

**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 -

Neil Ware  
a Director or Officer of Pacific Rim Wireworks Ltd.  
("Ware")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE No:** 1999/624

**DATE OF DECISION:** December 23, 1999

## DECISION

### OVERVIEW

Neil Ware, a Director or Officer of Pacific Rim Wireworks Ltd. (“Ware” or “the Appellant”) appeals a Determination by a delegate of the Director of Employment Standards dated June 18, 1999. The appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”).

The appeal was received after the time limit for filing an appeal of the Determination had passed. On receiving the appeal, the Tribunal indicated that it would consider exercising its discretion to allow the appeal even though it is out of time. Ware was invited to make written submissions in that regard.

### ISSUE TO BE DECIDED

My task in this case is to decide whether the Tribunal should exercise its discretionary power to extend the time limit for appealing the Determination.

### FACTS

The Determination advised Ware that, should he wish to appeal the Determination, “the appeal must be delivered by July 9, 1999”. The appeal was received by the Tribunal on the 28<sup>th</sup> of October, 1999.

On the 30<sup>th</sup> of September, Comox Valley Bailiffs served Ware with a Writ of Seizure and Sale which has been issued by the Supreme Court of British Columbia (the “Writ”) in the amount of \$2,982.48, the amount of the Determination. The Writ is stamped September 9, 1999.

According to Ware, it was not until the 30<sup>th</sup> of September that he was served with the Determination. In fact, the Determination was sent to what is still Ware’s current address by registered mail on June 23, 1999. It is just that Canada Post was unable to deliver that registered mail. And Ware did not claim his registered mail.

### ANALYSIS

Section 112 of the *Act* is as follows:

- 112** (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.

(my emphasis)

Section 109 (1)(b) of the *Act* provides the Tribunal with the power to extend the time limit for requesting an appeal.

**109** (1) In addition to its powers under section 108 and Part 13, the tribunal may do one or more of the following:

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

...

As noted in *SSC Industries Ltd., Christopher R. Prince and Ronald W.A. Busch*, (1996), BCEST No. 087/96,

The purpose for placing time limits and procedural requirements in the appeal process is twofold: First, it meets the statutory purpose of ensuring a fair and expeditious determination of disputes arising under the *Act*; second, it ensures a closure on the matters in dispute, preventing “open-ended” claims and responses which would ultimately result in an unmanageable review process.

In considering whether to exercise or not exercise the discretion to extend the time period for filing this particular appeal, I adopt the approach taken in a leading decision of the Tribunal, namely, *Liisa Tia Anneli Niemisto*, (1996) BCEST No. 099/96. The *Niemisto* decision recognises that:

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 as 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.

I am not persuaded that I should in this case allow the appeal. Ware was served with the Determination. It is just that Ware failed to pick up his registered mail. And for that, Ware has not provided any reasonable, credible explanation.

Under the *Act*, a Determination is to be considered served if sent by registered mail to the last known address.

**122 (1) A determination or demand that is required to be served on a person under this Act is deemed to have been served if**

(a) served on the person, or

(b) sent by registered mail to the person's last known address.

(2) If service is by registered mail, the determination or demand is deemed to be served 8 days after the determination or demand is deposited in a Canada Post Office.

(3) At the request of a person on whom a determination or demand is required to be served the determination or demand may be transmitted to the person electronically or by fax machine.

4) A determination or demand transmitted under subsection (3) is deemed to have been served when the director receives an acknowledgement of the transmission from the person served.

The Determination was sent to Ware's last known address, indeed, it was sent to what is still his current address.

There is not a compelling reason to grant an extension in this case. The appeal is dismissed.

**ORDER**

The request for an extension of the time for filing the appeal is denied. The appeal of the Determination dated June 18, 1999 is dismissed pursuant to section 114 of the *Act*.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**