

**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 -

William Trainer, Director/Officer of Trainer Bros. Equipment Ltd.  
("Trainer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**A**DJUDICATOR: David Stevenson

**F**ILE N<sub>O.</sub>: 98/692

**D**ATE OF **D**ECISION: December 8, 1998

**DECISION**

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") by William Trainer, Director/Officer of Trainer Bros. Equipment Ltd. ("Trainer") of a Determination which was issued on September 2, 1998 by a delegate of the Director of Employment Standards (the "Director").

The appeal seeks a review of part of an earlier Determination against the company of which Trainer was a Director/Officer and in respect of which there was no appeal.

**ISSUE TO BE DECIDED**

The issue is whether the Tribunal should extend the time limit for requesting an appeal in the circumstances of this case.

**FACTS**

The facts are as follows:

1. The Determination was issued on September 2, 1998 and service of the Determination in accordance with the *Act* was accomplished on September 22, 1998.
2. The appeal was delivered to the office of the Tribunal on November 3, 1998.
3. In the appeal, Trainer says:

I am late in filing this appeal as my copy of the determination was not delivered to my new address until approximately October 1, 1998.

**ANALYSIS**

The *Act* allows any person served with a Determination to appeal that Determination by delivering a written request to the office of the Tribunal. Subsection 112(2) sets out the time limits within which such a request must be delivered to the office of the Tribunal:

112. (2) *The request must be delivered within*
- (a) *15 days after the date of service, if the process 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).*

In this case, the request for appeal was not delivered to the office of the Tribunal until November 3, 1998, 42 days after service in accordance with the *Act* and 33 days after Trainer says he received it at his new address.

The Tribunal has the discretion, under section 109(1)(b), to extend the time limited for requesting an appeal, but has indicated in a number of decisions that the circumstances in which its discretion will be exercised will be rare and must at least indicate that the person has otherwise pursued their request for appeal with reasonable diligence. There is an obligation to exercise reasonable diligence in pursuing an appeal and the failure to meet this obligation mitigates against any extension of time limits.

In the circumstances of this case, the only reason given by Trainer for failing to file his request for appeal in a timely manner indicates he has not been diligent in pursuing this appeal. In the absence of any other reason for the Tribunal to exercise its discretion in his favour, the appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated September 2, 1998 be confirmed.

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**David Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**