

**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 -

Paragon Custom Developments Ltd.  
("Paragon")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** James Wolfgang

**FILE NO.:** 1999/515

**DATE OF DECISION:** October 21, 1999

**DECISION**

**OVERVIEW**

This is an appeal by Paragon Developments Ltd. (Paragon) pursuant to Section 112 of the *Employment Standards Act (the "Act")* from a Determination dated June 22, 1999. The Determination found Paragon had contravened Part 3, Section 18(2) and Part 4, Section 40(1) of the *Act*. Paragon was ordered to pay James Cameron (Cameron) \$2,070.80. A penalty of \$0.00 was imposed.

Paragon claim Cameron did not follow the proper procedure in submitting his time sheets and had been paid in full for all time properly claimed.

Paragon submitted an appeal dated August 3, 1999, which was received by the Tribunal August 20, 1999.

**ISSUE TO BE DECIDED**

The issue here is whether the Tribunal should extend the time period for requesting an appeal.

**FACTS**

A Determination was issued June 22, 1999 ordering Paragon to pay Cameron wages in the amount of \$2,070.80.

Paragon filed an undated letter of appeal claiming they had tried to reach the delegate of the Director "regarding this matter but have never heard back from him". The Tribunal received the letter on August 20, 1999, well outside the time limits set out in Section 112 (2) of the *Act*. Attached was an appeal form dated August 3, 1999 which was also date stamped by the Tribunal on August 20, 1999.

Section 112 (2) states:

- (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).

The delegate supplied copies of Canada Post Corporation Acknowledgement of Receipt cards indicating receipt of the Determination issued June 22, 1999. The cards show the company offices received the Determination June 26, 1999 and the registered and record office received their copy on June 24, 1999.

There was no request for an extension of time under Section 109 (1) (b) of the *Act* or other explanation for the delay.

### **ANALYSIS**

It is not a requirement of the *Act* to contact the delegate before filing an appeal. The procedure for filing an appeal is provided at the time the Determination is delivered, as are the time limits for filing an appeal. The *Act* is specific that the appeal must be delivered to the Tribunal within the time limits.

The rules under which an extension of time may be granted were set out in Niemisto (BC EST No. D 099/96. The appellant must prove that: (1) there is a reasonable and credible explanation for the failure to file within the time period; (2) there has been a genuine and on-going bona fide intention to appeal the determination; (3) the respondent party and the director have been made aware of that intention; (4) the respondent party will not be unduly prejudiced by the granting of an extension; (5) there is a strong *prima facie* case in favour of the appellant.

The appellant has failed to meet any of the criteria set out above therefore the appeal is dismissed.

### **ORDER**

In accordance with Section 115 of the *Act* I confirm the Determination dated June 22, 1999. Additional interest is to be calculated in accordance with Section 88 of the *Act*.

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**James Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**