



An appeal

- by -

Ty & Cody Holdings Ltd. Operating as Subway  
("Ty & Cody Holdings")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2001/022

**DATE OF DECISION:** March 7, 2001

## DECISION

### OVERVIEW

This is an appeal brought by Ty & Cody Holdings Ltd. (“Ty & Cody Holdings”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on December 20th, 2000 under file number ER 52313 (the “Determination”).

The Director’s delegate determined that Ty & Cody Holdings owed four former employees (Michael Vaast, Tanara Gariepy, Matthew MacDonald and Nadine Bazett) the total sum of \$2,004.09 including interest on account of unpaid wages. In addition, by way of the Determination, Ty & Cody Holdings was assessed a \$0 penalty pursuant to section 98 of the *Act* and section 29 of the *Employment Standards Regulation*.

### TIMELINESS OF THE APPEAL

This appeal was filed with the Tribunal, by fax, on December 29th, 2000 at 4:04 P.M.; the appeal form itself is dated December 29th, 2000. A notice, set out in large boldface type in the Determination, indicated that the deadline for appeal was December 28th, 2000 [see section 112(2) of the *Act*]--this notice also set out various particulars with respect to how an appeal could be filed. Inasmuch as this appeal was filed one day after the governing appeal period expired, the appellant now seeks an extension of the appeal period pursuant to section 109(1)(b) of the *Act*.

*These reasons for decision address only the application for an extension of the appeal period.*

### FACTS AND ANALYSIS

The Tribunal’s appeal form specifically directs an appellant (item number 5 on the form) to explain, if the appeal is being filed after the expiration of the appeal period, why the appeal was not filed within the governing time limit. In the instant case, and with respect to the timeliness of the appeal, the appellant’s principal states that:

“I received a package [presumably the Determination and attachments] that was sent to my attorney & then forwarded to me on Dec. 29/00. I would have responded sooner if I had received this sooner.”

I have before me a letter from the Nanaimo law firm Vining Senini--whose office serves as the registered and records office for Ty & Cody Holdings--dated December 27th, 2000 which states that “an envelope received by registered mail from the Ministry of Labour--Employment Standards Branch” is enclosed. The material before me indicates that the Determination was

served by registered mail and was delivered to the appellant's registered and records office. It is not clear from the material before me when the Determination was received at the registered office. However, it would appear that the instant appeal was not filed outside the governing limitation period assuming the Determination was delivered to the registered office on or about December 27th, 2000 [see section 112(2)(a) of the *Act*]. There is nothing in the material before me indicating that the Determination was personally served on a corporate director or officer.

In my view, it is entirely appropriate, in this case, to extend the appeal period. I have nothing before me from the Director's delegate to indicate that she is opposed to the appeal period being extended. Although two of the four complainant employees oppose an extension, I have not been made aware of any prejudice that they have suffered (or will suffer) *by reason only of the appeal arguably having been filed one day late*. The appeal is not obviously without merit and it does appear that the appellant did move promptly to file an appeal as soon as it was made aware that a Determination had been issued against it.

#### **ORDER**

Pursuant to section 109(1)(b) of the *Act*, I order that the appeal period governing the filing of an appeal of the Determination be extended to December 29th, 2000. Accordingly, this appeal is properly before the Tribunal and thus will now be adjudicated on its merits.

**KENNETH WM. THORNICROFT**

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