

An appeal

- by -

Michael Brett  
("Brett")

- 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

**TRIBUNAL MEMBER:** John M. Orr

**FILE No.:** 2004A/124

**DATE OF DECISION:** September 9, 2004

## DECISION

### APPEARANCES:

Adele L. Burchart on behalf of the appellant

Rod Bianchini on behalf of the Director of Employment Standards

### APPLICATION

This is a consideration of an application by Michael Brett ("Brett"), pursuant to Section 109 of the *Employment Standards Act* (the "*Act*") to extend the time period for requesting an appeal from a Determination ("the Determination") dated September 5, 2003 by the Director of Employment Standards (the "Director") even though the time period for requesting an appeal has expired.

The Determination finds Brett liable as an officer or director of Child Link Services Inc. for certain wages earned by a number of employees between February 2002 and July 2002. The Director had previously issued a determination against Child Link Services Inc. ("Child Link") and a corporation called Childline Identification Services Inc. ("Childline") as associated companies. Both corporations appealed and Brett was an active participant at the appeal.

A Tribunal adjudicator found that Child Link was an employer of the employees and confirmed that wages were owed by Child Link to the employees. The adjudicator referred the issue in regard to the association of the companies back to the Director because of lack of notice to Childline of the possible association, *Child Link Services Inc. and Childline Identification Services Inc.* [2003] BC EST # D219/03. There is no indication in the material before me that the Director responded to the referral back.

It appears to be uncontested that Brett was an officer or director of Childline but he claims that he had resigned as an officer and director of Child Link. The Determination against Brett as a director or officer is based on his relationship to Child Link.

Brett has filed an appeal against the finding of his liability as a director or officer of Child Link but his appeal is filed more than 9 months past the deadline for filing an appeal. The Determination is dated September 5, 2003 and contains information that any appeal must be delivered to the Tribunal on or before October 14, 2003. The appeal was delivered to the Tribunal on July 16, 2004.

The Tribunal has authority under Section 109(1)(b) to extend the time period for requesting an appeal even though the period has expired. The Tribunal has developed certain basic principles to exercising the discretion granted in this section which include that:

1. Is there a good reason why the person appealing could not meet the deadline?
2. Was there an unreasonably long delay in filing the appeal?
3. Did the person appealing always intend to appeal the Determination?
4. Were the other parties aware of the intent to appeal?

5. Would extending the appeal deadline harm the Respondent's case?
6. If the Tribunal grants an extension, does the person appealing have a strong case that might succeed?

In this case Brett asserts that he had no knowledge of the Determination against him as a director or officer until he became aware that enforcement proceedings had been commenced. He asserts that he did not get a copy of the Determination until his counsel requested it in June, 2004. He says that it was faxed to his lawyer on June 25, 2004. His appeal was filed within 21 days from the date the Determination was received.

Brett asserts that it was clear from the previous proceedings that he disputed the allegation that he was an officer or director of Child Link at the relevant time and that it was known or ought to have been known that he would intend to appeal any such finding. He has produced a corporate record showing that he was removed as a director of Child Link on April 24 2000 and that this was filed with the Corporate Registry on May 16, 2000. He has produced a copy of his letter to Child Link dated May 23, 2002 submitting his resignation from the company "in any capacity" and requesting the company to arrange for his name to be removed from any corporate records. It appears that the company did not file any documents confirming the resignation.

Brett has not denied being a director or officer of the other corporation, "Childline", but it appears that the Director's delegate has not pursued any action against Childline and is relying on Brett's involvement with Child Link. However, Brett has provided evidence indicating that he severed his ties with Child Link before the initial corporate determination.

The Director's delegate, in response to this application, states that during the initial proceedings notices had been sent to addresses found on corporate record searches and "addresses established through investigation". He does not provide any evidentiary basis to show an accurate personal address for Brett. He states that the Tribunal's previous decision had been sent to the same addresses and to Brett's legal counsel and that Brett must have had knowledge of the potential for a finding of liability.

The delegate has provided confirmation of registered mail delivery showing that the Determination was mailed to Brett. The Delegate asserts that Brett was properly notified and chose not to exercise his right to appeal within a reasonable time. However, it is noted that the registered mail sent to Brett was returned to the Employment Standards Branch unclaimed. There is no evidence provided to indicate that the address was a correct address for Brett at any time.

It seems to me that Brett has provided a reasonable *prima facie* case that he may have withdrawn from the company at least during a portion of the time that wages became due. To foreclose him from an opportunity to have that appeal addressed when there is some considerable doubt about his knowledge of the personal liability determination would result in an injustice.

Although the appeal is filed more than 9 months after the Determination was issued there appears to be good reason for the delay. It is clear that all parties have known from the previous proceedings that Brett disputed his personal liability in regard to any involvement with Child Link.

In conclusion, the application for an extension of time for requesting an appeal pursuant to s.109 (1)(b) is granted. The substance of the appeal will be addressed in due course.

**ORDER**

Accordingly, pursuant to section 109(1)(b), I extend the time for filing of the appeal herein.

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**John M. Orr**  
**Member**  
**Employment Standards Tribunal**