

An appeal

- by -

Wud'at Development Corporation, operating as
Fort Babine Silviculture Ventures
(the "Appellant")

- 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: Wayne R. Carkner

FILE No.: 2001/689

DATE OF DECISION: December 6, 2001

DECISION

This decision is based on written submissions by Victor William, on behalf of the Appellant, and written submissions from the Director.

OVERVIEW

This is an appeal by the Wud'at Development Corporation, operating as Fort Babine Silviculture Ventures pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) of a Determination issued by the Director of Employment Standards (the “Director”) on September 7, 2001.

The Determination concluded that the Appellant had contravened Section 21 of the *Act* and made unauthorized deductions from the payroll of Michael Balczer (the “Respondent”) in the amount of \$525.56. The total remedy assessed, including interest pursuant to Section 88 of the *Act*, was \$564.49.

The appeal deadline, as outlined in the Determination, was 4:30 P.M. October 1, 2001. The application for appeal was received in the Tribunal Offices, by facsimile, at 3:04 P.M. October 2, 2001. The Appellant has requested the Tribunal, pursuant to Section 109 (b) of the *Act*, extend the time limits to allow the appeal to be filed. The Director opposes this application.

ISSUE

Should the Tribunal exercise its discretion pursuant to Section 109 (1) (b) of the *Act* and allow an extension of time to the Appellant to file the appeal of the Determination issued September 7, 2001?

FACTS AND ANALYSIS

The Tribunal looks at several main factors when considering whether of not to exercise it's discretion and allow extensions to the appeal deadline. They are:

- Is there a good reason why the person appealing could not meet the deadline?
- Was there an unreasonably long delay in filing the appeal?
- Did the person appealing always intend to appeal the Determination?
- Were other parties aware of the intent to appeal?
- Would extending the appeal deadline prejudice the Respondents case?
- Does the Appellant have a strong case that might succeed.

The Appellant's only submission regarding the lateness of the appeal application was contained in a letter dated October 2, 2001, which primarily outlined the reasons for the Appeal. The only reason given for the delay provided in this document was:

“The delay in responding prior to the deadline of October 1, 2001 was that the registered mail was addressed to Wud’at development Corporation, I hand delivered the mail to the desk of the President of the Wud’at Development Corporation during the afternoon of September 29, 2001. The mail was opened this morning [October 2, 2001] by the President of Wud’at Development Corporation and handed [sic] me the letter from Employment Standard [sic].”

The Director opposed the extension. Referring to the factors outlined above, the Director stated that the delay was not unreasonably long, that there is no evidence of the Appellant's intent to appeal the Determination and that there is no evidence that allowing the appeal would prejudice the Respondent's case.

The Director submitted that the Determination was sent by courier to both the operating address of the Appellant and the Registered and Records office of the Appellant. The Director attached confirmations of delivery of the Determination from the courier service that showed that Victor William had signed for receipt of delivery of the Determination on the morning of September 26, 2001 at the operating office and that Violet Zehmke signed for receipt of the Determination on the morning of September 17, 2001 at the Registered and Records office of the Appellant.

The Director further submits that in any event the appeal only deals with the claim of debts owed by the Respondent to the Appellant and does not deal with the issue of unauthorized deductions. The Director concludes that on the face of the appeal the Appellant does not have a strong case and the Tribunal should decline the application.

After reviewing the submissions and the appeal I must concur with the Director. The Appellant has failed to provide any reason, let alone a compelling reason why the Tribunal should exercise its discretion and extend the time limits for appeal.

It is clear from the documentation that the Appellant had received the Determination within a timeframe that would allow the Appellant to file an appeal in a timely manner. It is also apparent from the appeal submissions that the Appellant has not set out a “*prima facie*” case in the appeal application. In the appeal submission the Appellant only refers to debts owed by the respondent. There are no facts presented in any manner that relate to the findings of the Determination, i.e. a finding that the Appellant has contravened the *Act* by making unauthorized deductions from the Respondent's payroll.

CONCLUSION

I must conclude that this application for an extension to file an appeal must be dismissed, as it is not a proper application for the Tribunal to exercise discretion pursuant to Section 109 (1) (b).

ORDER

Pursuant to Section 109 (1) (b) of the *Act* I decline to extend the time period for requesting an appeal. The appeal is dismissed pursuant to Section 114 (1) (a) of the *Act*.

Wayne R. Carkner
Adjudicator
Employment Standards Tribunal