

**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 -

Absolute Best Home Care Inc.  
(“Absolute”)

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE No.:** 2000/663

**DATE OF DECISION:** December 13, 2000

## DECISION

### OVERVIEW

The appeal is pursuant to section 112 of the *Employment Standards Act* (“the Act”) and by Absolute Best Home Care Inc. (which I will henceforth refer to as “Absolute”, “the appellant” and, also, “the employer”). Absolute appeals a June 27, 2000 Determination by a delegate of the Director of Employment Standards (“the Director”). In that Determination (“the Corporate Determination”), Absolute is ordered to pay Patty A. Wallace a total of \$1,339.74 in wages and interest.

The appeal is two months late.

### ISSUE TO BE DECIDED

What I must decide is whether the Tribunal should or should not exercise its discretion to extend the time period for an appeal of the Corporate Determination.

### FACTS

The Corporate Determination relies on the employee’s record of hours worked. Despite repeated requests to provide a record of hours worked, and an order to deliver such records, the employer did not. It appears that the employer failed to keep a record of hours worked.

The Corporate Determination advised Absolute of the right to appeal. It is clearly stated in the Corporate Determination that the deadline for appealing the Corporate Determination was July 20, 2000. Yet the deadline for appealing the Corporate Determination passed without an appeal having been filed.

On July 21, 2000, the Director issued a second determination against Absolute. That Determination (“the Penalty Determination”) imposes a penalty of \$500 on Absolute for a failure to produce employment records. Absolute did appeal that determination within the statutory time period for the appeal. It fell to me to consider the merits of the appeal. I did not find evidence that showed that the employer produced the records that it was ordered to produce and I therefore confirmed the Penalty Determination [*Absolute Best Home Care Inc.*, BCEST No. D522/00].

Tamara Zilcosky prepared the employer’s appeal of the Penalty Determination and, in setting out that appeal, Zilcosky indicated that she was preparing to appeal the Corporate Determination as well. Noticing that, the Tribunal wrote Zilcosky and advised her that if she wanted to appeal the Corporate Determination, that she had to file a copy of the determination and, if the appeal was late, which it was at that point, explain why the appeal was late and why the Tribunal should accept the appeal.

On July 24, 2000, the Director issued a Determination against Tamara Zilcosky, an officer and director of Absolute Best Home Care Inc. That decision orders Zilcosky to pay the amount of the Corporate Determination.

It was not until September 22, 2000 that the Tribunal finally received an appeal of the Corporate Determination. The appeal was prepared by Zilcosky. She did not explain why the appeal was late, nor did she offer any reason for extending the time period for the appeal.

The Tribunal, by letter dated September 27, 2000, invited submissions on the matter of whether it should or should not exercise its discretion under Section 109(1)(b) of the *Act* to extend the time limit for the appeal. Absolute did not respond to the Tribunal's request for submissions.

A response to the request for submissions was received from a delegate of the Director. It is his submission that the Corporate Determination was properly served in that it was delivered as is required by section 122 of the *Act*. According to the delegate, the determination was delivered to both Zilcosky's current and former addresses and also the Registered and Records Office of the employer.

The submission of the Director was sent to Absolute for a response. Absolute did not respond.

## **ANALYSIS**

I am satisfied that this appeal can be decided on the basis of written submissions as section 107 of the *Act* allows.

- 107** Subject to any rules made under section 109 (1) (c), the tribunal may conduct an appeal or other proceeding in the manner it considers necessary and is not required to hold an oral hearing.

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).

But the Tribunal has a discretionary power to waive the time limit for an appeal.

- 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;

....

In my view, parties must exercise reasonable diligence in filing appeals and the Tribunal should not extend the time limit for an appeal unless there is a compelling reason to do so, no actual prejudice to the other parties, and a fair question to address. To do otherwise is to disregard the *Act's* purposes, in particular, the need to provide fair and efficient procedures.

2 The purposes of this Act are as follows:

- (b) to promote the fair treatment of employees and employers;

...

- (d) to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act; ...

In this case it is evident that it was not until the Director issued the Penalty Determination, and/or issued the determination which is against Zilcosky personally, that the appellant became motivated to file the appeal. The appeal at hand is more than two months late. And the appellant has failed to advance what is a compelling reason why the time limit for the appeal should be extended. Indeed, the appellant has not advanced any explanation for why the appeal is late. I therefore find that the Tribunal should not, in this case, exercise its discretion to extend the time limit for an appeal of the Corporate Determination.

## ORDER

The appeal is dismissed and I order, pursuant to section 115 of the *Act*, that the Determination dated June 27, 2000 be confirmed in the amount of \$1,339.74 and to that I add whatever further interest has accrued pursuant to section 88 of the *Act*.

*Lorne D. Collingwood*

**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**