



IN THE MATTER OF:

A Preliminary Application on Timeliness and Jurisdiction under Part III of *The Saskatchewan Employment Act*

BETWEEN:

Jeff Romfo

Appellant

- and -

City of North Battleford

Respondent

- and -

Canadian Union of Public Employees, Local 287 ("CUPE")

Respondent

For the Appellant

Gary Hunter

For the Respondent, City of North Battleford

Brent Matkowski

For the Respondent, CUPE

Paul Kryzanowski

DECISION REGARDING TIMELINESS AND JURISDICTION

I. Introduction

[1] The Appellant, Jeff Romfo, has appealed the decision dated December 7, 2018 (the "Decision") of Occupational Health and Safety Officer, Shawn Tallmadge. Mr. Tallmadge, in the Decision, found that the City of North Battleford (the "City") had provided good and sufficient other reason for the termination of the Appellant's employment, and had not acted contrary to s. 3-35 of *The Saskatchewan Employment Act* (the "Act") when it terminated Mr. Romfo.

II. Facts

[2] The entire file pertaining to this matter was delivered to me by the Executive Director, Occupational Health and Safety Division, Ministry of Labour Relations and Workplace Safety, and I have reviewed all of its content. Subsequent case management calls were convened between the parties and hearing dates canvassed; however, during the course of these calls, the Respondent City retained legal counsel who raised a preliminary issue concerning the timeliness of the appeal, and therefore the jurisdiction of the Adjudicator to hear the appeal. The City maintains that the Appellant failed to comply with the requirements of section 3-53(2) of the Act thus the Adjudicator is without jurisdiction to hear the appeal.

[3] Section 3-53(2) of the Act states as follows:

An appeal pursuant to subsection (1) must be commenced by filing a written notice of appeal with the director of occupational health and safety within 15 business days after the date of service of the decision being appealed.

[4] Written submission were provided by the City and the Appellant to the Adjudicator in advance of a preliminary hearing held on December 6, 2019, by telephone conference call to consider the timeliness and jurisdiction issues. On the call, both the City and the Appellant gave oral submissions to supplement the written submissions. CUPE elected not to make submissions, but participated on the call.

[5] It is important for the purposes of this application to indicate that the file documents provided to me by the Executive Director, Occupational Health and Safety Division, include a copy of the Notice of Appeal of the Appellant (although not titled as such) bearing two date stamps, only one of which is relevant. The relevant date stamp indicates: Occupational Health and Safety RECEIVED JAN 04 2019 Saskatoon SASKATCHEWAN.

[6] Within the written submissions, both the City and the Appellant provided copies of or passages from email correspondence each had received from Karla Kobayashi. I have observed from the emails and accept that Karla Kobayashi occupies the position of Administrator and Appeal Registrar, Legal Affairs Branch, Occupational Health and Safety Division, Ministry of Labour Relations. Her office address is 300 – 1870 Albert Street, Regina. Upon my inquiry of both the City's and Appellant's representatives, both confirmed that they had no concerns with my acceptance of all correspondence provided to me regarding their respective correspondence with Karla Kobayashi.

[7] I also accept as fact that:

- (a) Mr. Matkowski, for the City, received an email message from Ms. Kobayashi on November 18, 2019, which indicated, in part, the following:

We consider the appeal received on the January 4, 2019 as indicated on the date stamped by our Saskatoon office.

And further, he received an email message from Ms. Kobayashi on December 3, 2019 regarding receipt of the Notice of Appeal, which indicates the following:

Occupational Health & Safety would consider the date received as January 4, 2019.

- (b) Mr. Hunter, advocate for the Appellant, received an email message from Ms. Kobayashi on November 19, 2019, which indicated, in part, the following:

So I have talked to our Saskatoon office and their mailing process is different than our Regina office. There is a mailroom in the Saskatoon building where they sort the mail and that is where anything that is registered is signed. So the mailing room received the registered letter on the 3rd of January, but our OHS Saskatoon office picked up the mail on the 4th of January. I have attached the signature copy that the mailroom provided. ... I would like to also add the reminder that within the 15 business days to send the appeal in, there are three stat holidays. The 25th, 26th of December and the 1st of January are holidays for Government of Saskatchewan workers, so our offices were closed these days.

- (c) Mr. Hunter obtained and provided copies of records from each of Canada Post and the Government of Saskatchewan, which support the contention that the Notice of Appeal was delivered to the Government of Saskatchewan on January 3, 2019.

[8] I accept Ms. Kobayashi's version of events regarding receipt of mail at a government mailroom and the subsequent, next day pickup of the mail by OHS Saskatoon office staff.

[9] The City and Appellant agree that the Notice of Appeal was due on January 3, 2019, and that it needed to be filed with Occupational Health and Safety on or before this date in order to satisfy the requirement that it be filed "within 15 business days after the date of service of the decision being appealed". Where the disagreement between them lies is in whether receipt at a central government mailroom is sufficient to satisfy the responsibility imposed on an appellant under subsection 3-53(1) of the Act.

III. Issues and Analysis

[10] The Appellant contends that delivery to and receipt at the central government mailroom sufficiently discharges the filing responsibility under subsection 3-35(1). This is at odds with the

position of the City and the statement of Karla Kobayashi in her November 18 email referred to above.

[11] In short, a primary question to be addressed in this application is whether delivery to and arrival of the Notice of Appeal in a central government mailroom satisfies the requirement of “filing a written notice of appeal with the director of occupational health and safety.” If this question is answered in the affirmative, then the City’s application will be dismissed. If this question is answered in the negative, the Notice of Appeal will not have been filed in time and I will need to determine the effect of the answer on my jurisdiction to hear the appeal.

[12] In its written submission, the City contends “that section 3-53(2) requires the appeal to be delivered to the Director of Occupational Health and Safety by the deadline, not that it be “in the mail”. It further provided the following definitions and citations with respect to the meaning of “file”:

The definition of “file” within *The Dictionary of Canadian Law*, 3d ed (Toronto: Thomson Carswell, 2004) is:

1. To leave with the appropriate office for keeping. 2. Register. 3. **Requires actual delivery. A mailed document is not filed until received by the appropriate party.** [Emphasis added]

The definition of “file” within *Black’s Law Dictionary*, 8th ed (St. Paul: Thomson Reuters, 2014) included:

1. To **deliver** a legal document to the court clerk or record custodian for placement into the official record. <Tuesday is the deadline for filing a reply brief> [Emphasis added]

[13] I accept both definitions set out above, and find that the term “file” indicates a positive duty to deliver to the appropriate office. While the method of delivery remains the choice of an appellant, the obligation to ensure delivery to the appropriate office is the appellant’s responsibility. In this case, the Appellant chose to mail the Notice of Appeal in the hope that it would reach its intended destination within the relevant timeframe. As such, he accepted a risk that delivery might not be effected by the statutory deadline.

[14] The next inquiry needs to determine whether the Act imposes a positive obligation on the Director of Occupational Health and Safety to locate and acknowledge documents that may be in transit to it. The answer to this inquiry is “no” as no provision in the Act imposes such an obligation on the director of occupational health and safety. The responsibility for properly filing a notice of appeal rests entirely on an appellant.

[15] I conclude that the Appellant did not file a written notice of appeal with the director of occupational health and safety within 15 business days after the date of service of the decision being appealed.

[16] Having drawn this conclusion, the next step is to consider the impact of the Notice of Appeal being filed outside of the deadline imposed by the Act; and, on this point, I am informed by both the Act and relevant jurisprudence.

[17] Two previous cases have considered the application of subsection 3-53(2) of the Act and the appropriate result upon determining that a notice of appeal was not filed within the prescribed time limit. Both are cited in the written argument submitted on behalf of the Appellant, which sets out in detail recently well-settled law.

[18] In *Pruden v. Olysky Limited Partnership*, Adjudicator Hildebrandt, Q.C., as she then was, concluded both that the time limit prescribed in subsection 3-53(2) was mandatory and that there was no jurisdiction for her under the Act to extend the time limit for filing an appeal. In arriving at these conclusions, she relied on the thorough analysis and conclusions of Adjudicator Wallace, Q.C. in *Brady and Jacobs Industrial Services Ltd.*, 2016 CarswellSask 481. On appeal, the Saskatchewan Labour Relations Board upheld the decision of Adjudicator Hildebrandt, Q.C. in *Pruden*.

[19] I need only reference the decision of Whitmore, J.A. in dismissing the application seeking leave to appeal to the Saskatchewan Court of Appeal from the decision of the Saskatchewan Labour Relations Board in *Pruden* to confirm the state of the relevant law and illustrate the most pertinent passages from *Pruden* and *Jacobs*. Whitmore, J.A. drew the following conclusions at paragraphs 24 through 26 of his reasons:

[24] In the *Adjudicator Decision*, the adjudicator set out ample authority for her conclusion that she could not extend the time for service of the notice of appeal. Cited extensively was *Brady v Jacobs Industrial Services Ltd.*, 2016 CanLII 49900 (Sask LRB) [*Brady*], a recent decision of an adjudicator appointed pursuant to s. 3-53 of the *Employment Act*. In that case, after reviewing the limitation period contained at s. 3-54(2) of the *Employment Act*, that adjudicator explained as follows:

[36] The mandatory nature of the appeal requirements makes it clear the legislature intended to provide certainty as to when an appeal has been properly commenced. This permits those directly affected by a decision as well as the Ministry to know with certainty whether or not the decision has been appealed. ...

...

[49] As an adjudicator under the [*Employment Act*], I only have the authority delegated to me by the *Act*. ... [T]ribunals created by statute cannot exceed the powers granted to them by their enabling statute, they must adhere to the statutory jurisdiction and they cannot trespass in areas where the Legislature has not assigned them authority. I have already noted above that the statutory requirements for an appeal are mandatory, including the time limit within which to file an appeal. Any authority to

permit me to extend or waive the time limit for the appeal must be found in the Act.

[50] The law in Saskatchewan is clear that any substantive right to extend the time for an appeal must be found in the statute creating the right of appeal: *Jordan v. Saskatchewan (Securities Commission)*, SK CA, March 21, 1968; *Wascana Energy Inc. v. Rural Municipality of Gull Lake No. 139 et al.*, 1998 CanLII 12344 (SK CA).

[51] There is no express provision anywhere in the *Saskatchewan Employment Act* that gives authority to the adjudicator or to anyone else to extend or waive the time limits for an appeal.

[25] I also note *Houston v Saskatchewan Teachers' Federation*, 2009 SKCA 70, 331 Sask R 157, a decision of this Court, wherein Justice Richards (as he then was) explained the effect of statutory appeal periods:

[5] As noted, s. 34(1) of *The Teachers' Federation Act, 2006* [SS 2006, c T-7.1], is clear. It says an appeal is to be brought within 30 days from the date on which the order in question was issued. It makes no provision for the extension of that time limit. The decisions of this Court establish that, in such circumstances, a litigant's right to appeal expires if it is not brought within the appeal period. In *Jordan v. Saskatchewan Securities Commission* (1968), 1968 CanLII 519 (SK CA), 64 W.W.R. 121 (Sask. C.A.), a case generally paralleling this one, Culliton C.J.S. dismissed an appeal by referring to *Re MacDonald Estate*, 1928 CanLII 123 (SK CA), [1929] 1 W.W.R. 193 (Sask. C.A.), where the Court had said this:

[10] As the right of appeal is given by statute and there is no statutory or other authority for extending the time fixed by the statute there is no right of appeal if the appeal is not brought within that time, and this Court has no power to extend that time as we have been asked to do: *B.C. Permanent Loan Co. v. C.N.R.*, 1922 CanLII 282 (SK CA), [1922] 2 W.W.R. 579, 15 Sask LR 433 (C.A.).

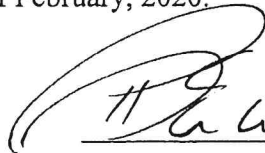
[26] The authorities are clear, and I find no error with the adjudicator's application of them to this case. Likewise, the Board's conclusion that the adjudicator's decision that she could not extend the time for service of the notice of appeal was reasonable and was correct. Accordingly, there is no merit to this proposed ground of appeal that would justify granting leave.

[20] In making a determination in this case, I am bound by the limitations set out in the Act and the pronouncements in the decisions cited above.

IV. Conclusion

[21] The Appellant failed to file his Notice of Appeal within the 15 business day time limit and in accordance with the Act. I have no authority to extend the time limit and am without jurisdiction to hear the appeal. The appeal is a nullity.

Issued at Regina, Saskatchewan the 3rd day of February, 2020.


A handwritten signature in black ink, appearing to read "P. Erhardt", is written over a horizontal line.

Perry D. Erhardt, Q.C., Adjudicator