

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 -

Pye Construction Ltd.
("Pye")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 97/635

DATE OF DECISION: September 30, 1997

DECISION

OVERVIEW

This is an appeal by Pye Construction Ltd. (“Pye”) under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination which was issued by a delegate of the Director of Employment Standards (the “Director”) on July 22, 1997. The time period for delivering the appeal to the Tribunal expired on August 14, 1997. The Tribunal received the appeal on August 19, 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 Pye may request an appeal even though the period has expired?

FACTS

The Determination which was issued on July 22, 1997 found that Pye owed \$10,771.28 in wages and accrued interest to certain of its former employees.

The Determination was sent by registered mail to Pye and it was received on July 25, 1997 as evidenced by Canada Post Corporation’s “Acknowledgement of Receipt” document.

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.

Wayne Pye submitted an appeal on behalf of Pye on August 19, 1997. In the appeal Mr. Pye stated:

Regretfully this appeal is somewhat late, this is due to the fact that because of the season Mr. Ron Corrigan of the Ministry of Labour is on holidays and I thought it was necessary for me to talk to him. Also my labour lawyer, Mr. Patrick Guy, was also on holidays and I felt that I should consult with him due to the nature of this complaint.

I sincerely hope that you can extend the deadline for us and consider our appeal

In a submission dated September 18, 1997 Mr. Pye stated:

We further explain that we did need to talk to Ron Corrigan as well as Mr. Patrick Guy. As these are very serious accusations we felt that we should consult with both these parties.

The United Brotherhood of Carpenters and Joiners Local 1598, which initiated the complaint against Pye, opposes any extension of the time period within which Pye may request an appeal. In a submission dated August 28, 1997 Shan O'Hara, Business Representative stated:

In Mr. Pye's letter (to the Registrar) he admits his appeal is late only due to the fact that Ron Corrigan (Ministry of Labour) and Mr. Pye's lawyer Mr. Patrick Guy were on holidays. This is a frivolous excuse! Mr. Pye indicates no reason that he felt it necessary to talk to Mr. Corrigan or that he was seeking other legal advice.

ANALYSIS

This decision deals only with the question of whether the Tribunal should extend the time period within which Pye 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 persons last known address.

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 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.

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 there 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 Pye well in advance of the deadline for an appeal.

Pye, however, did not contact the Tribunal on or before August 14, 1997 which would have resulted in a timely appeal. Pye knew by July 25, 1997 that the deadline for filing an appeal was August 14, 1997, yet it chose not to exercise its option of disputing the Determination until after the appeal period had expired. At no time prior to the expiry of the appeal deadline did Pye contact the Tribunal to advise it intended to appeal the Determination but needed time to consult with its lawyer and the Director's delegate. Mr. Pye's explanation for the delay in filing an appeal, is in my view, inadequate. I am not satisfied that the alleged need to consult with his lawyer and the Director's delegate prevented him from contacting the Tribunal about an appeal within the statutory time limits.

In my view, Pye had the opportunity to file an appeal, or an intent to appeal, in a timely manner. The obligation is on the appellant to exercise reasonable diligence in the pursuit of an appeal. In this case, Pye 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

Pye's request 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 July 22, 1997 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal