

An appeal

- by -

Mohamad Obeid
("Obeid")

- 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.: 2002/532

DATE OF DECISION: December 17, 2002

DECISION

OVERVIEW

This is an appeal by Mohamad Obeid (“Obeid”) 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 30, 2002. The Determination found that Obeid was not owed compensation for length of service. The deadline for filing an appeal of the Determination was 4:30 p.m. on October 23, 2002. The appeal was received by the Tribunal at 1:11 p.m. on October 24, 2002. The appeal was received with an explanation for why it was late. The implication of the explanation is that Obeid is asking for an extension of the appeal deadline to allow his appeal.

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

Obeid, in submitting his appeal, explained that he had “...misplaced the envelope, and someone found it and mail it back to the PO Box.” He apologized for being one day late with his appeal. The envelope referred to is apparently the envelope containing the Determination sent to him by the delegate by registered mail. The cover in question was included in the appeal. It bears a notation, “Customer drop on street found” and another one, “Put in PO Box”. In response to the Tribunal’s cross disclosure cover letter dated November 18, 2002, Obeid states that he was unaware of the content or provenance of the letter that he lost. He also states that his several calls to the delegate in April and May, in the weeks following his termination, show an intention to appeal a determination if it was not favourable to him.

There was no submission from the delegate on the issue of timeliness.

The submission from the employer concerned, Best Buy Canada Ltd. operating as Future Shop, raised several objections to the acceptance of the late appeal. These objections address the six criteria that the Tribunal usually considers in timeliness cases.

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 an 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.

The primary reason for the lateness of the appeal, according to Obeid's submissions, is that he lost the letter containing the Determination and it found its way back to him too late for him to file his appeal within the deadline. The evidence of the envelope submitted by Obeid supports this contention. This seems to be consistent with the facts and I am prepared to accept this explanation as the truth. In addition Obeid indicates that he was unaware of the content and source of the lost letter at the time that he lost it. I see no reason not to believe this. The Determination was issued some months after Obeid made his complaint and it is quite possible that, until it was returned to him later, he did not realize that the lost registered letter contained the Determination that resulted from the investigation of his complaint. These facts, however, do not mean that Obeid should be exempted from the consequences of his apparent carelessness in losing the registered letter.

The filing of the appeal one day after the deadline could not, in itself, be described as an unreasonable delay. Similarly, I see no reason to doubt that Obeid intended to appeal the Determination from the moment that he realized that it was not favourable to him. In the absence of any submission to the contrary from the delegate, there is nothing before me to indicate that Obeid was aware that the Determination was likely to be unfavourable to him before he finally read it. For this reason no one can be expected to have been aware of his appeal intentions before they were formed.

As to whether an extension of the deadline is likely to be harmful to the interests of the Respondent, I note that the Respondent argues that delay, in itself, hampers the Respondent's ability to defend its position. This would be a more convincing argument if a long delay was involved, however in the present case the delay is well within the usual range of time involved in the processing and adjudication of an appeal, therefore this argument is not convincing. The harm to the Respondent that might result from an extension of the time for appeal by one day is simply the burden of having to respond to the merits of the appeal.

Finally there is the question of whether Obeid has a strong case that might succeed. The delegate was convinced that the employer had proceeded properly in terminating Obeid's employment for just cause as described in section 63(3)(c) of the *Act*. Obeid's appeal is based, in part, on the contention that his supervisor had given him verbal authorization to resume the practice that he had previously been warned not to follow, and that resumption led to his dismissal. Also, Obeid contends that there had been tacit acceptance of his resumption of the practice. In the face of the contradiction between the written

disciplinary record and the alleged authorization and tacit consent it is understandable that the delegate came to the conclusion that there was justification for termination.

Even if the supervisor in question were compelled to give evidence on these issues it is doubtful, in my judgment, whether that evidence, even if supportive of Obeid's position, could outweigh the documented disciplinary record. As for Obeid's contention that there was an element of racial discrimination involved in his termination there is essentially no evidence of this. For these reasons it seems unlikely that the appeal would succeed on its merits.

In weighing these factors two are particularly significant. These are, first, the inexplicable carelessness of Obeid in losing his registered letter, the consequences of which are entirely Obeid's responsibility and, second, the unlikelihood of the appeal succeeding on its merits. In these circumstances it cannot be said that a compelling reason exists to extend the deadline, therefore I decline to do so.

ORDER

The Appellant Obeid'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 30, 2002 is confirmed.

William Reeve
Adjudicator
Employment Standards Tribunal