the CAW in his letter of June 26, 1997 that the appeal deadline continued to be July 11, 1997, I am not persuaded that this position has any merit or is of any assistance to the Tribunal.

In summary, the CAW was aware of the deadline for delivering an appeal to the Tribunal and had ample opportunity to file an appeal in a timely manner. There has been no denial of natural justice. The obligation is on the appellant to exercise reasonable diligence in the pursuit of an appeal. In this case, the CAW has failed to persuade me that it has done so. I find no compelling reasons to allow this appeal.

For the above reasons, I have decided not to extend the time limit for requesting an appeal in this case.

**ORDER**

The request by the CAW to extend the time period for requesting an appeal is denied. The appeal is dismissed pursuant to Section 114 of the *Act*. I order under Section 115 of the *Act* that the Determination dated June 18, 1997 be confirmed.

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**