

**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 -

Murray Proudfoot  
a Director or Officer of Hamerlock Couplings Inc.  
and Hamerlock Coupler U.S.A.  
("Proudfoot")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 1999/522

**DATE OF DECISION:** November 8, 1999

## DECISION

### OVERVIEW

This is an appeal by Murray Proudfoot (“Proudfoot”), a Director or Officer of Hamerlock Couplings Inc. and Hamerlock Coupler U.S.A. under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated July 30, 1999 issued by a delegate of the Director of Employment Standards (the “Director”). Proudfoot alleges that the delegate of the Director erred in the Determination by concluding that he was a Director or Officer of Hamerlock Couplings Inc. and Hamerlock Coupler U.S.A. and therefore was personally liable for the amount of \$5,000.00 in wages to Raymond Prevost (“Prevost”).

The Determination sets out that any appeal of the Determination must be delivered to the Tribunal by August 23, 1999. The appeal by Proudfoot was faxed to the Tribunal on August 24, 1999.

### ISSUE

The issue to be decided in this appeal is whether the appeal by Proudfoot was delivered to the Tribunal within the timelimits set for such delivery.

### FACTS

The Determination was mailed to all of the Directors listed in the Company search of the Registrar of Companies.

Proudfoot picked up his copy of the Determination on August 21, 1999.

The Determination is dated July 30, 1999 and clearly sets out that any appeal must be delivered to the Tribunal by August 23, 1999.

Proudfoot sent his appeal via fax to the Tribunal on August 24, 1999.

### ANALYSIS

The timelimits for the filing of an appeal with the Tribunal are found in Section 112 and provides:

*Section 112, Right to appeal director's determination*

*(1) Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.*

*(2) The request must be delivered within*

*(a) 15 days after the date of service, if the person was served by registered mail, and*

*(b) 8 days after the date of service, if the person was personally served or served under section 122 (3).*

*(3) The filing of a determination under section 91 does not prevent the determination being appealed.*

*(4) This section does not apply to a determination made under section 119.*

The evidence is that the appeal by Proudfoot was received by the Tribunal outside of the timelimits set forth in Section 112 *supra*.

The powers of the Tribunal to exercise discretion in regard to timelimits are set forth in Section 109 (1) (b) of the *Act* which provides:

*109.(1) In addition to its powers under section 108 and Part 13, the tribunal may*

*.....*

*(b) extend the time period for requesting an appeal even though the period has expired,*

The discretion of the Tribunal to extend the timelimits for accepting an appeal should, in my view, be exercised only where extenuating circumstances beyond the control of the appellant prevented the appellant from meeting the timelimits set out in the Determination.

The evidence is that Proudfoot's reason for not filing the appeal on time is stated in the appeal as "I would also like to apologize for being late in this appeal...I have been out of town and just picked up my registered mail on Saturday... Aug 21st /99."

I am not convinced that Proudfoot's being out of town until August 21, 1999 constitutes extenuating circumstances for not being able to meet the timelimits set forth. I therefore decline to exercise the Tribunal's discretion pursuant to Section 109 (1) (b) with respect to the timelimits for filing an appeal.

In reviewing the file, I note that the corporate Determination issued on January 20, 1999 indicates a copy sent to Proudfoot. Proudfoot would have or ought to have been aware shortly after that time that he was considered to be a Director or Officer of Hamerlock

Couplings Inc. and Hamerlock Coupler U.S.A. Proudfoot would have had ample opportunity to contact the Employment Standards Branch to correct any inaccuracies prior to the July 30th issuing of the Directors Determination. Proudfoot was aware that there was a corporate Determination which identified him as a Director or Officer yet he apparently felt comfortable in leaving town without having cleared up what he now claims to be an error.

For all of the above reasons I conclude that the appeal by Proudfoot was not received by the Tribunal within the timelimits set forth and the appeal will not be considered.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 30, 1999 be confirmed in the amount of **\$5,000.00** together with whatever interest has accrued pursuant to the provisions of Section 88 of the *Act*.

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**