

**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 -

Ana Belu  
("Belu")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** David B. Stevenson

**FILE No:** 1999/660

**DATE OF DECISION:** February 4, 2000

**DECISION**

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Ana Belu (“Belu”) of a Determination which was issued on September 17, 1999 by a delegate of the Director of Employment Standards (the “Director”). The Determination considered whether Belu had been paid all wages owing to her by her employer, Sherlock Enterprises Ltd. (“Sherlock”). It noted that any outstanding wages had been voluntarily paid by Sherlock as of the date of the Determination and concluded that she was not owed any further wages.

Belu challenges that conclusion and says the Director wrongly denied her claim for extra work she performed for Sherlock.

Before considering whether there is any substance to the appeal, a preliminary issue has been raised concerning the timeliness of the appeal.

**ISSUES TO BE DECIDED**

There are two issues raised by this appeal. The first is whether the Tribunal should extend the time limit for filing this appeal. If the Tribunal does extend the time limit, the second issue is whether Belu has shown the Determination was wrong in fact or in law.

**FACTS**

As stated above, the Determination was issued on September 17, 1999. The Determination clearly set out, at the bottom of the third page, that the Determination could be appealed to the Tribunal and that any appeal had to be delivered to the Tribunal no later than 4:30 PM on October 12, 1999. The appeal information also noted:

Complete information on the appeal procedure is attached. Appeal forms are available at any office of the Employment Standards Branch.

This appeal was not delivered to the Tribunal until November 5, 1999, 24 days late. Belu says she got the Determination on September 21, 1999 and attempted to contact the District Supervisor of Employment Standards, which she was not able to do until the middle of October, following which she obtained the appropriate forms and filed this appeal.

In their submissions to the Tribunal, both Sherlock and the Director indicated that Belu and Sherlock were informed during a fact-finding meeting of the right to appeal any decision of the Director if they disagreed and of the 10 day time limit to file that appeal.

On the substantive issue, Belu had claimed compensation for “extra” duties she did for Sherlock. The Director concluded that the work for which Belu claimed compensation was work done by Belu’s husband. The following extract from the Determination summarizes the decision of the Director:

Evidence has been provided that Belu was compensated for the work she completed on behalf of the employer. Any work that Belu's husband completed is an issue to be resolved by him and cannot be the subject of a complaint filed by Belu. This is based on the definition of work per Section 1 of the Employment Standards Act which states:

*“work” means the labour or services an employee performs for an employer whether in the employee's residence or elsewhere*

As per the above definition, work for which wages can be found outstanding must be performed by the employee. In this case, the work Belu personally performed has been fully compensated for. Belu's husband has not filed a complaint against the employer for work he alleges he completed and based on his statements at the fact-finding meeting does not wish to pursue this matter under the Employment Standards Act at this time.

In the appeal, Belu adds no new facts but takes issue with the premise contained in the above statement. She says she should be compensated for the amount of her husband's work within the context of her claim. She also asks the Tribunal to require Sherlock to provide written reasons for terminating her employment and to compensate her for stress and harassment.

## **ANALYSIS**

At first blush, I am not convinced there is any merit to the substantive aspect of the appeal. Belu seems to be under the misconception that the Tribunal will “revisit the entire situation on its own merits”. What she perhaps has missed is that this is an appeal of a Determination, not a reinvestigation of her complaint. She bears an onus in this appeal to show that the Determination is wrong in some fundamental way. That onus is not met simply by taking issue with the result and restating the complaint in the hope that the Tribunal will reach a different conclusion.

However, it will not be necessary to consider the second issue raised in this appeal, as Belu has not satisfied me that she should be granted an extension of the time limit for filing this appeal. Belu had an obligation to exercise reasonable diligence in the pursuit of an appeal and she has failed, without any good reason, to do so.

## **ORDER**

I decline to exercise my discretion under Section 109 of the *Act* and, pursuant to Section 115 of the *Act*, I order the Determination dated September 17, 1999 be confirmed.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**