

**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 -

Joyce Crummer  
("Crummer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No:** 1999/584

**DATE OF DECISION:** December 20, 1999

## DECISION

### OVERVIEW

This is an appeal filed by Joyce Crummer (“Crummer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) with respect to a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on September 1st, 1999 under file number ER 093-346 (the “Determination”).

The Director’s delegate, apparently relying on Crummer’s own hours of work records, determined that her former employer, Daily Race Form of Canada Ltd., had fully satisfied its obligations to Crummer under the *Act* and thus dismissed her complaint. Crummer appeals this finding alleging, *inter alia*, that the delegate failed to correctly calculate her wage entitlement under the *Act*.

### ISSUE TO BE DECIDED

Crummer’s appeal was date-stamped by the Tribunal as having been filed on September 27th, 1999 at 8:34 A.M. notwithstanding that the appeal period noted in the Determination itself expired on September 24th, 1999. According to Crummer, she received the Determination on September 7th (I assume by mail, but this is not clear) and thus her appeal period actually expired on September 22nd [see section 112(2)(a) of the *Act*] although, Crummer (not unreasonably in my view) relied on the notice set out in the Determination itself which fixed the expiration date of the appeal period as September 24th.

Given that September 25th and 26th spanned a weekend, in effect, this appeal was filed one day after the appeal period set out in the Determination expired [see section 25(3) of the *Interpretation Act*]. Crummer now seeks an extension of the appeal period in accordance with the provisions of section 109(1)(b) of the *Act*.

These Reasons for Decision address only the application for an extension of the appeal period.

### FACTS AND ANALYSIS

The notice of appeal filed on September 27th did not include the “Reasons for Appeal” [box C on the form] nor were any supporting documents [box D on the form] attached. According to the information contained in the Tribunal’s master file, Crummer was contacted, by telephone, by a member of the Tribunal’s staff and asked to submit her “reasons for appeal” by no later than 10 A.M. on September 28th.

On September 28th Crummer faxed a letter to the Tribunal (date stamped September 28 at 9:56 A.M.) which sets out the “reasons for appeal” the main reason being that her entitlement under the *Act* was not properly calculated. Crummer indicated that she was not able to file supporting documents at that time because most of her documents were still in the possession of the delegate.

Crummer maintains that, in fact, she filed her appeal with the Tribunal on September 24th and, indeed, at the top of her notice of appeal is a fax record indicating that the document was transmitted from the "Racing Office" on September 24th, 1999 at 15:23 (*i.e.*, 3:23 P.M.). I suppose it is possible that Crummer's appeal was filed on the 24th (by fax) but not processed (and date/time - stamped) until the following business day, namely, the 27th.

Further, although the Director opposes any extension of the appeal period the employer has not, despite being specifically requested to do so, filed any material vis-à-vis the extension request. While the appeal is far from certain to succeed, I cannot conclude, based on the material before me, that it wholly lacks merit.

**ORDER**

In these circumstances, I think it appropriate to extend the appeal period to September 28th, 1999. Accordingly, the within appeal is properly before the Tribunal and may now be adjudicated on the merits.

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**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**