

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act*

-by-

Liisa Tia Anneli Niemisto

(“Niemisto”)

-of a Determination issued by-

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE NO.:** File No. 95/007

**DATE OF DECISION:** May 17, 1996

## DECISION

### FACTS

This is an appeal brought by Liisa Tia Anneli Niemisto (“Niemisto”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) from Determination No. CDET 000068 issued by the Director of Employment Standards (the “Director”) on November 10, 1995. The Director determined that BWI Business World Incorporated (“BWI”) owed Niemisto the sum of \$4,195.94 on account of unpaid commission earnings, overtime, vacation pay, severance pay and unremitted health plan payroll deductions. I would note that the other employee named in the Determination, David Rathbone, has also filed an appeal as has the employer, BWI.

Niemisto’s appeal was filed with the Tribunal on March 28, 1996. Pursuant to section 112 of the *Act*, the appeal should have been filed within 15 days after the date of service (if served by registered mail) or within 8 days of being personally served. Ms. Niemisto’s appeal period expired on December 3, 1995. Accordingly, pursuant to section 109(1)(b) of the *Act*, Ms. Niemisto seeks an extension of the time period for requesting an appeal.

### ISSUE TO BE DECIDED

When and under what circumstances should the Tribunal extend the appeal periods set out in section 112 of the *Act*?

### ANALYSIS

The Legislature has established very short time frames for appealing a Determination issued pursuant to section 79 of the *Act*. These time periods are set out in section 112(2)(a) and (b) of the *Act*. A person served with a Determination has only 8 or 15 days to file their appeal depending on the mode of service. In the case of service by registered mail, the time period is 15 days; the time period is only 8 days if the Determination is personally served.

As these short time frames may, in some circumstances, create undue hardship for particular individuals or firms, the Legislature saw fit to grant the Employment Standards Tribunal the authority to extend these time limits. This latter authority to extend the time for requesting an appeal is set out in section 109(b) of the *Act*. It should be noted that the Legislature did not set out any particular criteria that should govern the Tribunal’s discretionary authority to extend the statutory time limits. Accordingly, it falls to the Tribunal to establish such criteria.

In my view, extensions should not be granted as a matter of course. The Legislature has established very tight time frames for filing an appeal from a Determination issued under the *Act*. Although relatively short, the appeal periods established in section 112(2) are not that unusual. For example, parties who wish to challenge decisions made by arbitrators under the *Residential Tenancy Act* have as little as 2 days and, at most, only 15 days to file an application for review with the Arbitration Review Panel (*cf. Residential Tenancy Act*, section 45.3). An application for reconsideration of a decision issued by the B.C. Labour Relations Board must be made within 15 days [*cf. Labour Relations Code*, section 141(5)]. As a final example, an appeal to the B.C. Court of Appeal must be brought within 30 days (*cf. Court of Appeal Act*, section 14).

Certain common principles have been established by various courts and tribunals governing when, and under what circumstances, appeal periods should be extended. Taking into account the various decisions from both courts and tribunals with respect to this question, I am of the view that appellants seeking time extensions for requesting an appeal from a Determination issued under the *Act* should satisfy the Tribunal that:

- i) there is a reasonable and credible explanation for the the failure to request an appeal within the statutory time limit;
- ii) there has been a genuine and on-going *bona fide* intention to appeal the Determination;
- iii) the respondent party (*i.e.*, the employer or employee), as well the Director, must have been made aware of this intention;
- iv) the respondent party will not be unduly prejudiced by the granting of an extension; and
- v) there is a strong *prima facie* case in favour of the appellant.

The above criteria are not intended to constitute an exhaustive list. Adjudicators may find that in particular cases, certain other, perhaps unique, factors ought to be considered.

In light of the foregoing, in the case at hand I am not satisfied that an extension ought to be granted. If Niemisto was dissatisfied with the Determination she had ample opportunity to file an appeal before March 28, 1996 by which time her statutory appeal period had long since run out. The Determination itself indicates that an appeal may be filed with the Tribunal and further indicates the final date for filing such an appeal. My persusal of the file material suggests that Niemisto was fully satisfied with the Determination until at least March 11, 1996. Lastly, it would appear, based on the material before me, that there is no valid claim to be advanced for any monies owed during the period August 8, 1994, when she commenced her employment, to September 3, 1994 which is the commencement date of her claim as set out in the Determination--Niemisto's submission in

support of her application to appeal does not set out any such claim nor does her original complaint of March 7, 1995 filed with the Employment Standards Branch.

**ORDER**

The appellant Niemisto's request to extend the time period for requesting an appeal is **denied**

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**