

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act, R.S.B.C. 1996, c. 113

- by -

Alborz Restaurant Enterprises Ltd.

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE No: 99/663

DATE OF DECISION: January 24, 2000

DECISION

APPLICATION

This is an application by Alborz Restaurant Enterprises Ltd. ("Alborz") for an extension of time to file an appeal pursuant to Section 112 of the Employment Standards Act (the "Act") from a Determination of the Director of Employment Standards (the "Director") dated October 12, 1999.

The Tribunal received an appeal dated November 4, 1999 from Alborz but it did not comply with the rules of the Tribunal in setting out the "reasons for appeal". The Tribunal notified Alborz of the shortcomings of the material and advised that it should be provided by 4:00 pm on November 8, 1999. No such information was forthcoming.

Alborz requested an extension of time and indicated that they were having some difficulty accessing records.

The Director's delegate has set-out a history of involvement with representatives of Alborz that indicates a complete lack of cooperation and refusal to participate in the Director's investigation. This Tribunal has stated in several decisions that an appellant who refuses to participate will not be allowed to file an appeal on the merits of the determination: e.g. *Re: Gosal* (1998) BCEST #D062/98.

In addition the Tribunal has stated on several occasions that for an extension to be granted the appellant must satisfy the Tribunal that (1) there is a reasonable and credible explanation for the failure to file within the time period; (2) there has been a genuine and ongoing bona fide intention to file within the time period; (3) the respondent party and the Director have been made aware of that intention; (4) the respondent party will not be unduly prejudiced; (5) there is a strong *prima facie* case in favour of the appellant.

None of the above five criteria are met in this case and, in my opinion, the appeal and the application for an extension are simply part of the obstructionism carried out by the appellant from the beginning of the Director's investigation.

There is no satisfactory basis submitted for the granting of the extension of time and therefore the appeal herein is dismissed and the Determination is confirmed.

ORDER

Pursuant to Section 115 of the *Act* I order that the Determination is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal