

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 -

Lyn Miller
("Miller")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 97/656

DATE OF DECISION: October 6, 1997

DECISION

OVERVIEW

This is an appeal by Lyn Miller (“Miller”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination issued by a delegate of the Director of Employment Standards (the “delegate”) on July 21, 1997. The time limit for filing an appeal of the Determination expired on August 13, 1997. The Tribunal received an appeal from Miller by fax on August 27, 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 Miller may request an appeal even though the period has expired?

FACTS

The Determination which was issued on June 21, 1997 found that the Okanagan Symphony Society (the “OSS”) did not owe Miller additional vacation pay, pay for sick benefits, wages for work performed in May 1996, and compensation for violations of Section 8 (No false representations) and Section 39 (No excessive hours) of the *Act*.

The Determination was received by Miller on July 28, 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. Appeal procedures were attached to the Determination which indicated the address, phone and fax number of the Tribunal and that an appeal must be made using the Tribunal’s appeal form and must include reasons and a copy of the Determination.

On August 20, 1997 the Tribunal received a letter by fax from Miller which stated that she had received the Determination on July 28, 1997 and thought she had 23 days from that date to file an appeal. She stated that after receiving the Determination she tried to contact staff at the Employment Standards Branch office in Kelowna as she needed certain information in order to file an appeal. She was not able to reach anyone until August 20, 1997 and then

she was told her appeal was already late. She further stated that a complete appeal would be forwarded to the Tribunal the following week.

On August 26, 1997 the Tribunal received another letter by fax from Miller which reiterated her reasons for not delivering the appeal within the 23-day time period. She also included reasons for the appeal

On August 27, 1997 the Tribunal received an appeal form by fax from Miller, with a copy of the Determination and reasons for the appeal.

The Tribunal received a submission from the delegate dated September 2, 1997 stating he has no problem with extending the timelines for an appeal by Miller.

Counsel for the OSS, in a submission dated September 16, 1997, opposes any extension of the time period within which Miller may request an appeal.

ANALYSIS

This decision deals solely with the question of whether the Tribunal should extend the time period within which Miller 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 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.

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 Miller well in advance of the deadline for an appeal.

I have considered Miller's explanation for the delay in filing an appeal, and I find it to be inadequate. The time period for delivering an appeal to the Tribunal was clearly indicated on the Determination. Miller, however, did not contact the Tribunal on or before August 13, 1997 which would have resulted in a timely appeal. I am not satisfied that her alleged need to contact staff at the Employment Standards Branch office in Kelowna prevented her from contacting the Tribunal about an appeal within the statutory time limits.

In my view, Miller had the opportunity to file an appeal in a timely manner. The obligation is on the appellant to exercise reasonable diligence in the pursuit of an appeal. In this case, Miller has failed to persuade me that she 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

Miller'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 21, 1997 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal