

Tribunal de santé et
sécurité au travail Canada



Occupational Health
and Safety Tribunal Canada

Ottawa, Canada K1A 0J2

Date: 2014-06-06
Case No.: 2014-06

Between:

James Riddell, Appellant

and

Correctional Service of Canada, Respondent

Indexed as: *Riddell v. Correctional Service of Canada*

Matter: Request for an extension of time to file an appeal under subsection 129(7) of the *Canada Labour Code*

Decision: The request is granted

Decision rendered by: Mr Michael Wiwchar, Appeals Officer

Language of decision: English

For the Appellant: Himself

For the Respondent: Mr Richard Fader, Senior Counsel, Department of Justice Canada, Labour and Employment Law Group

Citation: 2014 OHSTC 9

REASONS

[1] This matter concerns a request for an extension of time to file an appeal pursuant to subsection 129(7) of the *Canada Labour Code* (the Code). The appellant, Mr James Riddell, is requesting to be relieved of his failure to file an appeal of a decision that a danger does not exist rendered by Health and Safety Officer (HSO) Karina Sacco on February 13, 2014 within the 10-day statutory time limit set out in the Code.

Background

[2] On February 10, 2014, Mr Riddell, a correctional officer employed by the Correctional Service of Canada, exercised his right under section 128 of the Code to refuse to work by reason of his belief that a condition in his work place constituted a danger to him. It is Mr Riddell's contention that the can openers issued to inmates in the J-living Unit through the inmate canteen are being used to cut out portions of the desks to make metal stabbing weapons. Mr Riddell reported to have seen, on February 6, 2014, during a cell search an approximately 8 inch metal stabbing weapon that matched the pieces that have been removed from the desk in the inmate's cell. Based on his belief that these homemade stabbing weapons constitute a danger to staff and employees, Mr Riddell refused to perform his regular range duties.

[3] On February 12, 2014, HSO Sacco attended the work place to conduct her investigation into the work refusal. HSO Sacco issued her decision that no danger existed, on the following day, and notified the employer and Mr Riddell by a letter dated February 13, 2014 that was sent via e-mail. Having received the HSO's decision on February 13, 2014, Mr Riddell had until February 24, 2014 to file his appeal with the Occupational Health and Safety Tribunal Canada (Tribunal) pursuant to subsection 129(7) of the Code.

[4] The Tribunal received the appeal on February 25, 2014, a day after the expiry of the 10-day time limit set out in the Code. On February 26, 2014, the Tribunal informed Mr Riddell that his application to appeal was received beyond the 10-day statutory time-limit set out in subsection 129(7) of the Code. Mr Riddell was also informed of his right to request an extension of time for instituting the appeal to an appeals officer and was given until March 7, 2014 to provide his written submissions. On February 27, 2014, Mr Riddell provided his written submissions in support of his request to extend the time limit for instituting the appeal.

Issue

[5] The question that I must address is whether I should, in the present matter, exercise the discretion conferred upon me by paragraph 146.2(f) of the Code, to extend the time limit of 10 days set out in subsection 129(7) of the Code.

Submissions of the parties

[6] The appellant provided short submissions in support of its request to be relieved from its failure to file the appeal in the prescribed time limit. The appellant essentially argues that the extension should be granted based on the fact that he had sent his application to appeal within the time limits set out in the Code but that it was sent to the wrong person. He subsequently corrected the situation and sent his appeal file to the Tribunal only one day after the 10-day time limit had elapsed.

[7] The respondent, through its counsel, informed the Tribunal by a letter dated March 27, 2014, that it takes no position on the appellant's request for an extension of time.

Analysis

[8] The question that I must address is whether I should exercise my discretion in favour of extending the time limit for filing the appeal and relieve Mr Riddell of his failure to present the appeal within the prescribed time limit. Pursuant to paragraph 146.2(f) of the Code, an appeals officer is empowered to extend the prescribed time limit for initiating an appeal. This paragraph reads as follows :

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

[...]

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

[9] The Code does not prescribe the factors that an appeals officer ought to consider when exercising his discretionary powers to extend time limits. Appeals officers have, as well as other administrative tribunals, typically considered the following factors in the exercise of their discretion: the length of the delay in relation to the appeal period, the explanations given by the party to explain the delay, the due diligence shown through that party's actions, and the prejudice suffered by the other parties to the proceedings.

[10] In the present case, I find that the appellant has clearly manifested a clear intention to file the appeal within the time limit of 10 days. The appellant has submitted e-mail correspondence between him and HSO Sacco to demonstrate that he had every intention to file his appeal. On February 22, 2014, Mr Riddell sent an e-mail to HSO Sacco advising her of his intention to appeal her decision to which HSO Sacco replied that he should contact the Tribunal in order to file an appeal.

[11] Upon being informed by the HSO that he should file his appeal directly with the Tribunal, the appellant formally filed an appeal of the decision with the Tribunal on February 25, 2014, one day after the prescribed 10-day time limit had elapsed. Therefore, taking into consideration the short delay involved as well as the absence of prejudice to

the employer, I find that the circumstances of this case justify that I grant the appellant's request to be relieved of his failure to have filed the appeal within the time limit prescribed by the Code.

[12] For these reasons, I have decided to exercise the discretion conferred upon me by paragraph 146.2(f) to grant the appellant's request for an extension of time to file the appeal.

Decision

[13] The request for an extension of time to file the appeal is granted.

Michael Wiwchar
Appeals Officer