

An appeal

- by -

Finlay Contracting Ltd.  
("Finlay" or the "Appellant")

- 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.:** 2001/037

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

## DECISION

### OVERVIEW

This is an appeal brought by Finlay Contracting Ltd. (“Finlay” or the “appellant”) 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 1st, 2000 under file number ER 097-868 (the “Determination”).

The Director’s delegate determined that Finlay owed its former employee, Mel A. Harper, the total sum of \$1,904.67 on account of unpaid wages (principally compensation for length of service) and interest.

### TIMELINESS OF THE APPEAL

This appeal--together with a separate appeal relating to another former Finlay employee, Bud H. Colebank (see EST File No. 2001/038)--was filed with the Tribunal on January 8th, 2001; the appeal form itself is dated December 30th, 2000. A notice, set out in large boldface type in the Determination, indicated that the deadline for appealing the Determination was December 27th, 2000 [see section 112(2) of the *Act*]--this latter notice also set out various particulars with respect to how an appeal could be filed.

Inasmuch as this appeal was filed after the governing appeal had 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 instant appeal appears to have been filed with the Tribunal by way of a fax transmission. The “fax cover sheet”, dated January 8th, 2001, states:

“It has been brought to my attention that you have not received our request for an appeal of a determination, which was picked up by Canada Post at our office with our regular mail on December 19, 2000.

Herewith is a copy of our appeal and another hard copy will follow by mail--again.

Thank you.”

The above note was apparently prepared by “Sandra”, a Finlay employee. Further, and in addition to the above, on January 9th, 2001, the Tribunal received a letter, signed by “S. Sundby”, from Finlay which reads as follows:

“We previously mailed two ‘Appeal Form(s)’ related to the above noted determination number, which apparently never reached your office.

Our office enjoys *truck service* for mail delivery and pick up (which means that our postal carrier drives a mail truck and picks up outgoing mail at our office). We sent the original two appeals via our postal carrier to your office on December 19, 2000 (according to our mail log).

In my earlier discussions with Hans Suhr (Delegate) I had indicated that we would be filing these appeals, therefore when he did not receive notification from your office that they had indeed been received, he took it upon himself to call me on January 8, 2001. After informing him that we had indeed sent the required forms in good order and before the due date, he suggested that I fax a copy of the files to your office (and follow up with another hard copy by mail.)

I can only assume that the envelope has been lost or mishandled, and I would like to request that our appeals be accepted. We regret that these events have transpired and hope that your will not hold this against us.”

(*italics and underlining* in original)

I should note that I am somewhat troubled by the appellant’s assertion that the appeal filed on January 8th, 2001 was a *copy* of an earlier appeal form sent to the Tribunal by regular mail on December 19th, 2000 given that the present appeal form is dated December 30th, 2000. I might also add that I do *not* have before me a copy of Finlay’s “mail log” that would presumably corroborate Finlay’s assertion that an appeal form was mailed to the Tribunal on December 19th, 2000.

Notwithstanding the foregoing, however, the Director’s delegate, in a letter to the Tribunal dated January 12th, 2001, substantially corroborated the appellant’s assertions with respect to the filing of an appeal. Further, the delegate’s letter continues:

“The Director submits that there is no reason to dispute the contention of the [appellant’s] bookkeeper that the appeal was submitted prior to the expiry of the appeal period.

The Director further submits that it would be appropriate in these circumstances to permit the appeal of the employer to be heard.”

In addition, Mr. Harper, the respondent employee, has not indicated that he opposes the granting of an order extending the appeal period. The delay involved in this case is not substantial and spans the traditional Christmas/New Year holiday season when many, if not most, offices are either closed or are only open for limited hours. No one has suggested that they would be prejudiced by an order extending the appeal period. The appeal itself is not manifestly without merit raising, as it does, an issue with respect to section 65(1)(d) of the *Act*.

In light of all of the foregoing circumstances, I find it appropriate to extend the appeal period.

### **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 January 8th, 2001. 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**