

An appeal

- by -

Simply Bread Inc.  
("Simply Bread")

- 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:** Maia Tsurumi

**FILE No.:** 2019A/39

**DATE OF DECISION:** July 29, 2019

## DECISION

### SUBMISSIONS

Chafik Mekhloufi	on behalf of Simply Bread Inc.
The Complainant/Respondent	on her own behalf
Aleksandra Zivkovic	delegate of the Director of Employment Standards

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*ESA*”), Simply Bread Inc. (“Simply Bread”) has filed an appeal of a determination (the “*Determination*”) issued by Aleksandra Zivkovic, a delegate (the “*Delegate*”) of the Director of Employment Standards (the “*Director*”), on February 4, 2019. In the *Determination*, the *Delegate* found that Simply Bread contravened sections 18, 27, 40, 45, 46, and 58 of the *ESA*.
2. Simply Bread appeals the *Determination* on the grounds that the *Delegate* failed to observe the principles of natural justice in making the *Determination*. Simply Bread seeks to have the *Determination* referred back to the *Director*.
3. Simply Bread also requests an extension of time to the statutory appeal period pursuant to section 109(1)(b) of the *ESA*.
4. I decline to extend the time to file the appeal and thus dismiss the appeal pursuant to section 114(1)(b) of the *ESA*.
5. This decision is based on the submissions made by Simply Bread in its Appeal Form, supplemental submissions from the Appellant that were requested by the Tribunal (“*Supplemental Submissions*”), the sub-section 112(5) record (the “*Record*”), the *Determination*, and the Reasons for the *Determination*.

### ISSUE

6. The issues before the Employment Standards Tribunal are whether:
  - a. the time period for filing the appeal should be extended pursuant to section 109(1)(b) of the *ESA*; and
  - b. if the answer to a. is yes, whether all or part of this appeal should be allowed or dismissed.

## ARGUMENT

7. Simply Bread asks me to extend the time period for its submissions on this appeal because it says that it did not receive the Determination letter (the “Determination Letter”) and was not aware of the Determination until April 5, 2019.
8. On the merits of the appeal, Simply Bread submits that:
  - a. Komalpreet Sandhu (the “Complainant”) was assigned to work no more than eight hours per day and she requested to be paid as a contractor;
  - b. the Complainant was told that under no circumstances would overtime be authorized;
  - c. Mr. Mekhloufi was unaware of the complaint until December 2018;
  - d. Simply Bread offered to settle the claim for \$3,600 and provided this amount by cheque to the Employment Standards Branch (“Branch”) and if the Complainant was not satisfied with this amount, she should not have accepted it;
  - e. the Delegate is keeping the claim open even though it has been settled;
  - f. the Delegate should not just take the Complainant’s statements as fact, but should also consider Simply Bread’s evidence; and
  - g. Simply Bread provided the requested records.

## THE FACTS

### Background

9. Simply Bread is a British Columbia company and Chafik Mekhloufi is its sole director and officer. Simply Bread operates a bakery.
10. The Complainant was employed by Simply Bread as a “Packer” from April 27 to July 13, 2018. Her rate of pay was \$11.35/hour from April 27 to May 31, 2018, after which her rate of pay was \$12.65/hour until July 13, 2018. She filed the complaint under section 74 of the *ESA* on September 8, 2018, alleging that Simply Bread failed to pay her regular wages.

### Issue Before the Delegate

11. The issue before the Delegate was whether the Complainant was owed wages.

### Evidence and Submissions During the Investigation

12. The Delegate interviewed the Complainant by telephone. During that interview, the Complainant said that:
  - a. she was not paid regular wages, overtime, statutory holiday pay or vacation pay;
  - b. a cheque issued to her by Simply Bread for \$2,995.60 was returned on August 21, 2018, because of insufficient funds;

- c. she quit because she was not being paid;
  - d. she did not receive wage statements from Simply Bread; and
  - e. she used a clock in / clock out system at Simply Bread.
13. After the interview, the Complainant provided the Branch with a record of hours worked during her employment with Simply Bread. There were two days, May 19 and 26, 2018, for which she did not remember her hours or if she worked. The Delegate found that the record of hours showed that the Complainant regularly worked overtime. The Complainant also gave the Branch a copy of the cheque returned for insufficient funds and a copy of a receipt from the Scotiabank confirming that the cheque was returned for that reason.
14. The Complainant submitted to the Branch a screenshot of texts between herself and someone who was her manager at Simply Bread (the “Manager”). In the correspondence, the Manager says that accounting would process the Complainant’s pay and that there was a lot of overtime.
15. The Delegate described efforts the Branch made to contact Simply Bread and the opportunities that Simply Bread had to respond to the complaint. According to the Delegate, Simply Bread was aware of the complaint. In response to a Demand for Records and follow-up requests for documents from the Delegate, Simply Bread produced partial records.
16. From November 9 to 23, 2018, the Branch sent letters and e-mails to Simply Bread about the complaint and on November 23, 2018 the Delegate spoke by telephone with the Manager. The Delegate told the Manager about the December 6, 2018 deadline as per the Demand for Employer Records. The Manager said that she would submit the requested records by that deadline.
17. Simply Bread did not submit any records by December 6, 2018.
18. On December 10, 2018, the Delegate, via e-mail, provided Simply Bread with a preliminary assessment of the complaint, the complainant’s position, and potential penalties.
19. In response, Mr. Mekhloufi called the Delegate, who explained her role in the proceedings and provided him with a summary of the complaint. Mr. Mekhloufi said that he was unsure whether or not the Complainant was employed at Simply Bread, that the Complainant was no longer employed at Simply Bread and that he had not received any contact, notices, or e-mails from the Branch except for the December 10, 2018 e-mail. The Delegate told Mr. Mekhloufi about the other e-mails and letters sent by the Branch and that none were returned to the Branch. Mr. Mekhloufi stated that the addresses may have changed. The Delegate told Mr. Mekhloufi to update the BC Registry Services and the Branch regarding any address changes. Mr. Mekhloufi refuted the Complainant’s claims and said that he would submit Simply Bread’s clock in / clock out records to the Branch.
20. On December 11, 2018, the Delegate agreed to extend the deadline for the Demand for Employer Records by eight days to accommodate Mr. Mekhloufi’s desire to submit additional documents. Simply Bread did not produce any documents by this deadline.

21. In the same e-mail to Mr. Mekhloufi on December 11, 2018, the Delegate provided all of the addresses to which correspondence had been sent to Simply Bread and/or Mr. Mekhloufi in response to his statement that he had not received any contact, notices, or e-mails from the Branch prior to the December 10, 2018 e-mail. The addresses used were:
- a. Simply Bread at its storefront at #160 – 6711 Elmbridge Way, Richmond, BC V7C 4N1;
  - b. Simply Bread care of its Registered and Records Office at #304 – 1200 Lonsdale Avenue, North Vancouver, BC V7M 3H6;
  - c. Mr. Mekhloufi, as Director of Simply Bread, at #210 – 7340 Westminster Highway, Richmond, BC V6X 1A1; and
  - d. Mr. Mekhloufi, as Officer of Simply Bread at #907 – 5782 Berton Avenue, Vancouver, BC V6S 0C1.
22. On December 14, 2018 (the deadline for the Demand for Employer Records), Mr. Mekhloufi e-mailed the Branch and offered \$3,600 to settle the complaint. The Delegate informed Mr. Mekhloufi that if he agreed that wages were owing, the Branch would accept the voluntary payment and consider it when assessing any wages still outstanding as based on the records submitted by the Complainant, it appeared that she may have been owed more than \$3,600. Thus, the \$3,600 would be credited against any total amount of wages found owing. The Delegate also reminded Mr. Mekhloufi that the deadline for the Demand for Employer Records was later that day and that Simply Bread had not yet produced any documents. She further told him that there is a mandatory penalty for failing to provide records under the Demand for Employer Records.
23. By e-mail on December 14, 2018, Mr. Mekhloufi said that he would be able to provide the Branch with records by “Monday by 4pm” and that he would get the records to the Branch as soon as possible.
24. On December 21, 2018, the Delegate e-mailed Mr. Mekhloufi and told him that if Simply Bread did not respond to the Branch in writing by December 27, 2018, a determination with applicable penalties could be issued based on the information on file at that time. Mr. Mekhloufi responded that he would drop off the \$3,600 cheque before December 27, 2018.
25. On January 9, 2019, the Delegate e-mailed Mr. Mekhloufi with all of the documents produced by the Complainant and she told him that this was his opportunity to respond and provide any additional information with a deadline of January 23, 2019. She further explained that failure to respond to the complaint could lead to a determination, with applicable penalties, without further notice based on the information on file at that time.
26. On January 17, 2019, Mr. Mekhloufi left a voicemail asking about the January 9, 2019 e-mail from the Delegate. In response, on January 18, 2019, the Delegate re-iterated the information provided to Mr. Mekhloufi on December 14, 2018, and explained that the January 9, 2019 e-mail was giving Simply Bread an opportunity to respond to the documents submitted to the Branch by the Complainant. The Delegate also explained that the voluntary payment of \$3,600 would be considered when assessing any wages that might be outstanding, but it was not the full and final settlement of all matters under the *ESA* and there was never any indication that upon payment the complaint would be closed.

27. On January 23, 2019, Mr. Mekhloufi forwarded his e-mail from December 14, 2018, to the Branch and said that he did not understand why the claim was still open. The Delegate replied later that day and said that the Branch accepted the \$3,600 as voluntary payment but based on the records of hours submitted by the Complainant, she may be owed more than \$3,600.
28. On January 24, 2019, Mr. Mekhloufi submitted a daily record of hours for the Complainant from May 19, to June 29, 2018. The record of hours was very different from the Complainant's record of hours: the hours of work for each day were not the same; the total hours worked were different; the days she worked were different; and there was no indication of any overtime worked by the Complainant.
29. On January 30, 2019, Mr. Mekhloufi responded to the overtime claim, including the text correspondence between the Complainant and the Manager. He said that he had made the cheque payment based on the system Simply Bread uses for its timesheets and that there was no authorization for overtime for the Complainant and that he is the only one who approves overtime. He did not comment on any other aspect of the complaint.

#### Delegate's Findings and Analysis

##### *Wages owing*

30. The Delegate found that Simply Bread owed wages to the Complainant. On a balance of probabilities, she accepted the evidence of the Complainant regarding her hours worked and rejected the evidence from Simply Bread regarding the Complainant's hours of work. Her conclusion was based on the following:
  - a. the Complainant provided a full record of hours for the duration of her employment, an estimate of the total wages she received from Simply Bread and a copy of the returned cheque;
  - b. the Complainant's record of hours work was a contemporaneously recorded, detailed account of her hours of work, including shift start and end times;
  - c. the Complainant's record of hours was corroborated by her verbal evidence;
  - d. Simply Bread provided an incomplete record of hours that did not cover the entirety of the Complainant's employment period and did not provide shift start and end times—it was an account of total hours worked;
  - e. both Simply Bread and the Complainant agreed that there was a clock in / clock out system used by Simply Bread to track hours of employment and with such a system, there would be variation in the hours worked each day, but Simply Bread's record of hours showed that the Complainant often worked exactly seven or eight hours a day with no variation;
  - f. Simply Bread did not produce any evidence to show that the Complainant was paid properly, or at all, for the time period for which it provided records;
  - g. the text message from the Manager indicated that the Complainant worked a significant amount of overtime, but Simply Bread's record of hours showed no overtime.

31. The Delegate noted that Simply Bread said that the Complainant was never authorized to work overtime. The Delegate found that, whether or not it was authorized by Simply Bread, the Complainant worked overtime and Simply Bread did not employ any measures to stop her from doing so.
32. Simply Bread did not respond to the Complainant's evidence that she never received vacation pay or a wage statement. Based on the evidence before her, the Delegate found that the Complainant did not receive wage statements, statutory holiday pay, or annual vacation pay.
33. The Delegate stated that there was no Settlement Agreement. Her finding in this regard was based on the evidence and submissions I have set out above.
34. In the result, the Delegate determined that the Complainant was owed wages for work performed at Simply Bread in the following amounts:
- a. regular wages owed between April 27 and July 13, 2018 (section 17 and 18 of the *ESA*): \$4,999.95;
  - b. overtime wages owed between April 27 and July 13, 2018 (section 40 of the *ESA*): \$4,060.96;
  - c. statutory holiday pay owed for Canada Day, July 2, 2018 (sections 45 and 46 of the *ESA*): \$279.03;
  - d. annual vacation pay owed (section 58 of the *ESA*): \$373.59; and
  - e. interest (section 88 of the *ESA*): \$56.11.
35. The total owed was \$9,769.64.
36. As the Complainant's documents showed that Simply Bread had paid her \$3,400 in wages between April 27 and July 13, 2018, and Simply Bread had made a voluntary payment of \$3,600 on December 28, 2018, the total remaining owing to the Complainant was \$2,769.64.

#### *Penalties*

37. The Delegate imposed administrative penalties pursuant to sub-section 98(1) of the *ESA* and sections 29 and 46 of the *Employment Standards Regulation* (the "*Regulation*").
38. Section 18 of the *ESA* requires employers to pay wages owing to an employee within six days after an employee quits. As the Delegate found that wages were not paid as required, Simply Bread breached section 18 of the *ESA* and incurred an administrative penalty of \$500.
39. Section 27 of the *ESA* requires employers to provide employees with written wage statements for each pay period. The Delegate found that Simply Bread did not provide regular wage statements for multiple pay periods, the most recent of which was the July 1 to 13, 2018 period, and therefore breached the Act and incurred an administrative penalty of \$500.
40. Section 40 of the *ESA* requires an employer to pay overtime for all hours worked over 8 hours in a day or 40 hours in a week. The Delegate found that Simply Bread did not pay overtime as required and thus it violated section 40 of the *ESA* and incurred an administrative penalty of \$500.

41. Sections 45 and 46 of the *ESA* requires employers to pay statutory holiday pay. The Delegate found that Simply Bread breached sections 45 and 46 and incurred an administrative penalty of \$500.
42. Sections 84 and 85 of the *ESA* and section 46 of the *Regulation* requires employers to produce records in the person's possession or control if a demand is made by the Director. The Delegate found that because Simply Bread did not provide records as required, it breached section 46 of the *Regulation* and incurred an administrative penalty of \$500.

## ANALYSIS

### Issue 1: Should the Time for Filing the Appeal Be Extended?

43. The Determination was issued on February 4, 2019, and the statutory appeal period ended on March 14, 2019.
44. Simply Bread filed the Appeal Form on April 10, 2019, without written argument in support of its appeal. On April 17, 2019, the Tribunal's Registrar asked Simply Bread for written reasons and argument in support of its appeal by no later than 4:30 p.m. on May 3, 2019. No submissions were received and on May 7, 2019, the Tribunal's Registrar informed Simply Bread that it had not yet made submissions on the merits of the appeal. Simply Bread made these submissions on May 17, 2019.
45. As held by the Tribunal in *Liisa Tia Anneli Niemisto*, BC EST # D099/96, extensions of time should not be granted as a matter of course. While the Legislature has established tight time frames for filing an appeal from a Determination, the time periods established in the *ESA* are not that unusual: *Niemisto*, at p. 3.
46. The Tribunal has established criteria to provide guidance in determining whether or not to extend the time periods for appeals from decisions of the Director. These criteria are set out in the *Niemisto* decision. Appellants seeking time extensions for requesting an appeal from a Determination should satisfy the Tribunal that:
- 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 ongoing *bona fide* intention to appeal the Determination;
  - iii) the respondent party (i.e., the employer or employee), 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.
- Niemisto* at p. 3; see also *Gorenshtein v. British Columbia*, 2013 BCSC 1499 at paras. 28 and 57
47. These criteria are not an exhaustive list. There may be other factors that ought to be considered. Further, in my view, not all of the above factors may be applicable in determining whether an extension should be granted or not, depending on the circumstances of each case.



48. Simply Bread's explanation submitted with its Appeal Form as to why it wanted an extension of time to make its written submissions on the appeal was that it did not receive the Determination Letter and was unaware of the Determination until April 5, 2019.
49. I requested supplemental submissions first from the Delegate and then from Simply Bread about delivery of the Determination Letter.
50. The Delegate's supplemental submissions ("Delegate's Submissions") included two BC company searches (one from January 17, 2019, prior to issuance of the Determination and one from June 4, 2019, after the Determination was issued) as well as a Registered Mail Trace Sheet for the Determination Letter, along with corresponding tracking information. According to the Delegate, a copy of the Determination Letter was sent to:
- a. Simply Bread at its storefront location at #160 – 6711 Elmbridge Way, Richmond, BC V7C 4N1;
  - b. Mr. Mekhloufi, as a Director of Simply Bread, at #210 – 7340 Westminster Highway, Richmond, BC V6X 1A1;
  - c. Mr. Mekhloufi as a Director and an Officer of Simply Bread, at #907 – 5782 Berton Avenue, Vancouver, BC V6S 0C1, which was the address listed for him on the company search results from January 17, 2017; and
  - d. Simply Bread care of its Registered and Records Office at #304 – 1200 Lonsdale Avenue, North Vancouver, BC V7M 3H6, which was listed on the company search results from January 17, 2017.
51. The June 4, 2019 company search lists the same addresses for Simply Bread's Registered and Records Office and Mr. Mekhloufi as the January 17, 2019 company search.
52. The Delegate's Submissions say that the Determination Letter:
- a. was delivered and signed for on February 5, 2019, at Simply Bread's storefront location;
  - b. was delivered and signed for on February 15, 2019, at the Westminster Highway address;
  - c. was held for pick-up until February 22, 2019, after notice cards were left on February 6 and 11, 2019, at Mr. Mekhloufi's address listed on the company search, but was never picked-up; and
  - d. was delivered and signed for on February 6, 2019, at Simply Bread's Registered and Records Office listed on the company search results.
53. My review of the Canada Post tracking records for the Determination Letter sent to the Westminster Highway address resulted in a different conclusion from that of the Delegate. Based on the Canada Post tracking information submitted as part of the Delegate's submissions, I find that the Determination Letter was not delivered to the Westminster Highway address. However, this fact is not material as I explain below.
54. Simply Bread made no supplemental submissions.

55. For the reasons set out below, I do not find that Simply Bread provided a reasonable and credible explanation as to why it failed to request an appeal within the statutory time limit.
56. First, the Determination Letter was delivered and signed for at Simply Bread's storefront location, at an address on Westminster Highway that the Branch had for Mr. Mekhloufi and at Simply Bread's Registered and Records Office. Section 122 of the *ESA* says that a determination that must be served on a person under the *ESA* is deemed to have been served if: (1) it has been served on the person; or (2) it has been sent by registered mail to the person's last known address.
57. Further, if served by registered mail, as was the case here, the *ESA* deems a determination to have been served eight days after the determination is deposited in a Canada Post Office. Thus, the copies of the Determination Letter sent via registered mail, but which were not picked up at the Post Office were deemed delivered as of February 14, 2019.
58. Second, if in fact there was an issue with the multiple addresses the Branch used to deliver the Determination Letter, Simply Bread was aware of this fact by December 10, 2018. Yet, it did nothing to correct the problem despite the Delegate making Mr. Mekhloufi aware of which addresses had been used by the Branch and telling him that if there were changes in Simply Bread's addresses from those listed with BC Registry Services, then he should update the Branch with any address changes. Moreover, Mr. Mekhloufi could also have requested electronic delivery of any correspondence from the Branch, including the Determination Letter, and he did not do so.
59. Third, not only did Simply Bread fail to submit its appeal on time, but it has not acted in the appeal process in a timely manner. Simply Bread says that it did not learn of the Determination until April 5, 2019, but even so, it waited another five days to file its appeal. It filed its appeal on April 10, 2019. At this time the Appeal Form was incomplete as Simply Bread did not provide its reasons and argument for its appeal as expressly required by the Appeal Form. Thus, on April 17, 2019, the Tribunal asked Simply Bread for written reasons and argument in support of its appeal by no later than 4:30 p.m. on May 3, 2019. However, still no submissions were received and so on May 7, 2019, the Tribunal informed Simply Bread that it had not yet made submissions on the merits of the appeal. Simply Bread at last made submissions on May 17, 2019.
60. Finally, Simply Bread had a chance to respond to the Delegate's Submissions regarding delivery of the Determination Letter and to explain on what basis it asserts that it did not receive the Determination Letter and it chose not to do so.
61. The other *Niemisto* criteria also do not favour the granting of an extension.
62. There is no evidence that Simply Bread had a genuine and ongoing *bona fide* intention to appeal the Determination within the statutory time limit. Indeed, the Appeal Form, Determination, Record and record of proceedings at the Tribunal indicate that Simply Bread has displayed the same casual attitude towards this appeal as it did towards the investigation.
63. The Complainant will be unduly prejudiced by the granting of a time extension. The Complainant has been waiting since July 2018 for payment of the wages she says are owed to her and which the Delegate found

were in fact owed. Further, completion of the investigation was delayed at Simply Bread's requests for more than a month.

64. The final *Niemisto* factor is whether there is a strong *prima facie* case in favour of the appellant. I find that there is not a strong *prima facie* case in favour of the appellant.
65. Sub-section 112(1) of the *ESA* provides that a person may appeal a determination on the following grounds:
- a. the director erred in law;
  - b. the director failed to observe the principles of natural justice in making the determination;
  - c. evidence has become available that was not available at the time the determination was being made.
66. As I set out above, in this appeal, Simply Bread says that it was not accorded procedural fairness because:
- a. the Complainant was never authorized to work overtime;
  - b. Mr. Mekhloufi was unaware of the complaint until December 2018;
  - c. Simply Bread offered to settle the claim for \$3,600 and provided this amount by cheque to the Branch and if the Complainant was not satisfied with this amount, she should not have accepted it;
  - d. the Delegate is keeping the claim open even though it has been settled;
  - e. the Delegate should not just take the Complainant's statements as fact, but should also consider Simply Bread's evidence; and
  - f. Simply Bread provided the requested records.
67. There is nothing in the Determination, the Reasons for Determination, or the Record that indicates the Delegate failed to observe principles of natural justice in making her Determination. Simply Bread was given notice of the proceedings and their potential implications and it had several opportunities to provide evidence and submissions in relation to the complaint. The Record shows that the Delegate made multiple efforts to contact Simply Bread, as described above, and that Simply Bread was given reasonable notice of the complaint, the investigation and its potential implications and had a reasonable opportunity to respond to the complaint. The Delegate extended document production and submission deadlines in response to requests from Simply Bread. The fact that Simply Bread provided requested records does not indicate a lack of procedural fairness, if anything, it indicates the opposite: that Simply Bread had an opportunity to know the case it had to meet and to respond to it.
68. Even though Simply Bread in its Appeal Form relied on a breach of natural justice, I have also considered whether Simply Bread might have a strong *prima facie* case based on a possible error of law.
69. In *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, 1998 CanLII 6466 (BC CA), the British Columbia Court of Appeal defined a question of law in the context of an appeal of a determination. In this context, an error of law occurs in the following situations:

- a. A misinterpretation or misapplication by the decision-maker of a section of its governing legislation;
- b. A misapplication by the decision-maker of an applicable principle of general law;
- c. Where a decision-maker acts without any evidence;
- d. Where a decision-maker acts on a view of the facts that could not reasonably be entertained; and/or
- e. Where the decision-maker is wrong in principle.

70. The Tribunal has adopted this definition: see e.g., *Re: C. Keay Investments Ltd. (Re)*, 2018 BCEST 5, at para. 36.

71. Simply Bread's arguments that could relate to this ground of appeal is that: (1) it never authorized the Complainant to work overtime; (2) the Delegate should have preferred its evidence to that of the Complainant's; and (3) it settled the claim.

72. The Appeal Form, Determination, Record and Supplemental Submissions do not indicate that the Delegate may have been wrong in principle, may have misinterpreted or misapplied the *ESA* or may have misapplied an applicable principle of general law. Under section 40 of the *ESA*, if overtime is worked, then it must be paid and Simply Bread allowed the Complainant to work overtime, whether or not it was expressly authorized.

73. Further, there is no basis on which I might conclude that the Delegate did not act without any evidence or on a view of the facts that could not reasonably be entertained. As noted above in relation to the principles of natural justice, my review of the Record and Reasons for Determination indicate that the Delegate's findings were based on the evidence and submissions before her from both parties. For the reasons provided in the thorough Determination, she preferred the evidence of the Complainant over that of Simply Bread and she concluded that there was no Settlement Agreement. Her conclusions were reasonable.

74. Accordingly, I decline to extend the time to file the appeal.

#### Issue 2: Should the appeal be allowed or dismissed?

75. As I decline to exercise my discretion under paragraph 109(1)(b) of the *ESA* to allow the late-filed appeal, I do not need to determine whether the appeal should be allowed or dismissed and I decline to do so.

**ORDER**

76. Pursuant to section 109(1)(b) of the *ESA*, I decline to extend the time for filing an appeal and this appeal is dismissed pursuant to section 114(1)(b) of the *ESA*.

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**Maia Tsurumi**  
**Member**  
**Employment Standards Tribunal**