



Occupational Health and Safety Tribunal Canada

Date: 2015-09-17
Case No.: 2015-13

Between:

Federal Express Canada Ltd.

Indexed as: *Federal Express Canada Ltd.*

Matter: Request for an extension of time to file an appeal.
Decision: The request is granted.
Decision rendered by: Mr Michael Wiwchar, Appeals Officer
Language of decision: English
For the appellant: Mr Dino C. Nave, Corporate Counsel, Federal Express Canada Ltd.
Citation: 2015 OHSTC 17

REASONS

[1] This decision concerns a request for an extension of time to file an appeal pursuant to subsection 146(1) of the *Canada Labour Code* (the Code). The direction was issued by Mr Nasir Naroo, Official delegated by the Minister of Labour on May 11, 2015.

Background

[2] Following complaints from four employees alleging that the employer had failed to investigate allegations of bullying and harassment in the work place and the failure of employer representatives to respond to numerous correspondences, the Official delegated by the Minister of Labour, Mr Naroo, attended the work place on March 5, 2015, to conduct an investigation into the complaints.

[3] Subsequent to the investigation and after several attempts to obtain the employer's response with regard to the complaints made by the employees, Mr Naroo decided to issue two directions to the employer on May 11, 2015. The first one issued pursuant to paragraph 142(b) of the Code for failing to provide all reasonable assistance to Official delegated by the Minister of Labour carrying out his duties under the Code. The second direction issued under section 145(1) for contravening paragraph 125(1)(z.16) of the Code and subsection 20.9(2) of the *Canada Occupational Health and Safety Regulations*.

[4] The directions were hand delivered by Mr Naroo to employer representatives on May 11, 2015. The employer therefore had until June 10, 2015, to file an appeal of the directions with an appeals officer under subsection 146(1).

[5] The Occupational Health and Safety Tribunal Canada received a notice of appeal of the direction issued under subsection 145(1), on June 11, 2015, one day after the expiry of the prescribed 30-day time limit. On June 19, 2015, after having been informed of the lateness of the appeal, counsel for the appellant submitted a request for extension of time to file the appeal.

Issue

[6] The question that I must address is whether I should exercise the discretion conferred upon me by paragraph 146.2(f) of the Code, to extend the time limit of 30 days set out in subsection 146(1) of the Code.

Appellant's submissions

[7] The appellant submits that it made an administrative error when filing one day after the expiry of the limitation period as it mistakenly believed it had until June 11, 2015, to file an appeal.

[8] The appellant contends that its actions following the receipt of the direction clearly demonstrate due diligence. Indeed, upon receipt of the direction, the appellant sought

clarifications from the Official delegated by the Minister of Labour and undertook a comprehensive fact-finding into the direction. The appellant alleged to have had numerous discussions both internal and external to the company to determine the accuracy of the allegations contained in the direction before filling their appeal.

[9] The appellant submits that granting an extension of time for instituting the appeal would not cause any prejudice to the parties to the appeal. On the other hand, not granting the request would deprive the employer of a statutory right to seek review of a direction that it submits is unfounded.

[10] Finally, the appellant submits that in light of the very serious nature of the direction, the minimal delay in filling, the immediate action on the part of the appellant to conduct a fact-finding investigation into the direction, and the appellants detailed reasons for its appeal, the appeals officer should exercise its discretion to grant an extension of time for instituting the appeal.

Analysis

[11] My authority to extend the time limit for filing an appeal is found under paragraph 146.2(f) of the Code which reads as follows:

146.2 For the purposes of a proceeding under subsection
146.1(1), an appeals officer may

[...]

(f) abridge or extend the time for instituting the proceeding or
for doing any act, filing any document or presenting any
evidence;

[12] When exercising their discretion to extend the time limits, appeals officers consider a number of factors as described by Appeals Officer Pierre Hamel in the decision in *Alex Hoffman v. Canada (Border Services Agency)*, 2013 OHSTC 19:

[25] The Code does not prescribe factors that an appeals officer ought to consider in exercising the power to extend time limits. Such discretion must be exercised judicially, in a non-arbitrary or discriminatory manner, must be based on relevant legal principles, and be anchored in considerations that support the interest of fairness and serve the purpose and objectives of the Code. [...] Administrative tribunals and appeals officers alike, have typically considered and weighed the following factors in the exercise of their discretion: the length of the delay in relation to the appeal period, the explanations of the party to account for the delay, the due diligence shown through that party's actions, and the prejudice suffered by the other party (ies) to the proceedings.

[13] After having reviewed the appeal file and the appellant's submissions, I find that the steps taken by the appellant following the receipt of the direction demonstrate that the appellant acted diligently over the period of the delay. To establish the due diligence factor, a party requesting an extension of time must show, through his actions over the relevant time period, a continued intention to file an appeal. The e-mail correspondence between the appellant and Mr Naroo shows that the appellant took immediate action in seeking clarification from the Official delegated by the Minister of Labour on the identified contraventions. Moreover, on May 31, 2015, which is well before the June 10th deadline, the employer informed Mr Naroo of its intention to comply and to file an appeal of the direction.

[14] Additionally, considering the appeal was filed only one day after the expiration of the 30-day time limit to file an appeal of a direction, as well as the absence of prejudice to an opposing party, I find that the circumstances of this case justify that I grant the appellant's request to exercise the discretion conferred upon me by paragraph 146.2(f) of the Code to extend the time period to file the appeal.

Decision

[15] For these reasons, the request for an extension of time to file the appeal is granted.

Michael Wiwchar
Appeals Officer