

**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 -

Nagwa Ziada  
("Ziada")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** C. L. Roberts

**FILE No.:** 2000/491

**DATE OF DECISION:** September 8, 2000

## DECISION

This is a decision based on written submissions by Nagwa Ziada (“Ziada”), Gary and Charlene Luedke (“Luedke”) and Sharon Charboneau for the Director of Employment Standards (the “Director”).

This decision is on the question of whether the Tribunal should extend the time for Ziada to file her appeal.

## OVERVIEW

Ziada filed a complaint with the Director alleging that the Luedkes owed her overtime wages and compensation for length of service. The Director’s delegate investigated Ziada’s complaint, and on June 13, 2000, issued a determination finding that, although the Luedkes had contravened section 28 of the *Employment Standards Act* (“the *Act*”) in failing to keep daily records of the hours Ziada worked, she was unable to conclude that Ziada was owed either overtime wages or compensation for length of service.

Ziada appealed the Determination on July 6, 2000. On July 18, the Tribunal advised her that she needed to provide the Tribunal with “complete appeal documents including late reasons”. Although further information was received by the Tribunal on July 13, the documents were of poor quality and unreadable. Ziada was asked to resubmit those documents.

The Director contends that there is no apparent compelling reason why the appellant could not have filed the appeal prior to the appeal deadline, and opposes the application.

## 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.

## FACTS

As noted, the Determination was issued June 13, 2000. The Determination indicated that the appeal deadline was 4:30 p.m. July 6, 2000.

The fact is that Ziada’s appeal was received by the Tribunal at 4:17, July 6, 2000 as indicated by the date stamp on the appeal letter. The appeal was faxed to the Tribunal by the Burnaby office of the Employment Standards Branch that day.

Although the appeal was not “perfected” since it did not include a copy of the Determination and Reasons schedule with the appeal form, I find that Ziada intended to appeal the Determination, and did so, by the appeal deadline.

Section 112 of the *Act* 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.

In my view, Ziada complied with the *Act*. Her letter contains the date of the Determination, the name of the delegate, and sets out, in eight paragraphs, the reasons why she felt the Determination was wrong. While certain additional documents were required by the Tribunal to process the appeal, the fact that those documents do not accompany the written request does not nullify the appeal. Nor, in my view, ought the appeal to be considered received only upon receipt of those documents.

I expect that the Tribunal erred in concluding that the appeal was not filed in time. However, if it was not in error, I find that this is an appropriate case for the Tribunal to exercise its discretion and allow the filing of the appeal.

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