

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-

Alexander Domanski

(“Domanski”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 97/470

DATE OF DECISION: October 29th, 1997

DECISION

OVERVIEW

This is an appeal brought by Alexander Domanski (“Domanski”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on December 19th, 1997 under file number 081-085 (the “Determination”).

The Director determined that Domanski (and another individual named Zbigniew Stasienko), together carrying on business known as “Zespol Electric”, owed their former employee, Aboulgassem T. Suleiman (“Suleiman”), the sum of \$2,152.04 on account of unpaid wages. Specifically, the Director found that Suleiman was employed by Domanski and Mr. Stasienko as an apprentice electrician from October 11th to 31st, 1996 at an hourly rate of \$14.00. After accounting for the sum of \$700 that was paid to Suleiman by Domanski, the Determination was issued reflecting the balance of wages due plus vacation pay (at 4%) and interest pursuant to section 88 of the *Act*.

ISSUES TO BE DECIDED

Domanski’s appeal is based on the following arguments:

1. Suleiman was never employed by Domanski; rather, Suleiman, as well as Domanski, was employed by Mr. Stasienko.
2. Domanski never was a partner of Stasienko in a firm known as Zespol Electric.
3. Domanski also asserts that, in essence, the Director failed to comply with section 77 of the Act inasmuch as:

“No one from the Employment Standards Branch ever contacted Mr. Domanski. Mr. Domanski never received notice of any inquiry, request for information, hearing or any other step taken on behalf of the Employment Standards Branch in this matter.” (see paragraph no. 6, p. 3 of Domanski’s Appeal form)

4. There is also a question as to the timeliness of Domanski’s appeal; thus, Domanski must be granted, if required, an extension of the appeal period under section 109(1)(b) of the *Act* before the substantive merits of his appeal can be addressed.

ANALYSIS

The Timeliness of the Appeal

According to the information and corroborating documentation filed with the Tribunal, the Determination was sent, by certified mail, to Domanski on December 27th, 1996. The envelope in which the Determination was enclosed clearly identifies both the sender--the Employment Standards Branch in Surrey--and the Determination number. I note that the Determination was sent to the same Surrey address listed by Domanski on his appeal form. After having been given a further notice, on January 9th, 1997, Canada Post returned the certified mail to the Employment Standards Branch on February 3rd, 1997 as "unclaimed" mail.

Section 112(2)(a) of the *Act* states that an appeal of a Determination must be filed with the Tribunal "within 15 days after the date of service" by registered (or as it is now known, certified) mail. I am entirely satisfied that service was effected on Domanski by certified mail in late December 1996 and that Domanski simply refused to take delivery of the Determination. He was well aware of the fact that there was an ongoing investigation, having spoken with the Director's delegate on at least two occasions in November 1996. However, an appeal was not filed with the Tribunal until June 19th, 1997--the appeal form itself is dated June 17th, 1997. The appeal appears to have been precipitated when the Director, on or about June 4th, 1997, attempted to enforce the Determination by a seizure of assets (see section 92 of the *Act*).

In light of the foregoing, the Tribunal Registrar wrote to Domanski on June 25th, 1997 and advised that his appeal would not be considered as it was filed beyond the statutory time limit. By way of reply, Domanski's solicitors' wrote to the Tribunal on July 2nd, 1997, and although this submission does not specifically seek a reconsideration of Registrar Edelman's decision pursuant section 116 of the *Act*, I am prepared to treat it as such.

In my view, Registrar Edelman quite properly refused to grant a time extension of the appeal period. I am satisfied that the Determination was served on Domanski by certified mail and that he, at his own peril, chose not to respond. Domanski was only motivated into filing an appeal when the Director attempted to enforce the Determination.

I might add that even if I was inclined to grant a time extension, I do not see that there is any merit to the appeal in any event. In determining that Domanski and Stasienko were Suleiman's employer, the Director relied on a number of factors including: the complainant's evidence that Domanski was his employer; a general contractor's evidence that both Domanski and Stasienko were sub-contractors on the project in question, and Domanski's action in paying, personally, the \$700 in wages that were referred to in the Determination. Nor am I satisfied that there is any merit to the appellant's claim that the Director breached section 77 of the *Act*.

ORDER

Pursuant to sections 114(1)(a), 115 and 116 of the *Act*, I order that Domanski's appeal of the Determination be dismissed and that the Determination be confirmed as issued.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal