

An appeal

- by -

Efstathios Stan Stathis
("Stathis")

- 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: Lorne D. Collingwood

FILE No.: 2001/479

DATE OF DECISION: October 2, 2001

DECISION

OVERVIEW

The appeal is pursuant to section 112 of the *Employment Standards Act* (“the *Act*”) and by Efstathios Stan Stathis (who I will also refer to as “the Appellant”). Stathis appeals a Determination issued on December 1, 2000 by a delegate of the Director of Employment Standards (“the Director”). In that Determination (the “DDET Determination”), Stathis is found to be an officer of Consolidated Van-City Marble Ltd. (“Consolidated”) and, pursuant to section 96 of the *Act*, he is ordered to pay Tarsem Dhillon \$5,484.21 in wages and interest.

An unsigned application to appeal was received from the Appellant but the Appellant had failed to attach either a copy of the Determination which was being appealed or any documents in support of the appeal and, as such, the appeal was incomplete. Stathis was told to file the missing documents and that the Tribunal would not proceed without them. When nothing was received or heard from the Appellant, the Tribunal closed the file. Some weeks passed and the Director moved to collect on the DDET Determination. The Appellant, at that point, filed a complete appeal.

The Tribunal has the power to extend the time limit for an appeal and the Appellant has requested that the Tribunal exercise that power in his case. I have decided that this is not a case in which to extend time limits.

This appeal has been decided on the basis of written submissions.

ISSUE TO BE DECIDED

The sole issue before me is whether the Tribunal should or should not exercise its discretion to extend the time period for appealing the DDET Determination. Stathis claims that it was always his intention to appeal the DDET Determination and in that regard he notes that he filed his application to appeal in time. He goes on to claim that it is largely because the Tribunal misplaced his application and the Director’s delegate was unresponsive that the complete appeal was filed when it was.

FACTS

The Director has issued a Determination against Consolidated. In that Determination (“the Corporate Determination”), Consolidated is ordered to pay Tarsem Dhillon \$10,790.25.

Once the Corporate Determination became final, the Director issued Determinations against the directors and officers of Consolidated. The DDET Determination was issued against Stathis because he is listed in the record of the Registrar of Companies as being the Secretary of Consolidated at the time Dhillon's wages were earned and should have been paid.

The amount of the DDET Determination is \$4,924.56 plus interest. That is the amount of the Corporate Determination minus what is awarded in the way of length of service compensation and it is less than what is two months of wages for Dhillon.

The deadline for appealing the Determination was December 27, 2000. On December 20, 2000, an unsigned, incomplete application to appeal was received by the Tribunal. On March 14, 2001 the Tribunal advised Stathis, both by telephone and letter, that his appeal was incomplete and that the Tribunal required a copy of the Determination which was being appealed and documents to support the appeal. Stathis was given until March 21, 2001 to submit such information.

On March 15, 2001, the Tribunal sent Stathis another letter. That letter is similar to the above letter but establishes that the Tribunal was in contact with Stathis by telephone on the 14th of March.

As the deadline for submitting documents neared, Stathis asked if he could have a few more days in which to submit information. He was at that point given until the 23rd of March to submit the required documents. Nothing was received from Stathis, nor was anything heard from him.

By letter dated April 4, 2001 Stathis was notified that the Tribunal was closing his file because he had not supplied documents which are required before the Tribunal could proceed with the appeal.

In May, the Director moved to enforce the Determination.

On the June 6, 2001, Stathis faxed the Tribunal documents pertaining to the appeal, an incomplete copy of the DDET Determination included. By letter dated June 6, 2001, the Tribunal instructed Stathis that it needed a complete copy of the DDET Determination and that he should send along the missing pages. Stathis promptly did that.

As there had been a failure to respond to the request for documents and as it was by now June, the Tribunal, by letter dated June 25, 2001, invited submissions in respect to the matter of whether the Tribunal should or should not extend the time limit for the appeal. The Appellant has concluded that the Tribunal misplaced his application and he complains that that accounts for much of the delay in filing a complete appeal. I find that there is no explanation for the fact that it was not until March 14, 2001 that the Tribunal instructed Stathis to file a copy of the DDET Determination and other documents but I am prepared to accept that it is for reason of the Tribunal's delay in doing so that there was not a complete appeal before that point.

According to the Appellant, the subsequent delay in filing documents, a period which is just short of three months, is also the fault of the Tribunal and the Director's delegate. As I understand the Appellant, he is saying that he was not able to recall in March, April or May where it was that he put his documents and he blames that loss of memory on the fact that it took the Tribunal as long as it did to advise him on the shortcomings of his appeal. He also claims that the Director's delegate did not return his calls and that it was not until "about June 9, 2001" that he was able to obtain a second copy of the DDET Determination and file a complete appeal. I find that that fails to explain why it took Stathis until June before he got around to filing a single document. All that he has filed is a copy of the DDET Determination and a press release. Those documents are readily available. They could have been filed months ago.

There is no explanation for the fact that nothing was heard from Stathis even though he had indicated that he would file documents by the 23rd of March, nor is it explained why he did not respond to notice that the Tribunal was moving to close his file.

Stathis does not, on appeal, argue the amount of the DDET Determination. His claim is that he was not a director or an officer of Consolidated in the period of the employment and the point when Dhillon should have been paid. The press release which is submitted is dated February 20, 1997 and it announces his resignation "as a director of the company". I find that it does not announce his resignation as secretary, nor does it say that Stathis was severing all ties with Consolidated, quite the contrary, it announced that Stathis "remains as an employee". The Appellant has not presented any evidence in support of his claim that he resigned as Secretary of that incorporation.

The Director objects to an extension of time limits but it does not argue that such an extension would be prejudicial. Nothing at all has been heard from the employee.

ANALYSIS

Section 112 of the *Act* establishes a 15 day period for appealing Determinations.

- 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 may dismiss an appeal without holding a hearing if it is satisfied that the appeal is not in time, the appeal is not within the Tribunal's jurisdiction, or the appeal is frivolous,

vexatious, trivial or not in good faith. The Tribunal may also extend the time limit for filing an appeal.

- 114** (1) The tribunal may dismiss an appeal without a hearing of any kind if satisfied after examining the request that
- (a) the appeal has not been requested within the time limit in section 112 (2),
 - (b) the appeal is not within the tribunal's jurisdiction, or
 - (c) the appeal is frivolous, vexatious or trivial or is not brought in good faith.
- 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;
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The statutory period for appeals will not be overridden lightly but only where there is a compelling reason to do so. Where there is a reasonable explanation for the failure to file the appeal in time, no actual prejudice to the other parties, and it appears that there is a serious issue to address, I am satisfied that the Tribunal should not deny an appellant access to the Tribunal but that it should accept an appeal that is late. That being said, however, I am satisfied that the Tribunal should be more inclined to extending the time limit for an appeal where the appeal is only late by a few days and far less inclined to accepting the explanation for why the appeal is late where deadline is missed by a wide margin.

I am not prepared to extend the time limit for this appeal. This appeal is almost six months late and there is no reasonable explanation for that. The Appellant was told to file a copy of the determination which he was appealing and any documents which were in support of his appeal by the 21st of March. That deadline was extended at his request yet nothing was received. In early April he was told that the Tribunal was closing his file and still there was no response. I consider that indifference to be inexcusable. As I see it, the Appellant had no interest in an appeal until such time as the Director moved to collect on the DDET Determination.

I am not shown, moreover, that there is a serious question to address in this case. The Appellant has produced evidence which indicates that he may have resigned as a director of Consolidated and, at least initially, he argued that the DDET Determination is in error because he had in fact resigned as a director of Consolidated in 1997. It is, however, immaterial whether he did so. The DDET Determination is not issued because Stathis is a director of Consolidated but because of evidence showing that he was the Secretary of that incorporation at the point when the employee's wages became due.

The Director may issue a DDET determination against both the directors of an incorporation and the officers of the incorporation.

- 96** (1) A person who was a director or **officer of a corporation** at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee. (my emphasis)

In subsequent submissions, the Appellant began to claim that he also resigned as the incorporation's secretary but he has not presented any evidence in support of that claim. There is, as such, no reason to believe that the record of the Registrar of Companies or the DDET Determination is in error. I fail to see how there is a serious question to address.

ORDER

I order, pursuant to section 114 (1) (a) of the *Act*, that the appeal be dismissed on the basis that it is out of time and the Appellant has failed to produce a compelling reason to extend the time limit for the appeal.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal