

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 -

4 Seasons Electrical Mechanical Contractors of B.C. Ltd.
("4 Seasons")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 98/563

DATE OF DECISION: October 13, 1998

DECISION

OVERVIEW

This case began with an appeal by 4 Seasons Electrical Mechanical Contractors of B.C. Ltd. (“4 Seasons”) pursuant to Section 112 of the Employment Standards *Act* (the “*Act*”) against a Determination issued by a delegate of the Director of Employment Standards on July 29, 1998. The Director’s delegate found that 4 Seasons owed wages to Simon Silavwe (“Silavwe”). The Determination stated that an appeal of it had to be received by the Tribunal by August 21, 1998. The Tribunal received an appeal on August 26, 1998 and 4 Seasons was informed that it would not be considered as it had been received outside of the timelines contained in the Determination and did not comply with Section 112(2) of the *Act*. Subsequently, 4 Seasons effectively requested that the Tribunal extend the deadline to file an appeal. The other parties to the appeal were invited to make submissions on a possible extension of the deadline under Section 109(1)(b) of the *Act*. The Victoria Labour Council, on behalf of Silavwe, opposed granting an extension of the deadline. The appeal was decided based on written submissions.

ISSUE TO BE DECIDED

Should the Tribunal exercise its discretion under Section 109 (1) (b) of the *Act* to extend the deadline for filing an appeal?

FACTS

The Determination which was issued on July 29, 1998 found that 4 Seasons owed wages in the amount of \$2,315.09 (including interest) to Silavwe for overtime, statutory holiday pay, vacation pay and minimum daily pay. The Director’s delegate calculated the amount based on records received from 4 Seasons. The Determination also stated that an appeal of it had to be received by the Tribunal no later than August 21, 1998.

The Tribunal received an appeal from 4 Seasons on August 26, 1998. Consequently, on the same day, 4 Seasons was informed that its appeal would not be considered as it had been received outside of the timelines contained in the Determination and did not comply with Section 112(2) of the *Act*.

In an undated letter received by the Tribunal on September 2, 1998, Elaine Lakeman (“Lakeman”), on behalf of 4 Seasons, effectively requested that the Tribunal extend the deadline to file an appeal. Lakeman offered the following explanation for why the appeal was late:

On August 19 my office assistant and friend was informed that her sister and brother in law were both drowned in an accident. I was not available for

work until Tuesday 24th as this incident was a priority for me to take care of. The letter was written on the 14th and all I had to do was pick up an appeal form and courier it to your office by the 21st. There are things that happen in this world that can prevent one from meeting deadlines. I got this appeal to your office as soon as possible. It is important to me that some leniency be acceptable in this matter.

Lakeman goes on to state:

If you read my letter you will understand that I do have some serious doubts about paying Simon Silavwe.

The letter referred to in the above statement is the undated appeal submitted by Lakeman on August 26, 1998. In the appeal, Lakeman claims that the Director's delegate made some calculations errors and that Silavwe was dishonest, unqualified and overcharged customers. She further says that there were instances where 4 Seasons did contravene the *Act*, but it was not intentional, and in any event, Silavwe was overpaid for the work he performed for the company. She also said that she had doubts that the hours submitted by Silavwe to the company were accurate.

The other parties to the appeal were invited to make submissions on a possible extension of the deadline for filing an appeal under Section 109(1)(b) of the *Act*. The Victoria Labour Council, on behalf of Silavwe, replied that it opposed any extension of the time period within which 4 Seasons may request an appeal.

ANALYSIS

I am not satisfied that it would be appropriate to extend the appeal period given the facts of this case.

4 Seasons was validly served the Determination and had until August 21, 1998 to file an appeal.

I have considered Lakeman's explanation for the delay in filing an appeal. While I am sympathetic to her circumstances, I find Lakeman's explanation to be inadequate. By her own admission, Lakeman was aware of the Determination by at least August 14, 1998 but despite the clear direction contained in the Determination regarding how and when an appeal could be filed with the Tribunal, she did not file an appeal, nor did she make any contact with the Tribunal until after the expiration of the appeal period. 4 Seasons had an opportunity to file a timely appeal, particularly during the period August 14 to August 19, but it chose not to exercise its option of disputing the Determination until after the deadline to do so had expired.

In previous Tribunal decisions, several material considerations have been identified when considering a request for an extension of the appeal period including:

- 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, 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.

In my view, 4 Seasons has failed to satisfy any of the above-mentioned criteria. The obligation is on the Appellant to exercise reasonable diligence in the pursuit of an appeal. In this case, 4 Seasons 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

4 Seasons application under Section 109(1)(b) of the *Act* to extend the time for requesting an appeal is refused. Pursuant to Section 114 (1)(a) of the *Act* the appeal is dismissed and accordingly the Determination is confirmed as issued in the amount of \$2, 315.09 together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Norma Edelman
Registrar
Employment Standards Tribunal