

An appeal

- by -

Atlas Publishing and Printing Co. Ltd.
(“Atlas”)

- 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: James Wolfgang

FILE No.: 2001/600

DATE OF DECISION: November 2, 2001

DECISION

OVERVIEW

This is an appeal by Atlas Publishing and Printing Co. Ltd. (“Atlas”) pursuant to Section 112 of the *Employment Standards Act (the “Act”)* of a Determination issued by the Director of Employment Standards (the “Director”) dated July 10, 2001. The Determination found Atlas had failed to pay overtime as per Section 28 of the *Employment Standards Act*. It was determined Atlas owed \$2,916.65 in overtime and interest.

Atlas failed to supply any payroll records after repeated requests and the Determination relied on the records of the former employee.

In addition, a penalty of \$0.00 was imposed.

Atlas claimed they did not receive the Determination, however the Delegate supplied a copy of the Canada Post “Priority Courier Track and Trace System” indicating the delivery took place on July 11, 2001.

Atlas filed an appeal dated August 08, 2001, which was received by the Tribunal August 09, 2001.

ISSUE

Should the time limits be extended to allow Atlas to appeal the Determination?

ARGUMENT

The only submission accompanying the Tribunal Appeal Form dated August 08, 2001 from Atlas was an undated fax received by the Tribunal August 09, 2001 titled “Reason for delay”. Atlas claimed they were waiting for the Delegate to return from holidays before appealing, as they “lacked knowledge about how and when we can appeal”.

In a subsequent submission they also claimed they had a verbal “contract” with the former employee in which he waived his right to overtime.

The Delegate, in her submission to the Tribunal dated September 7, 2001; stated Atlas claimed they did not receive the Determination. The Delegate enclosed a proof of delivery from Canada Post of the Determination on July 11, 2001 at 09:54 signed for by Prabhakar Devkar.

THE FACTS AND ANALYSIS

Atlas made no submission to the Tribunal claiming they did not receive the Determination.

We have no evidence Atlas attempted to contact the Delegate prior to her leaving or on her return from vacation although they claim they left a message for her.

Section 112 (1) of the *Act* states:

Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reason for the appeal.

Section 112 (2) of the *Act* states:

The request must be delivered within

(a) 15 days after the date of service, if the person was served by registered mail, and

The Tribunal received Atlas' appeal some 29 days after their receipt of the Determination. There was no request from Atlas for an extension of the time limits for an appeal.

The information on filing an appeal was included with the Determination and Atlas could have contacted the Tribunal if they were having difficulty. Section 109 (1) (b) allows the Tribunal to extend the time periods for requesting an appeal even though the time period has expired. This is not done lightly as one of the purposes of the *Act* under Section 2 (d) is to “provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act”. (emphasis added) There was no valid reason submitted to the Tribunal for an extension and I find Atlas has failed in their request for an appeal.

A review of the material supplied by Atlas would lead to the conclusion they do not have a strong case and the appeal would, in all probability, fail on the evidence.

ORDER

In accordance with Section 115 of the *Act* I confirm the Determination by the Director dated December 1, 2000. Additional interest is to be calculated in accordance with Section 88 of the *Act*.

James Wolfgang
Adjudicator
Employment Standards Tribunal