

Citation: Rose & William Enterprises Ltd. (Re)  
2018 BCEST 29

An appeal

- by -

Rose & William Enterprises Ltd. carrying on business as  
The Dear Animal Hospital  
(the “Appellant”)

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**TRIBUNAL MEMBER:** Rajiv K. Gandhi

**FILE NO.:** 2018A/2

**DATE OF DECISION:** March 27, 2018

## DECISION

### SUBMISSIONS

Varinder Dabri on behalf of Rose & William Enterprises Ltd. carrying on business as The Dear Animal Hospital

Sarah Orr on behalf of the Director of Employment Standards

### OVERVIEW

1. On October 16, 2017, a delegate of the Director of Employment Standards (the “Director”) issued a determination (the Determination”) pursuant to section 79 of the *Employment Standards Act* (the “ESA”) in which Rose & William Enterprises Ltd. carrying on business as The Dear Animal Hospital (the “Appellant”) was ordered to pay Xiao Yue Zhu (the “Complainant”) the aggregate sum of \$2,012.99, representing unpaid regular and overtime wages, vacation pay, and accrued interest. The Appellant was also ordered to pay \$2,000.00 in administrative penalties.
2. The Appellant now asks the Tribunal to refer the Determination back to the Director, ostensibly because:
  - (a) the Director erred in law;
  - (b) the Director failed to observe the principles of natural justice;
  - (c) evidence has become available that was not available at the time the Determination was made,all according to sections 112(1)(a), 112(1)(b), and 112(1)(c) of the *ESA*.
3. The time in which to bring the appeal expired on November 30, 2017. Although the appeal is dated November 28, 2017, the Tribunal did not receive it until January 2, 2018. In that it was late-filed, the Appellant also seeks an extension of time under section 109(1)(b) of the *ESA*.
4. Having reviewed the Determination, the Appellant’s submissions filed with the appeal, and the record of proceedings received from the Director’s delegate on January 23, 2018, I conclude that this appeal must be dismissed pursuant to section 114(1)(b) of the *ESA*.

### FACTS AND ANALYSIS

5. The Tribunal regularly entertains requests from Appellants for extensions of time. In *Re Niemisto*, BC EST # D099/96, the Tribunal declared that, before granting such a request, it should be satisfied that:
  - (a) there is a reasonable and credible explanation for failing to appeal in a timely fashion;
  - (b) there has been a genuine, on-going *bona fide* intention to appeal the Determination;
  - (c) the Director and the complainant have been made aware of the intention to appeal;
  - (d) an extension, if granted, would not unduly prejudice the Complainant; and

- (e) the Appellant has a strong *prima facie* case.
6. To say that the Appellant's submissions are terse would be an understatement. In approximately eighty-five words, it alleges an error of law in the Determination, calls into question the credibility of a witness, and takes issues with a few specific findings of fact. What the Appellant does not do, however, is to offer any support for these statements, or otherwise address the late-filed appeal, or any other ground for appeal listed in the appeal form.
7. The absence of any sort of explanation as to why the appeal is late-filed, and the brevity of the Appellant's substantive submissions, undermines any presumption of *bona fides* to which the Appellant might otherwise be entitled.
8. In my view, not only is the *prima facie* case not strong, it is dead on arrival.
9. I find that the Appellant has not discharged its burden to justify an extension of time.
10. According to section 114(1)(b), an appeal may be summarily dismissed if it is not filed within the applicable time limit. In the circumstances, I believe that order to be appropriate.

## ORDER

11. This appeal is dismissed under section 114(1)(b) of the *ESA*, and the Determination is confirmed under section 115(1)(a).

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**Rajiv K. Gandhi**  
**Member**  
**Employment Standards Tribunal**