

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act* S.B.C. 1995, C. 38

- by -

Linda Wright Operating as Advanced Carpet Cleaning  
("Wright")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 97/044

**DATE OF DECISION:** March 20, 1997

## DECISION

### OVERVIEW

This is an appeal by Linda Wright operating as Advanced Carpet Cleaning (“Wright”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination Letter dated December 17, 1996 issued by the Director of Employment Standards (the “Director”). The time limit for filing an appeal of the Determination expired on January 9, 1997. The Tribunal received an appeal from Wright on January 17, 1997.

### ISSUE(s) TO BE DECIDED

The issue to be decided is whether the time limit for requesting an appeal, as set out in Section 112 of the *Act*, should be extended in this case.

### FACTS

On December 17, 1996, a Determination was issued against Wright in which the Director concluded that Wright had contravened Sections 18(2), 34(2) and 58(3) of the *Act* on two previous occasions and, as a result, a penalty in the amount of \$2250.00 was imposed on her pursuant to Section 29(2)(c) of the Employment Standards Regulation.

The Determination was sent by registered to mail to 4L - 55 Victoria Road, Nanaimo, B.C. V9R 4N9. It was received by Wright on January 7, 1997. This is confirmed by the Acknowledgment of Receipt card. The Determination stated that an appeal of it had to be delivered to the Tribunal by January 9, 1997.

On January 17, 1997, the Tribunal received an appeal from Wright. The appeal form was dated January 13, 1997. The complete reasons for the appeal are as follows:

*Did not receive any mail from Labour Standards. Mail is to go to L3 - not L4.*

The Tribunal invited the Director to reply to the issue of whether the Tribunal should exercise its discretion under Section 109(1) (b) of the *Act* and allow Wright’s appeal even though the time period for requesting an appeal had expired. The Director replied in the negative.

### ANALYSIS

Section 122(1) of the *Act* provides that a Determination that is required to be served on a person is deemed to have been served if either served on the person or sent by registered mail to the persons last know address. Section 122(2) of the *Act* states that if service is by registered mail, the Determination is deemed to be served 8 days after it is deposited in a Canada Post office.

Section 112(2) of the *Act* sets out the time periods for appealing a Determination. A person served with a Determination has only 8 or 15 days to file an appeal depending on the mode of service. In the case of service by registered mail, the time period is 15 days after the date of service; the time period is only 8 days if the Determination is personally served.

These relatively short time limits are consistent with one of the purposes of the *Act* which is to provide for fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. It is in the interest of all parties to have complaints and appeals dealt with promptly.

Section 109(1)(b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.

In the case at hand, I am not satisfied that an extension ought to be granted.

The Determination was served in accordance with Section 122(1) of the *Act*. The Determination clearly stated that an appeal of it had be delivered to the Tribunal by January 9, 1977. In contrast to Wright's statement that she "did not receive any mail from Labour Standards", there is no question that she received the Determination prior to the expiry of the appeal period.

Wright did not contact the Tribunal, however, on or before January 9, 1997 which would have resulted in a timely appeal. Wright knew by at least January 7, 1997 that the deadline for an appeal was on January 9, 1997, yet she chose not to exercise her option of disputing the Determination until several days later. Furthermore, Wright is aware of the Tribunal's appeal procedures as she filed a previous appeal which was decided by way of an oral hearing on May 3, 1996 (BC EST#D058/96).

In my view, Wright had the opportunity to file an appeal in a timely manner. The obligation is on the employer to exercise reasonable diligence in the pursuit of an appeal. In this case, Wright has failed to persuade me that she has done so. I find no compelling reasons to allow this appeal.

For the above reasons, I have decided not to extend the time limit for requesting an appeal in this case.

**ORDER**

The appeal is dismissed pursuant to Section 114 of the *Act*. I order pursuant to Section 115 of the *Act* that Determination Letter dated December 17, 1996 be confirmed.

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**