



An appeal

- by -

Stephen Rayment  
("Rayment" 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.:** 2001/162

**DATE OF DECISION:** May 2, 2001

## DECISION

### OVERVIEW

This is an appeal filed by Stephen Rayment (“Rayment”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on January 26th, 2001 under file number ER#95780 (the “Determination”).

The Director’s delegate determined that Rayment’s former employer, CE Franklin Ltd. (“Franklin”), had just cause to terminate Rayment’s employment and, accordingly, Rayment was not entitled to any compensation for length of service [see section 63(3)(c) of the *Act*].

On February 22nd, 2001, legal counsel for Rayment filed the instant appeal on his behalf alleging, among other things, that the delegate relied on hearsay evidence and inappropriately applied certain legal principles (particularly with respect to the law of fiduciary duties) to determine that Franklin had just cause for dismissal.

I do not intend to address in any fuller fashion the grounds of appeal and supporting factual assertions advanced on behalf of Rayment--which are extensively set out in a lengthy brief appended to the notice of appeal--since my task, as this point, is merely to rule on Rayment’s application, made under section 109(1)(b) of the *Act*, for an extension of the appeal period.

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

### FACTS AND ANALYSIS: TIMELINESS OF THE APPEAL

As previously noted, the Determination was issued on January 26th, 2001. Counsel for Rayment says that “Mr. Rayment received a copy of the decision [Determination] at the end of January, 2001”. It is not clear from the material before me precisely when or how (regular mail, registered mail, fax, personal service?) the Determination was actually served.

The Determination is addressed to Franklin and at the bottom of page 4 there is a notation that the Determination is being copied (“cc”) to Rayment. There is a handwritten postal address noted next to Rayment’s name at the bottom of page 4 of the Determination which would suggest the Determination was delivered by mail. There is no evidence before me indicating, if the Determination was mailed, that it was sent by *registered* mail. If the Determination was not sent by registered mail, the “deemed service” provision [section 122(2)] is inapplicable and thus, in my view, the appeal period would only begin to run, at best, from the date of actual receipt.

Indeed, if the Determination was not served by registered mail, or by personal service, it may well be that the Determination has not been properly served under the *Act*. Inasmuch as sections 112(2) and 122 only refer to service being effected by personal service, registered mail, or, and only if requested by the person being served [section 122(3)], by fax, it is certainly arguable that only those modes of service are permissible. Any other form of service, say, by regular post, would not constitute valid service.

If a determination can be properly served by regular mail (a proposition about which I have some doubts), I am of the view that the appeal period should not be less than the 15-day period that governs service by registered mail, dating from the date of *actual receipt* by the addressee (since there is no “deemed service” provision in the *Act* relating to regular mail).

I should pause, at this juncture, to note that the delegate did not provide any particulars to the Tribunal regarding service; indeed, the only submission from the delegate is a 2-sentence letter in which the delegate states: “In view of the extenuating circumstances, I have no objection to the appeal being filed out of time”. I am not been advised as to what the “extenuating circumstances” might be.

Assuming Rayment received the Determination on or before January 31st, 2001 by regular post, and assuming regular post is a valid mode of service, the appeal period would have expired on or before February 15th, 2001. A notice set out on the last page of the Determination itself indicates that the appeal deadline is 4:30 P.M. on February 19th, 2001. Rayment’s appeal was filed on February 22nd. Thus, this appeal was possibly not late at all--by reason of lack of valid service--or it is late by either one week (January 31st being the assumed date of actual receipt) or by 3 days (based on the deadline set out in the Determination).

As previously noted, the Director’s delegate does not oppose an extension of the appeal period. Franklin’s legal counsel, in his submission dated March 19th, 2001, frankly concedes that Franklin will not suffer any particular prejudice if an extension is granted.

Having reviewed the merits of the appeal in an admittedly cursory fashion since, after all, these reasons do not address the underlying merits of the appeal, I cannot, at this stage, characterize this appeal as being obviously frivolous.

In light of all the foregoing circumstances, I think it appropriate to extend the appeal period in this matter to February 22nd, 2001.

## **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 February 22nd, 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**