

Citation: Virpal Kaur Dhaliwal (Re)  
2019 BCEST 122

An appeal

- by -

Virpal Kaur Dhaliwal  
(the “Appellant”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

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

**PANEL:** James F. Maxwell

**FILE NO.:** 2019/161

**DATE OF DECISION:** November 19, 2019

## DECISION

### FACTS

1. The appellant herein, Virpal Kaur Dhaliwal (the “Appellant”), filed a complaint with the Employment Standards Branch on February 20, 2019. The complaint alleged that at the end of the Appellant’s employment with Oasis Windows (Canada) Inc. (“Oasis”), Oasis had failed to pay her regular wages in the sum of \$581.45 as required pursuant to the provisions of the *Employment Standards Act* (the “ESA”).
2. On July 29, 2019, a delegate of the Director of Employment Standards (the “Director”) issued a determination (the “Determination”). In the Determination, the Director found that the Appellant had failed to file her complaint within the time limits prescribed by section 74 the *ESA*. For this reason, the Director declined to continue to investigate the complaint.
3. Upon being served with the Determination, the Appellant was informed that the deadline for the filing of any appeal of the Determination was September 5, 2019.
4. On September 10, 2019, the Appellant filed an appeal of the Determination.
5. The Appeal Form filed by the Appellant affords an appellant the opportunity to request an extension of time to the statutory appeal period. In completing this Form, the Appellant did not formally request an extension to the statutory appeal period. However, in the materials accompanying her Appeal, the Appellant stated that the reason that she filed the appeal after the expiry of the statutory appeal period was that “[she] did not read the paper properly before”.

### ISSUE

6. Is the Appellant entitled to an extension to the time for filing an appeal of the Determination?

### ANALYSIS

7. The *Legislature* has established a limitation on the time period for appealing a determination. The relevant time periods are set out in section 112(3) of the *ESA*. A person served with a determination has 30 days from the date of service of a determination in which to file an appeal if the determination was served by registered mail.
8. The Appellant submitted her appeal on September 10, 2019, five days after the deadline for doing so.
9. In completing the Appeal Form to commence the within Appeal, the Appellant did not check the box at section 6 of the Appeal Form, by which she would have requested an extension to the statutory appeal period.
10. It is the practice of this Tribunal to take a large and liberal view of an appellant’s intentions when an appeal is commenced, regardless of whether that party has failed to check off a particular box on an Appeal Form (see *Triple S Transmission Inc.*, BC EST # D141/03). In light of the fact that the Appellant presented an

explanation for the late filing of this Appeal, I am prepared to recognize that the Appellant has requested an extension to the statutory appeal period.

11. Section 109(1)(b) of the *ESA* provides that the Tribunal may exercise a discretion to extend the deadline to file an appeal notwithstanding that the statutory time period has expired. In *Niemisto*, BC EST # D099/96, the Tribunal defined criteria that must be satisfied by an appellant for that discretion to be exercised. These criteria include:
  - i) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
  - ii) there has been a genuine and on-going *bona fide* intention to appeal the Determination;
  - iii) the respondent party as well the Director must have been made aware of this intention;
  - iv) the respondent party will not be unduly prejudiced by the granting of an extension; and
  - v) there is a *strong prima facie* case in favour of the appellant.
12. In *Re: Gary Tam*, BC EST # D093/11, the Tribunal noted that the burden falls upon the appellant to demonstrate that there is a compelling reason to grant an extension:

The *Act* allows the appeal period to be extended on application to the Tribunal. In *Metty M. Tang*, BC EST # D211/96, the Tribunal expressed the approach it has consistently followed in considering requests to extend time limits for filing an appeal:

Section 109(1) (b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where there are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.
13. I turn first to the question of whether the Appellant has provided a reasonable and credible explanation for failing to file this appeal within the time limit.
14. In the present case, the Appellant's reason for failing to file this Appeal within the statutory period is that she "did not read the paper properly before".
15. The issue decided by the Director in the Determination under appeal was whether the Appellant had filed her original complaint within the time limit for doing so. The Director declined to investigate the complaint because it had not been filed on time. In light of the Director's decision, it should have been clear to the Appellant that there are time limits under the *ESA*, and these may be strictly enforced. Nevertheless, the Appellant then failed to file the within appeal in the statutory time period and cites as her explanation that she "did not read the paper properly".
16. I do not find the Appellant's reason for failing to file the within appeal on time to be sufficiently compelling that I should exercise my discretion to extend the deadline. The time limits for filing an appeal were implemented to provide for fair and efficient procedures for resolving disputes, and to promote the fair treatment of both employers and employees (section 2 of the *ESA*). Ignorance of the law, or failure to

inform oneself about the law, is not a sufficiently compelling reason for me to exercise my discretion to extend the deadline for the appeal.

17. Section 114 of the *ESA* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the parties or the Director if the Tribunal decides that the appeal does not meet certain criteria. Section 114(1)(b) of the *ESA* provides that I may dismiss an appeal if it was not filed within the applicable time limit.
18. The Appellant has not satisfied the burden upon her to provide a compelling reason why an extension should be granted. In the circumstances, I decline to exercise my discretion to grant an extension.

### **ORDER**

19. Having reviewed the Determination, the section 112(5) Record, and the Appellant's submissions filed with the appeal, I conclude that this appeal must be dismissed pursuant to section 114(1)(b) of the *ESA* and confirm the Determination pursuant to section 115(1)(a).

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**James F. Maxwell**  
**Member**  
**Employment Standards Tribunal**