

**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 -

Galter Holdings Ltd  
("Galter")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** James Wolfgang

**FILE No:** 1999/616

**DATE OF DECISION:** December 14, 1999

## DECISION

### OVERVIEW

This is an appeal by Galter Holdings Ltd. (“Galter”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards on September 16, 1999. The Determination found Galter had violated Sections 17, 18, 21, 27, 40 and 58 of the *Act* and ordered them to pay Philip Brent (“Brent”) \$1,829.85. A penalty of zero dollars (\$0.00) was also assessed.

The Determination specified an appeal must be delivered to the Tribunal not later than 4:30 PM on October 14, 1999. The appeal was delivered to the Tribunal office and date stamped on October 15, 1999 at 8:40 AM.

### ISSUE TO BE DECIDED

As the time limits had expired should the appeal by Galter be allowed under Section 109 (1) (b) of the *Act*?

### FACTS

Brent commenced his employment with Galter on May 14, 1999. On May 17, 1999 a fire damaged the shop where Brent was employed and renovations were not completed until October 7, 1999. The term of Brent’s employment is in dispute. Brent claims he worked until June 1, 1999. Galter claim his employment ended on the morning of May 18, 1999. The shop was closed for several days while the fire was being investigated. Following this time the shop apparently continued to operate on a restricted basis as cars that could not be moved occupied two of the three hoists.

Invoices dated June 5, 7, 9, 22, 23 and July 16, 1999 were submitted showing some work was being done, presumably at the shop.

The delegate claims he discussed the case with Alex Laverick (Laverick), the manager of the business, by telephone on July 26, 1999. As there was a considerable difference in the evidence of the parties the delegate arranged for a Fact Finding conference. He called Laverick on August 6, 1999 to set a date for the conference and, according to the delegate, left a message on Laverick’s answering machine. The delegate received no response and mailed the notice of the Fact Finding conference on August 7, 1999 to the business address. The delegate claims he also made telephone calls on August 11 and 18 and left messages on Laverick’s answering machine.

In the Director’s submission to the Tribunal dated October 18, 1999 the delegate makes reference to a July 27, 1999 telephone call in which he was given the business address as the preferred mailing address. It is indicated the reference to that call was attached to the Determination as attachment #1. That document is not included in the package I received.

Laverick claims he does not have nor ever had an answering machine attached to the telephone at the number the delegate claims he called. He also claims he gave his home address as the preferred mailing address while the notice was sent to the business address.

Laverick claims he did not receive the notice of the Fact Finding conference held on August 20, 1999 as it was sent to the business address and he was not going there. He claims the delegate did not discuss dates with him. The conference was held August 20, 1999 and Laverick did not attend.

Brent claims Laverick was in the shop during the period following the fire and answered the telephone each time he called.

Laverick also claims he had difficulty in retrieving records from the office as a result of the fire and the presence of the contractor repairing the damage.

The Determination was issued on September 16, 1999 and it informed Laverick the latest an appeal would be considered would be if it were delivered to the Employment Standards Tribunal no later than 4:30 PM on October 14, 1999.

Laverick claims he attempted to forward an appeal on October 14<sup>th</sup> however, because of computer problems, he was not able to do so. Laverick telephoned the Tribunal and informed them of his problem. He was informed the last date an appeal would be considered would be October 14, 1999. He would be required to provide a satisfactory explanation if the time limits were to be extended.

## **ANALYSIS**

The only issue to be decided is whether the appeal by Galter should be allowed under Section 109(1)(b) even though the time period for requesting an appeal had expired.

Laverick did attempt to file his appeal, albeit at the last minute, within the time limits of the *Act* however a problem with his computer prevented him from doing so. He called the Tribunal on the last day of the open period and requested an extension of time. The Tribunal did not close the door completely on Laverick, indicating that compelling reasons must be provided if the appeal period were to be extended. Laverick did deliver the appeal to the Tribunal office, date stamped October 15, 1999 at 8:40 AM.

One of the concerns I have is Laverick waited until the last day to file an appeal. He concedes he received the Determination at his home address on September 24, 1999 and had until October 14, 1999 to prepare and deliver an appeal.

I agree with the delegate that approximately 20 days elapsed from the time of the receipt of the Determination and the date in which an appeal must be filed, however, I feel the conflicting evidence around the scheduling of the Fact Finding conference and the possible difficulty in locating and providing the records requested as a result of the fire are sufficient reasons to give serious consideration to the appeal of Laverick

Section 109(1)(b) was incorporated into the *Act* to allow an appeal even if the time limits had expired. The grounds under which such an appeal are to be allowed are limited and are not to be used as a delaying tactic.

While time periods will not be extended as a matter of course: (Niemisto, B.C.E.S.T. No. D099/96) the purposes of the *Act* include the need to promote the fair treatment of employees and employers and to provide fair and efficient procedures for resolving disputes.

As in the case of Stifler, (B.C.E.S.T. No. D572/97), Laverick showed a bona fide intention to file an appeal and, in the absence of prejudice to any party, it should be granted.

While I have some reservations regarding the willingness of Laverick to co-operate in the investigation of the case I believe the request to accept his appeal, in view of the circumstances, is reasonable and is granted.

**ORDER**

In accordance with Section 115 of the *Act* I allow this appeal under Section 109(1)(b) of the *Act*.

---

**James Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**