

An appeal

- by -

Yellow Cab Company Ltd.  
("Yellow Cab")

- 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

**ADJUDICATOR:** Paul E. Love

**FILE No.:** 2000/638

**DATE OF DECISION:** January 23, 2001

## DECISION

### OVERVIEW

This is an application by Yellow Cab Company Ltd. (the “employer” or “Yellow Cab”) to extend time to permit the filing of a late appeal. The deadline for filing the appeal was September 11, 2000. The employer indicates that it attempted to file the appeal on September 11, 2000, but the fax did not transmit to the Tribunal’s offices. The employer indicates, that upon return of Mr. Leidl to the office on September 14, 2000 he faxed the notice of appeal to the Tribunal after he learned that the first transmission was unsuccessful. I am satisfied that the appellant formed the intention to appeal within the appeal period, and has a reasonable excuse for the late filing. I am satisfied that there is no prejudice to the employee, and therefore I extended time for the filing of the appeal.

### FACTS

This is an application by the employer for extension of time to file an appeal. The Determination was issued on August 18, 2000. The deadline for the filing of the appeal was September 11, 2000. The employer filed the appeal of the Determination on September 14, 2000 by fax transmission. In a letter dated September 15, 2000, Mr. Leidl, General Manager of Yellow Cab sets out that the employer attempted to fax the appeal, on the afternoon of September 11, 2000. Mr. Leidl says that he was out of the office for meetings on September 12, and 13, and when he returned to the office he noted that the fax transmission was unsuccessful and he faxed the appeal again on September 14.

I conclude from the evidence before me that Yellow Cab formed an intention to appeal during the appeal period and took some steps to effect the appeal by attempting to serve the Tribunal’s office by fax.

The grounds for the appeal is that Yellow Cab asserts that Adbigani Adbille was not an employee of Yellow Cab, but was a driver approved by Yellow Cab who was employed by various drivers who supplied services on an independent contractor basis to Yellow Cabs. Yellow Cabs has also filed a number of Private Taxi Lease Agreements whereby an owner of z taxi, leases a taxicab to Mr. Adbille.

Mr. Adbille opposes the extension of time on the basis that the employer was grossly negligent in failing to file an appeal on time, and that the late filing of the appeal was a delay tactic. From the submission made by Mr. Adbille, I am not made aware of any prejudice to the employee from a late filing of the appeal.

**ISSUE:**

Should the Tribunal grant an extension of time to the employer to file this appeal?

**ANALYSIS**

In determining whether to grant an extension of time, I must consider whether the appellant formed the intention to appeal within the appeal period, that the appellant has a reasonable excuse for failing to file the appeal within the time limits set out in the Determination and that there is no prejudice to the respondent from the late filing of the appeal.

In this case, from the written submissions before me, the employer has established that the employer formed the intention within the appeal period, and that the excuse for lateness is a reasonable one. There was some attempt to comply with the time limits for the filing of an appeal set out in s. 112 of the *Employment Standards Act* (the “Act”). I see no evidence of any prejudice to the employee if this matter proceeds to an appeal.

I therefore extend time for the filing of the appeal, and request that the Registrar invite the parties to file submissions on the merits of the appeal.

**ORDER**

Pursuant to section 109(1)(b) of the *Act*, I extend the time for the employer to file the appeal until the close of business on September 14, 2000.

***PAUL E. LOVE***

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**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**