

**EMPLOYMENT STANDARDS TRIBUNAL**

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

*Employment Standards Act*, R.S.B.C. 1996, c. 113

-by-

Gordon Blair MacLeod

(“MacLeod”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 99/162

**DATE OF DECISION:** May 31st, 1999

## DECISION

### OVERVIEW

This is an appeal brought by Gordon Blair MacLeod (“MacLeod”) 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 January 14th, 1999 under file number 041-360 (the “Determination”).

The Director’s delegate determined that Raintree Kitchens Ltd. and Pettirsch Furniture Manufacturing Ltd. (the “employer”) jointly and separately owed MacLeod \$1,455.28 on account of unpaid wages and interest. The Determination was appealed by the employer on February 8th, 1999; an oral hearing was held on April 21st, 1999 and a decision was rendered on May 25th, 1999 confirming the Determination (see B.C.E.S.T. Decision No. 212/99).

### ISSUE TO BE DECIDED

MacLeod’s appeal of the Determination was filed on March 18th, 1999. MacLeod claims that he was not awarded all of the unpaid wages to which he was entitled. MacLeod’s appeal was filed after the statutory appeal period [see section 112] had expired. MacLeod now seeks an extension of the appeal period pursuant to section 109(1)(b) of the *Act*.

### FACTS AND ANALYSIS

The Determination was sent, by certified mail, to MacLeod’s residential address on January 14th, 1999--this mailing was returned to the delegate on February 2nd, 1999 as “unclaimed”. MacLeod says he never received notification of delivery but even in the unlikely event that is so, the Determination was re-mailed to him by regular post on February 15th and was, according to MacLeod, received by him on February 23rd. Further, notice of the employer’s appeal of the Determination was mailed to MacLeod by the Tribunal on February 11th and also apparently received on the 23rd. I find it odd that it would have taken nearly two weeks for an envelope to travel from Vancouver to Langley. Nevertheless, by no later than February 23rd, MacLeod was well aware that a determination had been issued.

Under the “deemed service” provisions of the *Act* [section 122(2)], the appeal period expired on January 22nd, 1999. At the very latest, assuming MacLeod never received any notification about the Determination until February 23rd, the appeal period expired on March 10th, 1999. As noted above, MacLeod’s appeal was not filed until March 18th, 1999.

By his own admission, MacLeod was advised by a Tribunal staff member on March 2nd, 1999 to file his own appeal “as soon as possible”. While MacLeod was called out of town on March 3rd to attend to his gravely ill father and the subsequent funeral arrangements, he returned to Vancouver on March 11th but still did not file his appeal until one more week had elapsed. I also note that MacLeod had--taking his position that he did not receive the Determination until February 23rd, 1999 at face value--from February 23rd until March 2nd (*i.e.*, one full week) to file an appeal but did not do so.

The Determination itself clearly states that an appeal to the Tribunal was to be filed by no later than February 8th, 1999 and thus MacLeod must have known that there was a great urgency to the matter. Yet, inexplicably, he proceeded in what I consider to be a very dilatory fashion. This is not the first time MacLeod proceeded with a seemingly cavalier disregard for time limits. The record before me shows that MacLeod repeatedly ignored the delegate’s requests for information and documentation made during the course of her investigation. I note that the Tribunal Registrar’s initial letter to MacLeod, dated February 9th, 1999 (and supposedly received on February 23rd), asked for a written reply to the employer’s appeal by no later than March 2nd, 1999--a request that was ignored by MacLeod.

In light of all the foregoing, I am not persuaded that MacLeod ought to be given the dispensation he seeks.

## **ORDER**

The application for an extension of the appeal period is refused.

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**