

An appeal

- by -

Fired Up Events & Catering Inc.  
(“Employer”)

- 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)

**TRIBUNAL MEMBER:** Sheldon M. Seigel

**FILE No.:** 2008A/158

**DATE OF DECISION:** February 26, 2008

## DECISION

### SUBMISSIONS

Ella and Marat Dreyshner	on behalf of the Employer
Trevor Schmidt	the Employee
Lynne L. Egan	Delegate of the Director

### OVERVIEW

1. This is an appeal by the Employer pursuant to section 112 of the *Employment Standards Act* (Act), of a Determination issued by the Director of Employment Standards on October 18, 2007.
2. The Determination found that the *Act* had been contravened, and that the Employer owed the Employee \$1368.80. The amount included sums for wages (s. 21 of the Act), annual vacation pay (s. 58 of the Act), compensation for length of service (s.63 of the Act) and \$45.41 in interest in accordance with section 88 of the *Act*.
3. The deadline for appeal of the Determination was November 26, 2007. The Tribunal received the Appeal on December 18, 2007.
4. The Employer subsequently filed submissions relating to both the substantive matters of the appeal and the procedural matter of the late appeal.
5. The Employee replied to those submissions with his own, relating to both the substantive matters and the late appeal.
6. The Delegate of the Director replied to the Employer's submissions by addressing the late appeal and providing the record, and copies of all documents contained within it. The Delegate of the Director did not reply to the substantive matters submitted by the Employer.
7. The Employer did not complete s.2 of the Appeal Form, which requires that the appellant identify the grounds for appeal under s.112(1) of the Act. The Employer did, however attach substantive arguments against the Employee's position as set out in the Determination, a submission that the administrative penalties set out in the Determination "are not fairly calculated", an explanation for not attending the hearing prior to the Determination, and an explanation for their late appeal.
8. The Employer seeks consideration of the late appeal, a change or variation of the Determination in accordance with their submissions, and an oral hearing.
9. The Tribunal determined that this matter would proceed by written submissions.

## ISSUES

10. Is the Appeal a nullity because the grounds for appeal were not completed as required by s.2 of the Appeal Form?
11. Should the deadline for the appeal be extended under s.109(1)(b) of the Act to allow the substantive matters to be considered?

## DISCUSSION

12. Many of the appeals that the Tribunal hears are from unrepresented parties. The Tribunal has typically interpreted appeals in such a manner as to best allow for the substantive issues to be considered. There is no balance of detriment to be examined or prejudice in so doing, as the appellant's desire for a review of the Determination on the available grounds is self-evident.
13. Accordingly, I have interpreted the Appeal Form as though each of the three available grounds for appeal had been selected.
14. The file indicates that the Employer knew of the complaint against it and had actual notice of the investigation process and the hearing date. The Employer did not participate in the investigation or attend the hearing, despite advance notice and being contacted on the day of the hearing. The Employer confirmed knowledge of the hearing by telephone and advised that it would not attend. The Employer did not seek a rescheduling of the hearing.
15. The Employer knew of the complaint at least as early as August 16, 2007. The hearing was conducted on October 1, 2007. The Determination was published on December 18, 2007.
16. The Employer attempted to contact the Delegate of the Director sometime in November 2007. The Delegate forwarded that message in due course to the contact officer with a request that he contact the Employer.
17. The next contact that is described in the file is on December 18, 2007, when the Employer filed the appeal. On that occasion the Employer indicated that it would issue a certified cheque that same day and forward the cheque to the Director. The Appeal was twenty-two (22) days late.
18. The certified cheque was never received.
19. Subsection 112(2) of the Act requires, among other things, that an appeal of a Determination to the Tribunal be filed within the appeal period. The appeal period is described in paragraphs 112(3), which says:
  - 112(3) The appeal period referred to in subsection (2) is
    - (a) 30 days after the date of service of the determination, if the person was served by registered mail, and
    - (b) 21 days after the date of service of the determination, if the person was personally served or served under section 122(3).

20. Subsection 122(3) allows electronic or fax service at the request of a person.
21. The *Act* imposes an appeal deadline to ensure that appeals are dealt with promptly. This is consistent with one of the purposes of the *Act*, which is to provide fair and efficient procedures for resolving disputes.
22. The Tribunal will not exercise its discretion to extend the time for filing an appeal unless there are compelling reasons for doing so. (*Moen and Sagh Contracting Ltd.*, BC EST #D298/96).
23. The burden is on the appellant to show that the appeal period should be extended. (see *Niemisto*, BCEST #D099/96 and *Matty Tang*, BCEST #D211/96).
24. The Tribunal has established a non-exhaustive list of criteria for the exercise of discretion extending the time to file an appeal. The party seeking an extension must satisfy the tribunal that:
- (1) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
  - (2) there is not an unreasonably long delay in filing the appeal;
  - (3) there has been a genuine, ongoing bona fide intention to appeal the determination;
  - (4) the respondent and the director has been made aware of this intention;
  - (5) the respondent will not be unduly prejudiced by the granting of an extension; and
  - (6) the appellant has a strong prima facie case that might succeed.
25. Except to the extent necessary to determine if there is a “strong prima facie case that might succeed”, the Tribunal does not consider the merits of the appeal when deciding whether to extend the appeal period (*Re Owolabi (c.o.b.) Just Beauty*), BCEST RD#193/04, *Re BNN Enterprises Ltd.*, BCEST #D165/04).
26. With respect to an explanation, the Employer submits simply that it filed the appeal late because the Delegate failed to return calls after the publication of the Determination, and because work obligations kept the Employer’s principals busy.
27. I find that the Employer tendered no reasonable explanation for the late appeal. The delay was not a mere day or two as a result of unusual or unpredicted work obligations. Further, the Employer failed to establish its intention to appeal the Determination prior to the deadline.
28. A cursory review of the Employer’s substantive submissions fails to point to any reasonable argument which could be interpreted as a ground of appeal as described in s.112(1) of the Act or enumerated in the Appeal Form. Instead, the thrust of the Employer’s submissions consists of argument based on evidence already considered in the Determination. The time for that to have been done was prior to or during the hearing.

**ORDER**

29. The appellant's request for extension of the deadline for appeal and for acceptance of the appeal is denied. The appeal is dismissed pursuant to section 114(1) of the *Act*.
30. Pursuant to section 115(1) of the *Act* the Determination dated October 18, 2007 is confirmed, along with any additional interest calculated in accordance with section 88 of the *Act*.

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**Sheldon M. Seigel**  
**Member**  
**Employment Standards Tribunal**