

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-

Mei Yuan Wu

(“Wu”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 1999/529

DATE OF DECISION: October 6th, 1999

DECISION

OVERVIEW

In a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 10th, 1999 under file number ER076-436, the appellant Mei Yuan Wu (“Wu”) was awarded the sum of \$582.65 on account of unpaid weekly overtime pay and interest against her former employer, D & T Taiwanese Restaurant Ltd. By way of that same Determination, her claim for compensation for length of service (see section 63) was dismissed. I shall refer to this latter Determination as the “Corporate Determination”.

By way of another Determination, also issued on March 10th, 1999 under file number ER076-436, Wei Yung Lee (“Lee”) was ordered to pay Wu, pursuant to section 96 of the *Act*, \$582.65 by reason of Lee’s status as an officer and/or director of D & T Taiwanese Restaurant Ltd. when Wu’s unpaid wage claim crystallized. I shall refer to this latter Determination as the “Section 96 Determination”.

Wu has appealed both the Corporate and the Section 96 Determinations pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). The appeal now before me concerns the latter Section 96 Determination.

TIMELINESS OF THE APPEAL

The Section 96 Determination contains, at the bottom of page 2, a notice stating, in part, that an appeal of the Determination may be filed with the Tribunal and that such an “appeal must be delivered to the Tribunal by April 6, 1999”. Further particulars regarding the appeal process were also set out in the notice.

This appeal was not filed with the Tribunal until August 30th, 1999, nearly five months after the statutory appeal period expired [see section 112(2) of the *Act*]. Accordingly, Wu now seeks, pursuant to section 109(1)(b) of the *Act*, an extension of the appeal period.

These reasons for decision address only this latter application.

FINDINGS AND ANALYSIS

According to the information appended to Wu’s appeal notice, her appeal was late because “I was in Taiwan when the application period terminated” and “I didn’t receive the notice because change of address” [sic]. The relevant facts and circumstances relating to this request for an extension of the appeal period are essentially identical to those set out in my decision in EST File No.

1999/528 (BCEST Decision No. 380/99, issued concurrently) which latter file relates to an application for an extension of the time to file an appeal from the “Corporate Determination”.

The Acting Chair of the Tribunal wrote to Lee on August 30th, 1999 requesting his written submission, to be received by September 20th, with respect to the timeliness of Wu’s appeal, however, Lee has not filed any submission whatsoever. I infer from this inaction on his part that he does not object to an extension of the appeal period. The Director does, however, object to an extension on the ground that the appellant ought to have been more diligent in keeping the delegate informed as to her whereabouts.

For the reasons set out in my decision in EST File No. 1999/528 (BC EST D#380/99), I am of the view that Wu’s application for an extension of the appeal period ought to be allowed.

ORDER

Pursuant to section 109(1)(b) of the *Act*, I order that the appeal period in this matter be extended to August 30th, 1999. Thus, this appeal is properly before the Tribunal and, in due course, the merits of the appeal will be adjudicated following an oral hearing, or alternatively, based solely on the parties’ written submissions.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal