

EMPLOYMENT STANDARDS TRIBUNAL

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

-by-

David Rathbone

("Rathbone")

-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 David Rathbone (“Rathbone”) 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 Rathbone the sum of \$7,285.93 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, Liisa Tia Anneli Niemisto, has also filed an appeal as has the employer BWI.

Rathbone’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. Mr. Rathbone’s appeal period expired on December 3, 1995. Accordingly, pursuant to section 109(1)(b) of the *Act*, Rathbone 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 principles governing the granting of an extension for time to request an appeal are more fully dealt with in the Niemisto Reasons which are issued concurrently with these Reasons. In Niemisto, I suggested that an appellant seeking an extension 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.

In light of these criteria, I am not satisfied that an extension ought to be granted.

If Rathbone was dissatisfied with the Determination he had ample opportunity to file an appeal before March 28, 1996 by which time his statutory appeal period had long since expired. According to the material filed in support of the appeal, Rathbone was apparently satisfied with the Determination at least until March 7, 1996. The Determination in this case indicates that an appeal may be filed with the Tribunal and also indicates that the final date for filing such an appeal is December 3, 1995. Further, there is nothing in the material before me, either in the documents filed in support of the appeal, or in Rathbone's initial complaint filed with the Employment Standards Branch on March 7, 1995, that purports to substantiate a claim for monies owed prior to August 21, 1994, *i.e.*, the date commencement date of Mr. Rathbone's claim according to the Determination.

ORDER

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

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal