

Citation: Rose & William Enterprises Ltd. (Re)
2018 BCEST 30

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/3

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 23, 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 Shaylah Legault (the “Complainant”) the aggregate sum of \$1,506.02, representing unpaid regular and overtime wages, statutory holiday pay, vacation pay, and accrued interest. The Appellant was also ordered to pay \$2,500.00 in administrative penalties.
2. In this appeal, dated December 28, 2017, and received on January 2, 2018, the Appellant asks the Tribunal to refer the Determination back to the Director, on the basis that:
 - (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. 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. In *Re Niemisto*, BC EST # D099/96, the Tribunal opined that, before granting an extension 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. Submissions accompanying the appeal begin and end in three sentences, some eighty-five words in total. Not one reasonably or credibly defends the late filing or otherwise offers serious argument concerning any one of the three grounds for appeal that must underpin the substance of the Appellant's challenge. The Appellant, it seems, is intent only on revisiting facts with which, as the Tribunal has noted countless times, I have no authority to interfere.
7. The brevity of its submissions seriously calls into question the Appellant's *bona fides*; the lack of substantive argument speak to glaring deficiencies in the *prima facie* case.
8. In my view, at least three of the threshold *Niemisto* requirements have not been met, and the Appellant's onus to justify more time on this appeal has not been discharged. I therefore decline to exercise my discretion under section 109(1)(b) of the *ESA*.
9. According to section 114(1)(b), an appeal may be summarily dismissed if it is not filed within the applicable time limit.

ORDER

10. I dismiss this appeal under section 114(1)(b) of the *ESA*, and confirm the Determination under section 115(1)(a).

Rajiv K. Gandhi
Member
Employment Standards Tribunal