

An appeal

- by -

Alvin Ukrientz  
("Ukrientz")

- 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:** William Reeve

**FILE No.:** 2002/520

**DATE OF DECISION:** December 10, 2002

## DECISION

### OVERVIEW

This is an appeal by Alvin Ukrientz (“Ukrientz”) 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 September 16, 2002. The Determination found that Ukrientz was not owed compensation for length of service, over-time or other wages. The deadline for filing an appeal of the Determination was 4:30 p.m. on October 9, 2002. The appeal form was dated October 8, 2002 and included with it was a submission dated October 16, 2002. The appeal was received by the Tribunal on October 16, 2002. Ukrientz asks, at least by implication, that the appeal deadline be extended to allow the appeal, and he provided his reasons for the desired extension.

This decision is made based on the written submissions of the parties.

### ISSUE

The only issue to be addressed in this Decision is whether the Tribunal should extend the deadline for requesting an appeal in accordance with the powers of the Tribunal under section 109(1)(b) of the *Act*.

### ARGUMENT

In his appeal document dated October 16, 2002 Ukrientz stated, “Reason this appeal is late is because of marital problems.” In his submission made in response to the Tribunal’s acknowledgement letter Ukrientz elaborates on the marital problems mentioned, refers to events that happened around the date of the appeal deadline and explains the effects on his mental state. He apologizes for the lateness of the appeal.

The response to the appeal on the timeliness issue from Robert Barclay, the employer, opposes extension of the deadline. The delegate also opposes extension of the deadline. In his submission the delegate notes that the appeal form was dated October 8, 2002. The delegate mentions two contacts with the office of the local MLA. He summarizes his submission by saying that the “...Complainant had the time and the opportunity and the availability of a means...” to file an appeal in a timely manner and that he did not do so.

### THE FACTS AND ANALYSIS

The *Act* imposes an appeal deadline to ensure that appeals are dealt with promptly. This is consistent with one of the purposes of the *Act*, which is to provide fair and efficient procedures for resolving disputes. Under section 109(1)(b) of the *Act*, the Tribunal can extend the time for requesting an appeal, even though the appeal period has expired.

The Tribunal does not grant extensions automatically but it may extend a time limit if there are compelling reasons to do so. To help it decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. They are the following:

1. is there a good reason why the appeal could not be filed before the deadline;

2. was there are unreasonable delay in appealing;
3. did the appellant always intend to appeal the determination;
4. were the other parties aware of the intent to appeal;
5. is an extension of the appeal deadline harmful to the interests of the respondent; and
6. does the Appellant have a strong case that might succeed if an extension were granted.

There is nothing in the evidence that would convince me that Ukrientz was unable to appeal before the deadline. That a party has other concerns is not a compelling reason for failing to meet a deadline. His other concerns did not prevent Ukrientz from having a series of contacts with the office of his MLA, both during the investigation process, according to the Determination, and continuing in the week before finally filing his late appeal. He could have taken advantage of those contacts to file an earlier appeal, but failed to do so. The question is whether the appeal *could not* be filed before the deadline, not whether the party had other priorities.

As to the question of whether the delay of approximately a week is unreasonable. Given the apparently several reminders of the deadline for appeal both in the Determination and, reportedly, from the office of the MLA, it was not reasonable for Ukrientz to file his appeal in such a tardy manner. Deadlines set by legislation should not be treated casually.

There is no evidence that the interested parties were aware of any intent to appeal until after the expiry of the deadline. If Ukrientz had formed such an intention he would have been wise to have informed the Delegate. In the present case the extension of the deadline to allow the appeal is against the interests of the respondent mainly through the fact that it would probably extend the aggravation already experienced by the respondent for a considerable number of weeks.

Finally, and in this case most importantly, there is the question of how strong a case Ukrientz appears to have. In reviewing the Determination and the appeal documents it appears that there is little likelihood of the Determination being overturned.

Since nothing has been provided that constitutes a compelling reason to extend the deadline I therefore decline to do so.

## **ORDER**

The Appellant Ukrientz's request to extend the time period allowed for making an appeal is denied. The appeal is dismissed pursuant to section 114(1) of the *Act*. Pursuant to section 115(1) of the *Act* the Determination dated September 16, 2002 is confirmed.

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**William Reeve**  
**Adjudicator**  
**Employment Standards Tribunal**