

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 -

Blue World It Consulting Inc., and Blue World Information Technology
Consulting Inc., and Michael Charles Roy
("Roy")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 98/644

DATE OF DECISION: November 10, 1998

DECISION

OVERVIEW

This is an appeal by Blue World It Consulting Inc., and Blue World Information Technology Consulting Inc., and Michael Charles Roy (“Roy”) 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 August 19, 1998. The Director’s delegate found that Roy owed Rajendra Sookha (“Sookha”) wages in the amount of \$3828.17 (including interest). The Determination stated that an appeal of it had to be received by the Tribunal by September 11, 1998. The Tribunal received an appeal on October 14, 1998. Roy 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 Director’s delegate opposed the granting of an extension. This appeal was decided based on the written submissions of the parties.

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 August 19, 1998 found that Roy owed overtime pay and vacation pay to Sookha in the amount of \$3828.17 (including interest). The Director’s delegate said that Roy had failed to participate in the investigation and, as a result, she based her calculations on Sookha’s records. The Determination indicated that an appeal of it had to be received by the Tribunal no later than September 11, 1998.

The Determination was sent by registered mail and it was received by Roy on August 20, 1998 as evidenced by Canada Post Corporation’s “Acknowledgement of Receipt” document.

The Tribunal received an appeal from Roy on October 14, 1998. The appeal was dated September 14, 1998. In the appeal, Roy effectively requested that the Tribunal extend the deadline to file an appeal. Roy stated that the appeal was late because in his efforts to manage his multiple responsibilities he had been remiss in managing the priorities of certain administration tasks, including Sookha’s claim. Roy further stated that his bookkeeper had tried unsuccessfully to contact Sookha and due to the lack of response from Sookha and the fact that Sookha had violated non-disclosure and non-competition agreements he postponed trying to get the matter resolved. Roy stated: “At the time these events began to spiral, I was both angry and disappointed at the trust that was exploited by Mr. Sookha and this may have impacted my decision to resolve this matter further. I

realize now the seriousness of this matter and hope that it is not too late to resolve this matter for both Mr. Sookha and myself.” Roy goes on to state that Sookha is not entitled to vacation pay because he was on probation, and he was paid all his overtime by way of an overpayment on his December cheque.

The other parties on 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*.

In a submission dated October 16, 1998, the Director’s delegate stated that the appeal should be dismissed. She said she contacted Roy a minimum of six times between April 23, 1998 and June 23, 1998 and he was given the opportunity to provide his position. However, no information was provided by Roy until he filed the appeal. She stated that Roy is attempting to produce evidence which could have and should have been given to her during the investigation.

In his reply dated October 28, 1998, Sookha did not address the timeliness issue. Rather, he responded to the merits of the appeal arguing that he is owed overtime pay and vacation pay.

ANALYSIS

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

I have considered Roy’s explanation for the delay in filing an appeal and I find it to be inadequate. Roy was in receipt of the Determination well in advance of the appeal deadline but despite the clear direction contained in the Determination regarding how and when an appeal could be filed with the Tribunal, he did not file an appeal, nor did he make any contact with the Tribunal until after the expiration of the appeal period. Roy had an opportunity to file a timely appeal but he chose not to exercise his 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 with 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 of Employment Standards, 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, Roy 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, Roy has failed to persuade me that he 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

Roy's 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 \$3828.17 together with whatever further interest may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Norma Edelman
Registrar
Employment Standards Tribunal

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