



An appeal

- by -

Akbar Ali operating as Farrah's Creations  
(“Ali”)

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2001/571

**DATE OF DECISION:** September 27, 2001

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Akbar Ali operating Farrah’s fashions (“Ali”) of a Determination which was issued on July 6, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Ali had contravened Section 46 of the *Employment Standards Regulation* (the “*Regulation*”) by failing to comply with a Demand for Records issued under Section 85(1)(f) of the *Act* and, under Section 28(b) of the *Regulation*, imposed a penalty in the amount of \$500.00

The appeal was filed late and a preliminary matter has arisen concerning whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* to extend the time period for requesting the appeal. This decision deals with the preliminary objection. The Tribunal has decided this matter can be decided on the written submissions of the parties.

### ISSUE

The issue being considered in this decision is whether the Tribunal should extend the time period in subsection 112(2) of the *Act* for requesting an appeal of the Determination. If the time period is not extended, the appeal will be dismissed. If the appeal is accepted, the substantive issue that will be considered is whether the penalty imposed by the Director was appropriate.

### FACTS

The Determination was issued on July 6, 2001. The deadline for filing an appeal on the Determination was July 30, 2001. The appeal was received by the Tribunal on August 7, 2001. The appeal form is dated July 30, 2001.

On August 7, 2001, the Tribunal requested Ali to provide reasons why the appeal was late. Ali’s reply to the Tribunal was received on August 14, 2001. In that reply, he stated that he had always intended to appeal, but had been busy running his business. He claims he attempted to personally deliver the appeal form at the Tribunal office on the evening of the 29<sup>th</sup> of July, but could not find a drop box available, so he sent it regular mail.

### ARGUMENT AND ANALYSIS

The Tribunal has consistently held that it will not grant extensions under Section 109(1)(b) of the *Act* as a matter of course and will exercise its discretionary powers only where there were compelling reasons to do so (see, for example, *Re Metty M. Tang*, BC EST #D211/96). In

deciding whether “compelling” reasons exist in a particular request for an extension, the Tribunal’s decision in *Re Niemisto*, BC EST #D99/96, stated the following:

Certain common principles have been established by various courts and tribunals governing when, and under what circumstances, appeal periods should be extended. Taking into account the various decisions from both courts and tribunals with respect to this question, I am of the view that appellants seeking time extensions for requesting an appeal from a Determination issued under the Act should satisfy the Tribunal that:

- i. there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
- ii. there has been a genuine and on-going bona fide intention to appeal the Determination;
- iii. the respondent party (i.e., the employer or employee), as well the Director, must have been made aware of this intention;
- iv. the respondent party will not be unduly prejudiced by the granting of an extension; and
- v. there is a strong prima facie case in favour of the appellant<sup>1</sup>.

The above criteria are not intended to constitute an exhaustive list. Adjudicators may find that in particular cases, certain other, perhaps unique factors ought to be considered.

I am not convinced this is an appropriate case to exercise my discretion in favour of extending the time for requesting an appeal. Notwithstanding Ali’s assertions of a continuing intention to file an appeal and his claim of an attempt at personal service, there is no objective support for either of these matters.

The appeal itself is very brief, barely satisfying the requirements of the Tribunal appeal rules. It could not have taken more than a few minutes to prepare. Based on what the appeal form contains, to suggest he was so busy he could not have filled out and delivered the appeal form in the time provided in the *Act* and shown on the Determination is not reasonable. The fact that Ali claims he attempted to deliver the appeal form to the Tribunal on the 29<sup>th</sup> of July, indicates, at least, his awareness of the requirement to file the appeal by the date shown in the Determination. If he had made the failed attempt as he said, and being aware of the deadline for filing the appeal, it should have been a simple thing to have notified the Tribunal by telephone of the failed attempt at delivery and to have advised them the appeal was being delivered by regular mail. He did not. As well, the fact the appeal form is dated July 30/01 suggests Ali may not have attempted any delivery on July 29, as he has indicated. Nor is there any suggestion in Ali’s submission that the Director was ever advised of his intention to file an appeal.

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<sup>1</sup> See also the comments in *Re Berg*, BC EST #D212/97 in respect of this factor.

Finally, and most compelling, on its face, there is little, if any, merit to the appeal. In the appeal, Ali contends that he complied with the Demand for Records, but that is clearly not so.

I conclude that the appeal has not been requested within the time limits in the *Act*, that no good reason to extend the time limited for appeal has been provided and, pursuant to Section 114(1)(a) of the *Act*, the appeal is dismissed.

### **ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated April 11, 2001 be confirmed.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**