

An Application for Reconsideration

- by -

Mark Bridge

- of a Decision issued by -

The Employment Standards Tribunal  
(the “Tribunal”)

pursuant to Section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE No.:** 2009A/015

**DATE OF DECISION:** May 11, 2009

## DECISION

### SUBMISSIONS

Mark Bridge	on his own behalf
Ian MacNeill	on behalf of the Director of Employment Standards
Patrick Gilligen-Hackett	on behalf of the Friends of UVic Law Society and the University of Victoria

### OVERVIEW

1. Mark Bridge sought a reconsideration of Tribunal Decision BC EST #D091/07 (the "Original Decision"), issued by the Tribunal on September 25, 2007. The history of the complaint, Determination and Original Decision are set out in my decision, issued February 26, 2008. (*Bridge* (BC EST #RD026/08))
2. After the Original Decision was issued, the British Columbia Court of Appeal released its decision in *Karbalaeiali v. British Columbia (Employment Standards)*, 2007 BCCA 533 (“*Karbalaeiali?*”). The Court found that the *Employment Standards Act*, (R.S.B.C. 1996 c. 113) (the “*Act*”) gives the Director discretion to accept a complaint delivered more than six months after the date of termination of employment. At the time the Determination and Original Decision were made, the Director and the Tribunal had long interpreted the *Act* as not granting such discretion. After November 14, 2007, the law on the issue of whether the Director had the discretion to accept a late complaint was authoritatively settled.
3. In *Bridge* (BC EST #RD051/08), I concluded that *Karbalaeiali* required that the Director exercise his discretion to determine whether acceptance of the complaint should be refused. The Tribunal would then be “required to determine whether the complaint should have been accepted and reviewed having regard for the factors it considered properly bore on the exercise of the delegate’s discretion”. (*Karbalaeiali* para. 12)
4. I varied the Original Decision and referred the matter back to the Director to exercise his discretion as to whether or not Mr. Bridge’s complaint should be accepted.
5. In a report dated February 24, 2009, the delegate determined that Mr. Bridge had failed to provide adequate reasons to convince him that his complaint should be accepted. He therefore concluded it would be against the purpose of the *Act* for the Director to exercise discretion and allow Mr. Bridge’s complaint to proceed.

### ISSUE

6. Whether the delegate properly exercised his discretion in refusing to accept Mr. Bridge’s late complaint.

### FACTS AND ARGUMENT

7. On June 20, 2008, the delegate sent Mr. Bridge a certified letter asking him to respond to three questions:
  1. Do you have a reasonable and credible explanation for your failure to file your complaint within the time limit set out in section 74?

2. Did you have a genuine intention within the six month period to file a complaint or at least ask the employer to pay?
  3. What efforts did you make to ensure your former employer was made aware that you felt you were owed wages (did you use a self-help kit or make other attempts to resolve the issue in the period January 1, 2004 to June 30, 2004)?
8. The letter was returned unclaimed. A second letter, enclosing the first, was couriered to Mr. Bridge on September 22, 2008. Mr. Bridge acknowledged receipt of those letters.
  9. In the delegate's correspondence with Mr. Bridge from June 20, 2008 through to November 2008, Mr. Bridge was asked to elaborate on particulars of the alleged failure to accept his complaint and to respond to the questions posed in the June 20, 2008 letter.
  10. On December 8, 2008, Mr. Bridge responded to the delegate's June 20, 2008 letter but did not answer the questions in any meaningful way. His response was sent to Friends of UVic Law School ("Friends") and the University (the "University") (collectively, the "Respondents") for their reply. Mr. Bridge was provided with the Respondents' reply on January 14, 2009 and asked to respond to it by January 28, 2009. The delegate received no response from Mr. Bridge.
  11. On February 8, 2009, Mr. Bridge advised the delegate that he had not received the Respondents' submission. The delegate confirmed with the courier company that the package had been delivered on January 15, 2009 and did not re-send it. The delegate concluded that Mr. Bridge had ample opportunity to respond to the matter.
  12. The delegate concluded that he would not accept Mr. Bridge's complaint for the following reasons:
    1. The wages Mr. Bridge was seeking was for work he allegedly performed between January 1, 2004 and June 30, 2004. The delegate notes that he had decided Mr. Bridge did not perform work during this period, a conclusion upheld by the Tribunal and on reconsideration. The delegate submits that this fact distinguishes Mr. Bridge's complaint from that of Mr. Karbalaeciali and that, even if Mr. Bridge's complaint was accepted at this time, the substance of his complaint has already been investigated and decided.
    2. Mr. Bridge's response, or lack thereof, to questions asked of him in June 2008, do not give the Director reasons to exercise his discretion to accept the complaint outside the statutory time limit.
  13. With respect to the first question, the delegate acknowledged that Mr. Bridge's allegation that he attempted to file a complaint with the Victoria field office of the Branch and that he was turned away was a serious one and one that, if proven, would compel the Director to accept the complaint. However, the delegate concluded that Mr. Bridge provided insufficient evidence in support of this allegation and the delegate's own investigation at that office did not support Mr. Bridge's claim. The delegate determined that Mr. Bridge's assertions about what happened during his visits to the Branch office are not in harmony with what a practical and informed person would readily recognize as reasonable and therefore concluded that he had not provided a reasonable and credible explanation for his failure to file his complaint within the statutory time limit.
  14. The delegate found that Mr. Bridge had not responded to his second question about whether he had a genuine intention to file his complaint within the six month statutory time period. In the delegate's view, Mr. Bridge had not explained why his first request for payment of his unpaid salary was August 16, 2004. The

delegate concluded that Mr. Bridge's failure to respond to his question, along with other evidence relating to payment, showed that Mr. Bridge had not demonstrated a genuine intention to file a complaint.

15. With respect to the third question, the delegate noted that Mr. Bridge was successful in collecting wages from the Respondents on two previous occasions in January, 2004. The delegate further noted that even if Mr. Bridge had spoken to the Respondents about a further payment he took no steps to collect on those wages. The delegate notes that Mr. Bridge had not responded to his request for an explanation why he did not.
16. The delegate concluded that Mr. Bridge had failed to provide adequate reasons why his complaint should be accepted.
17. Mr. Bridge's submission to the Tribunal is silent on the merits of the delegate's conclusion. He merely contends that he was not afforded an opportunity to respond to the Respondents' final submission. He submits that the delegate sent the Respondents' submission to a non-existent address and seeks to have the Tribunal "remedy" this.
18. The Respondents agree with the delegate's decision to decline to exercise his discretion to extend the time for Mr. Bridge to file his complaint. They submit that the delegate's conclusions are abundantly supported by the record and the history of this matter before both the delegate and the Tribunal. The Respondents seek to have the Tribunal conclusively dismiss Mr. Bridge's application for reconsideration.

## THE FACTS AND ANALYSIS

19. The issue on the referral back to the Director was whether he ought to exercise his discretion as to whether or not Mr. Bridge's complaint should be accepted.
20. In *Jody L. Goudreau et.al.* (BC EST #D066/98), the Tribunal set out the circumstances under which it would interfere with the Director's exercise of discretion:

The Tribunal will not interfere with the exercise of discretion unless it can be shown the exercise was an abuse of power, the Director made a mistake in construing the limits of her authority, there was a procedural irregularity or the decision was unreasonable. Unreasonable, in this context, has been described as being:

... a general description of the things that must not be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and is often said, to be acting unreasonably". *Associated Provincial Picture Houses v. Wednesbury Corp.* [1948] 1 K.B. 223 at 229

Absent any of these considerations, the Director even has the right to be wrong.

21. In *Joda M. Takarabe et. al.* (BC EST #160/98), the Tribunal relied on *Boulis v Minister of Manpower and Immigration* [(1972), 26 D.L.R. (3d) 216 (S.C.C.)] in which the Supreme Court held that statutory discretion must be exercised within "well established legal principles"; in other words, the discretion must be exercised for *bona fide* reasons, must not be arbitrary and must not be based on irrelevant considerations.
22. In *Maple Lodge Farms v. Government of Canada*, [1982] 2 S.C.R.2, the Supreme Court underscored these comments:

Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

23. The purposes of the *Act* include ensuring that employees in British Columbia receive at least basic standards of compensation (s. 2(a)), and providing fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. (s 2 (d))
24. In his submissions to the Tribunal, Mr. Bridge does not address the merits of the delegate's decision denying him an extension of time in which to file his complaint. His only comments relate to the assertion that he did not receive the Respondents' submission, an argument he made to the delegate and which the delegate considered in his report.
25. In my view, Mr. Bridge has been afforded natural justice. He received the delegate's letters asking him to respond to specific questions relating to the late filing of his appeal. Mr. Bridge did not respond to any of these questions in any substantive way. Furthermore, when given the opportunity to respond to the delegate's report following the referral back, Mr. Bridge asserts only that he has not received the Respondents' submission. Attached to the Director's response is the Purolator tracing details confirming that the report was delivered to Mr. Bridge's door on January 15, 2009.
26. Furthermore, even if Mr. Bridge had not received the Respondents' submissions from the Director, he received them through the Tribunal's disclosure process. Mr. Bridge's position, as late as May 3, 2009, merely states that he wishes the matter "referred back to the Director of Employment Standards so that I might be afforded the right of reply". Had Mr. Bridge wished to comment on the submissions of the Respondents, he had that opportunity through his submissions to the Tribunal. His submissions fail to address the substance of the delegate's decision, which is the denial of an extension of time in which Mr. Bridge may file an appeal.
27. There is no basis to conclude that the delegate has not exercised his statutory discretion in accordance with natural justice.
28. The delegate asked Mr. Bridge to provide him with responses to three questions. In my view, these questions, and their responses, are related to the statutory purposes of the *Act*, and in particular, to fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*.
29. Although the delegate also indicated in his letter to Mr. Bridge that he would consider whether the Respondents would be unduly prejudiced by an extension, that factor did not appear to be a consideration in his final decision not to extend the time.
30. While it may have been instructive for the delegate to have had regard to the factors considered by the Tribunal when considering applications for extensions of time in which to file appeals not made within the statutory deadline (s. 112 of the *Act*), I find that the delegate exercised his discretion within well established legal principles.
31. I conclude that the delegate considered relevant factors and did not consider irrelevant ones. Mr. Bridge did not contend, and there is no evidence, that the delegate acted in bad faith. I also do not find that the delegate was arbitrary.
32. I find no basis on which to interfere with the delegate's decision not to exercise his discretion to accept Mr. Bridge's late complaint.

**ORDER**

33. Pursuant to Section 116 of the *Act*, I deny Mr. Bridge's application for reconsideration.

---

**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**