

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 -

Charanjiv Parmar Operating Grizzly Inn Restaurant

(“ Parmar ”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: David B. Stevenson

FILE NO.: 2000/570

DATE OF DECISION: November 6, 2000

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Charanjiv Parmar Operating Grizzly Inn Restaurant (“Parmar”) of a Determination (the “penalty Determination”) which was issued on June 30, 2000 by a delegate of the Director of Employment Standards (the “Director”). The penalty Determination concluded that Parmar had contravened Section 46 of the *Employment Standards Regulations* (the “Regulations”) and imposed a \$500.00 penalty on Parmar under Section 28(b) of the *Regulations*.

Before considering whether there is any substance to the appeal, a preliminary issue has been raised concerning the timeliness of the appeal.

ISSUE

There are two issues raised by this appeal. The first is whether the Tribunal should extend the time limit for filing this appeal. If the Tribunal does extend the time limit, the second issue is whether Parmar has shown the penalty Determination should be cancelled

FACTS

The Determination sets out the facts as follows:

On June 15, 2000, Jennifer Longdo issued a Demand for Employer Records pursuant to Section 85(1)(f) of the *Employment Standards Act* (the “Act”) to Charanjiv Parmar operating Grizzly Inn Restaurant. A copy of the Demand and the proof of service are attached. This Demand was necessary because three complaints had been received wherein there were allegations of regular and overtime wages owed.

Inspection of these payroll records was relevant to our investigation under the Act.

The penalty Determination was delivered by registered mail to the business address of Parmar on July 6, 2000 and it clearly notes the right of any person served with it to appeal it and that the appeal was required to be delivered to the Tribunal no later than 4:30 PM on July 27, 2000.

The representative for Parmar delivered the appeal to the Tribunal on August 18, 2000. There is nothing in the appeal itself that gives any reason for the delay in filing the appeal.

Upon receipt of the appeal, the Tribunal notified Parmar of its intention to consider whether to exercise its discretion under Section 109(1)(b) of the *Act* and allow the appeal even though the

period of time for filing the appeal had expired and sought submissions. Parmar and the Director filed initial submissions by September 6, 2000.

ARGUMENT AND ANALYSIS

In its submission to the Tribunal, the representative for Parmar does not specifically address the timeliness question and filed a further submission with the Tribunal on that issue on September 27, 2000, which says, in effect, that the delay in filing the appeal was caused by the failure of Mr. Parmar to appreciate the importance of the penalty Determination and a corresponding failure to bring the penalty Determination to the attention of his representative until July 28, 2000.

As I noted in *Re Charanjiv Parmar Operating Grizzly Inn Restaurant*, BC EST #D482/00:

The Tribunal has consistently stated that an appellant has an obligation to exercise reasonable diligence in the pursuit of an appeal and the Tribunal will not exercise its discretion under Section 109(1)(b) of the *Act* in favour of an appellant who has failed, without any good reason, to do so.

In the above decision, I declined to extend the time limited for appeal in the circumstances of that appeal. There is even less reason for doing so in this case. Even if Parmar did not understand the importance of the penalty Determination until July 28, 2000, the appeal was not filed with the Tribunal until August 18, 2000, three weeks later. And even if I accepted that the reasons existing up to July 28, 2000 were sufficient explanation for not diligently pursuing an appeal in a timely way, there is no explanation for the delay from July 28, 2000 to the date of delivery of the appeal to the Tribunal.

ORDER

I decline to exercise my discretion under Section 109 of the *Act* and, pursuant to Section 115 of the *Act*, I order the penalty Determination dated June 30, 2000 be confirmed.

David B. Stevenson

David B. Stevenson
Adjudicator
Employment Standards Tribunal