

An appeal

- by -

Round Table Enterprises Ltd. operating as The Troller Pub
(“Round Table”)

- 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

TRIBUNAL MEMBER: Carol L. Roberts

FILE Nos.: 2005A/29

DATE OF DECISION: April 13, 2005

The delegate took no position on Round Table's application.

ANALYSIS AND DECISION

Section 112(1) of the *Act* 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;
or
- (c) evidence has become available that was not available at the time the determination was being made

Section 109(1) (b) provides that the Tribunal may extend the time for requesting an appeal even though the time period has expired.

In *Niemisto* (ESTD#099/96), the Tribunal set out criteria for the exercise of discretion extending the time to appeal. Those are that 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 has been a genuine, ongoing *bona fide* intention to appeal the determination;
- (3) the respondent party as well as the director has been made aware of this intention;
- (4) the respondent party will not be unduly prejudiced by the granting of an extension; and
- (5) there is a strong *prima facie* case in favour of the appellant.

These criteria are not exhaustive.

I find it appropriate to extend the time in which to file an appeal.

The appeal documents are dated January 17, 2005, and received by the Branch on January 21, 2005, well before the appeal deadline.

I am satisfied Round Table had a genuine, ongoing and *bona fide* intent to appeal the Determination. It is clear that the director was aware of this intent, and in any event, does not appear to dispute the application.

Furthermore, there is no evidence that Mr. Foo or the director will be unduly prejudiced by the granting of an extension.

Mr. Kavanagh says that he mailed the appeal documents to the Tribunal at the same time as he sent them to the Branch, which was January 17, 2005. Although he provides no evidence, either postage receipts or

other documentation, to support this assertion, I find the assertion to be a reasonable and plausible one. Had the appeal documents been delivered, they would have been filed within the appeal deadline.

In light of all of these conclusions, I need not conduct a lengthy analysis of the merits of the appeal at this time. Although the appeal documents appear to suggest that the basis of the appeal is something other than a failure to observe natural justice, it cannot be characterized as a frivolous appeal. The merits of the appeal can be determined by a Member upon hearing the appeal itself.

ORDER

Pursuant to section 109(1) (b) of the Act, I Order that the deadline for filing the appeal be extended to February 23, 2005.

Carol L. Roberts
Member
Employment Standards Tribunal