

An appeal

- by -

Quizine Classic Food Corporation
("Quizine")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: William Reeve

FILE No.: 2002/486

DATE OF DECISION: November 5, 2002

DECISION

OVERVIEW

This is an appeal by Quizine Classic Food Corporation (“Quizine”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued by the Director of Employment Standards (the “Director”) on August 2, 2002. The Determination found that the *Act* had been contravened and that \$1,401.98 in wages was owed to employee Steven Robertson (“Robertson”).

Quizno filed an incomplete appeal consisting of an appeal form dated September 10, 2002 and a statement of the grounds for appeal, both sent to the Tribunal by fax on September 11, 2002 and received on the same date. On September 19, 2002 the Tribunal received further documents dated September 18, 2002. These were deemed by Tribunal staff to be sufficient to allow the Tribunal to then open an appeal file. While the documents submitted do not contain any explicit request that the appeal deadline be extended they do contain something of an explanation for why the appeal was late, therefore they are deemed to contain an implicit request for extension of the appeal deadline.

As noted in the Tribunal’s acknowledgement letter the only initial issue is whether the Tribunal should extend the deadline for appeal and accept the late appeal. The issue of whether to extend the appeal deadline is decided based on the written submissions of the parties.

ISSUE

The only issue to be addressed in this Decision is whether the Tribunal should extend the deadline for requesting an appeal in accordance with the powers of the Tribunal under section 109(1)(b) of the *Act*.

EVIDENCE AND ARGUMENT

Quizine appears to have selectively omitted the appeal deadline information from the copy of the Determination submitted as part of the appeal process however internal evidence in the Determination suggests that the deadline for appeal was August 26, 2002. Quizno filed an incomplete appeal consisting of an appeal form dated September 10, 2002 and a statement of the grounds for appeal, both sent to the Tribunal by fax on September 11, 2002 and received on the same date. On September 19, 2002 the Tribunal received further documents dated September 18, 2002. These were deemed by Tribunal staff to be sufficient to allow the Tribunal to then open an appeal file.

It should be noted that the copy of the appeal sent to the parties along with the Tribunal’s acknowledgement letter was the copy that commenced with a fax cover page dated September 18, 2002 and that was received by the Tribunal on September 19, 2002. This included an appeal form dated September 10, 2002. The other parties may not have been aware that Quizine had earlier, on September 11, 2002, sent an incomplete appeal containing the same appeal form dated September 10, 2002 and a statement of the grounds for appeal.

Quizno stated in its appeal under the heading “Reason for Late Submission”,

“1) Out of town on vacation from Aug 2, 2002 until Sept.3/02 Determination was mailed to me on August 2/02 and received upon my return Sept3/02. [Name of Delegate], the Delegate of the Director, was made aware of this by phone and will support me. Please phone him at [telephone number of Delegate]”

“2) Records I have to submit will follow in next few days. Thank you”.

In response to the timeliness issue the Respondent, Robertson, said,

“I believe that Mr. Blaise has been given ample time to make his appeal. Mr. Blaise and I were both informed of the determination by telephone conversation with the Delegate [name of Delegate] prior to Aug. 02, 2002. as Mr. Blaise was going on vacation it was discussed that Mr. Blaise should have an additional 5 working days to make his appeal on his return from vacation as he would not arrive home until Sept. 03, 2002. I was agreeable to this scenario as it was quite probable the Mr. Blaise would appeal the determination.

“Mr. Blaise for reasons of his own; decided to not file the appeal until the 18th of September in full knowledge of the extended period given him. By my calculation that should have been the 10th of September.”

Robertson concludes his submission by stating,

“I do not believe the Mr. Blaise’s late appeal should be allowed as he has supplied no new proof nor supplied a reason for the delay beyond which was already extended to him.”

The Delegate of the Director responded to the timeliness issue stating,

“The delegate was made aware of the fact Mr. Alvin Blais was not due to return from vacation until September 3, 2002. The determination was mailed just prior to this information becoming available and it was clear at that time Mr. Blais would not be able to respond within the timelines allowed in the determination. The delegate states the following:

1. There are good reasons to allow the appeal
2. Mr. Blais always intended to appeal
3. The delegate and the respondent were aware of the intent to appeal”.

THE LAW AND ANALYSIS

The time limits for appeals are set out in Section 112 of the *Act* as follows:

Right to appeal director's determination

- 112.** (1) *Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.*
- (2) *The request must be delivered within*
- (a) *15 days after the date of service, if the person was served by registered mail, and*

(b) *8 days after the date of service, if the person was personally served or served under section 122(3).*

The Tribunal has authority under Section 109(1)(b) to extend the time period for requesting an appeal even though the period has expired. The relevant section of the *Act* reads as follows:

Other powers of tribunal

109 (1) In addition to its powers under section 108 and Part 13, the tribunal may do one or more of the following:

...

(b) extend the time period for requesting an appeal even though the period has expired;

The Tribunal has developed certain basic principles to ensure that there are compelling reasons to exercising the discretion granted in this section. The Tribunal set out the six criteria for determining timeliness of appeals based on previous cases in *Bravo Cucina Restaurante Italiano Ltd.* BC EST #D343/00.

"Appellants who are seeking a time extension for an appeal, should satisfy the Tribunal on balance that:

1. there is a good reason they could not appeal before the deadline;
2. there is not an unreasonably long delay in appealing;
3. they always intended to appeal the determination;
4. the other parties (the respondent and the Director) are aware of the intent to appeal;
5. the respondent will not be harmed by an extension; and
6. they have a strong case that might succeed, if they get an extension."

In the present matter Quizine has offered an explanation for why it could not meet the deadline set out in the Determination. The explanation is that the Determination was sent to Quizine just as the principal of the firm was departing on a planned vacation from which he was not scheduled to return until after the expiry of the appeal deadline. I understand from the submissions of both the Delegate and Robertson that this explanation was acceptable to them, up to a point. Robertson seemed to believe that an extension of the deadline to September 10, 2002 would be reasonable and acceptable however he was not agreeable to an extension to September 18, 2002.

The delay in filing a perfected appeal would appear to be over three weeks from the deadline in the Determination and about a week past what Robertson felt was a reasonable deadline however the first incomplete appeal attempt was made only a day after the date that Robertson thought acceptable.

There is no doubt that all parties were aware from an early stage, probably even before it was issued, that the Determination was likely to be appealed. It is acknowledged that Quizine always intended to appeal. No argument has been made that allowing the extension required would cause any significant prejudice to the interests of the Respondent, Robertson.

This is not the place for a definitive analysis of the merits of the appeal, however it is apparent from a reading of the Determination, the appeal documents and the submissions of the parties, that there is a basis for the appeal that has sufficient merit that it deserves the consideration of an Adjudicator.

Despite the rather casual if not careless attitude shown by Quizine with respect to meeting the appeal deadline I am persuaded by the factors noted above, and particularly by the generous indulgence towards Quizine by the other parties, that this is a case where extension of the appeal deadline is appropriate.

ORDER

Pursuant to section 109(1)(b) of the *Act* I order that the time for the filing of an appeal in this matter be extended to September 19, 2002 and that the appeal by Quizine be accepted.

William Reeve
Adjudicator
Employment Standards Tribunal