

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 -

Paramjit Singh
("Singh")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 1999/585

DATE OF DECISION: November 19, 1999

DECISION

OVERVIEW

This is an appeal by Paramjit Singh (“Singh”) under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination dated July 12, 1999 issued by a delegate of the Director of Employment Standards (the “Director”). Singh alleges that the delegate of the Director erred in the Determination by concluding that she was only owed wages in the amount of \$1,720.80.

The Determination sets out that any appeal of the Determination must be delivered to the Tribunal by August 4, 1999. The appeal by Singh was received by the Tribunal on September 28, 1999.

ISSUE

The issue to be decided in this appeal is whether the appeal by Singh was delivered to the Tribunal within the time limits set for such delivery.

FACTS

The following facts are not in dispute:

- the Determination was mailed to Singh on July 12, 1999;
- the Determination clearly sets out that any appeal must be delivered to the Tribunal by August 4, 1999;
- the Determination was mailed to an incorrect address for Singh;
- the Determination was returned to the *Employment Standards Branch* (the “*Branch*”) on August 9, 1999;
- the Determination was again mailed to the corrected address for Singh on August 18, 1999;
- the Canada Post “Certificate of Delivery Confirmation” indicates that the Determination was “successfully delivered to the customer” on August 19, 1999;
- in her appeal, Singh confirms that she “*received your letter of determination after August 19, 1999...*”;
- Singh’s appeal is dated September 17, 1999 but was not received by the Tribunal until September 28, 1999.

Singh argues that she contacted the Tribunal offices 2 days before her appeal was filed and was advised that without proof of when the Determination was received her appeal would not be accepted. Singh further argues that when she got home she found the envelope which contained the Determination so she filed her appeal at that time.

The delegate of the Director states that the second mailing of the Determination was picked up on August 19, 1999. The delegate of the Director further states that Singh offers no explanation as to why she did not deliver her appeal to the Tribunal until September 28, 1999, some 40 days after receipt of the Determination. The delegate of the Director finally states that a Bank Draft in the full amount of the Determination was mailed to Singh on August 4, 1999 therefore the employer has paid in full all monies owed.

ANALYSIS

The time limits for the filing of an appeal with the Tribunal are found in Section 112 and provides:

Section 112, Right to appeal director's determination

(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).

(3) The filing of a determination under section 91 does not prevent the determination being appealed.

(4) This section does not apply to a determination made under section 119.

The evidence is that the appeal by Singh was received by the Tribunal outside of the time limits set forth in Section 112 *supra*.

The powers of the Tribunal to exercise discretion in regard to time limits are set forth in Section 109 (1) (b) of the Act which provides:

109.(1) In addition to its powers under section 108 and Part 13, the tribunal may

.....

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

The discretion of the Tribunal to extend the time limits for accepting an appeal should, in my view, be exercised only where extenuating circumstances beyond the control of the appellant prevented the appellant from meeting the time limits set out in the Determination.

The evidence is that the Determination was first mailed to an incorrect address and was returned to the *Branch* on August 9, 1999, 5 days after the date set forth for the appeal to have been received by the Tribunal. The Determination was mailed a second time on August 18, 1999 and picked up on August 19, 1999.

Singh however, provides no explanation of why, when she confirms that the Determination was received on or about August 19, 1999, that her appeal was not received by the Tribunal until September 28, 1999.

I note that the appeal is dated September 17, 1999 however, the date which I must consider pursuant to section 112 *supra* is the date that the appeal is *delivered* to the Tribunal which was September 28, 1999.

Based on the evidence provided, it is appropriate that I consider the second mailing of the Determination on August 18, 1999 to be the commencement of the appeal period. The plain fact of the matter is however, even counting from August 18, 1999, the appeal was filed outside of the permissible time limits as set forth in Section 112 *supra*.

Singh has not provided any credible explanation or evidence with respect to the delay between the date of the receipt of the Determination and the date of delivering the appeal to the Tribunal.

Based on the evidence provided, I am satisfied that there are no extenuating circumstances with respect to this appeal. I therefore decline to exercise the Tribunal's discretion pursuant to Section 109 (1) (b) with respect to the time limits for filing an appeal.

For all of the above reasons I conclude that the appeal by Singh was not received by the Tribunal within the time limits set forth and the appeal will not be considered.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 12, 1999 be confirmed in the amount of **\$1,720.80**.

Hans Suhr
Adjudicator
Employment Standards Tribunal