



An appeal

- by -

Peter Crowther  
("Crowther")

- 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:** C. L. Roberts

**FILE No.:** 2001/113

**DATE OF DECISION:** April 18, 2001

## DECISION

This is a decision based on written submissions by Peter W. Crowther, and J. R. Dunne, a delegate of the Director of Employment Standards. This decision is on the issue of the timeliness of the appeal only.

### OVERVIEW

This is an appeal by Peter W. Crowther ("Crowther"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued January 15, 2001. The Director found that Astro Guard Alarms Vancouver Ltd. ("Astro Guard") contravened Sections 21, 45 and 58(3) of the Act in failing to pay Crowther statutory holiday pay, vacation pay, and had made unauthorized deductions from his wages, and Ordered that Astro Guard pay \$2,988.56 in wages and interest to the Director on Crowther's behalf.

The deadline for filing an appeal of the Determination to the Tribunal was 4:30 p.m. February 7, 2001. Mr. Crowther's appeal was received by the Tribunal at 8:18 am February 9, 2001.

### ISSUE TO BE DECIDED

Whether the Tribunal should exercise its discretion under Section 109(1)(b) of the Act and allow the appeal even though the time period for seeking an appeal has expired.

### ARGUMENT

The delegate issued the Determination on January 15. In his appeal letter dated February 8, Mr. Crowther states that he contacted the delegate on February to "update" his complaint against Astro, and was told that he could appeal the Determination. Mr. Crowther contends that, because the Determination imposes penalties against Astro, he thought the "you can appeal this Determination" box was for Astro. Mr. Crowther admits that he was "negligent" in his interpretation of the Rules.

The Director's delegate does not object to the late appeal. Astro Guard made no submissions.

## ANALYSIS

Section 112 provides that a person served with a determination may appeal the determination by delivering a written request to do so, with reasons for the appeal, to the tribunal office within 15 days of service, if served by registered mail, or 8 days after service, if served personally.

Section 109(1)(b) provides that the Tribunal may extend the time for requesting an appeal even though the time period has expired.

The Tribunal has established a number of criteria for the exercise of discretion extending the time to file an appeal. The party seeking an extension must satisfy the tribunal that:

- (1) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
- (2) there has been a genuine, ongoing bona fide intention to appeal the determination;
- (3) the respondent party as well as the director has been made aware of this intention;
- (4) the respondent party will not be unduly prejudiced by the granting of an extension; and
- (5) there is a strong prima facie case in favour of the appellant.

*(see: Niemisto v. British Columbia (Director of Employment Standards) (BC EST #D099/96) and Pacholak v. British Columbia (Director of Employment Standards) (BC EST #D526/97)*

I am satisfied that Mr. Crowther has demonstrated a bona fide intention to appeal the Determination.

Furthermore, the appeal was filed just over one day late, and the Director has no objection to the late filing.

Given that Astro Guard made no submissions, I infer there would be no prejudice to the Respondent if the extension were allowed.

I note that the text of the notice of appeal rights incorporated into the determination does not comply with the requirements specified in Section 81(1)(d) in that no explanation of the appeal process is provided. Further, the notice provides an incorrect phone number for the Tribunal Office. It appears that the appellant was not provided with a copy of the Information Sheet prepared to explain the appeal process. These deficiencies contribute to my decision to allow the appeal to proceed.

**ORDER**

I allow Mr. Crowther's application for an extension of time to file the appeal.

***C.L. ROBERTS***

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**C.L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**