

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act S.B.C. 1995, C.38

- by -

Ronald Clifford Pistell
("Pistell")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 95/057

DATE OF DECISION: February 29, 1996

DECISION

OVERVIEW

This is an appeal by Ronald Clifford Pistell (“Pistell”), pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against the Determination (# CDET 000564) issued by the Director of Employment Standards (The “Director”) on December 21, 1995. In this appeal, Pistell seeks to have the Determination canceled, thereby allowing him to reactivate a complaint against his former employer, Victoria Taxi (1987) Ltd. (“Victoria Taxi”).

FACTS

Pistell was employed as a taxi driver between September, 1992 and March, 1995. He filed a complaint with the Employment Standards Branch on March 9, 1995, in which he sought severance pay from his former employer, Victoria Taxi.

Determination # CDET 000564 sets out the following facts which are not contested by Pistell:

- On June 22, 1995 Pistell withdrew his complaint dated March 9, 1995 in order to launch a civil (small claims) action for wrongful dismissal.
- Pistell’s action was dismissed by the Court on December 4, 1995.
- Pistell submitted another complaint to the Employment Standard’s Branch on December 4, 1995 in which he sought to “reactivate” his original complaint.

ISSUE TO BE DECIDED

Was the Determination made by the Director’s delegate a proper exercise of the powers granted to the Director under Section 74 of the *Act*?

ARGUMENTS

In the Reason Schedule attached to the Determination the following explanation is offered for rejecting Pistell’s complaint:

Section 74(3) of the *Act* requires an employee to launch a complaint within six months after the last day of employment. Pistell’s last day of employment was March 8, 1995. His complaint was dated December 4, 1995 and exceeds the six-month time limit imposed by Section 74(3) of (the *Act*). Section 76(2)(a) of the *Act* allows the Director to refuse to investigate a complaint which is not made within the time limits set out in Section 74. On that basis, Pistell’s complaint was not investigated.

Pistell's argument in support of having his complaint investigated are set out in his complaint dated December 4, 1995 and in his Appeal dated December 28, 1995. The essence of his argument is that he withdrew his original complaint because he believed he would get a decision faster by launching a civil action in Small Claims Court than by pursuing his complaint under the *Act*. He also argues that he acted on advice of the industrial relations officer to whom his original complaint was assigned for investigation. Finally, Pistell argues that as an ordinary citizen he could not be expected to know that the *Act* "...has no standing in provincial court."

ANALYSIS

Section 76(2) of the *Act* states:

The director may refuse to investigate a complaint or may stop or postpone investigating a complaint if

- (a) the complaint is not made within the time limit in section 74 (3) or (4),*
- (b) this Act does not apply to the complaint,*
- (c) the complaint is frivolous, vexatious or trivial or is not made in good faith,*
- (d) there is not enough evidence to prove the complaint,*
- (e) a proceeding relating to the subject matter of the complaint has been commenced before a court, tribunal, arbitrator or mediator,*
- (f) a court, tribunal or arbitrator has made a decision or award relating to the subject matter of the complaint, or*
- (g) the dispute that caused the complaint is resolved.*

Clearly, Section 76(2)(a) allows the Director to refuse, stop or postpone investigation of a complaint which is not made within the six-month time limit set out in Section 74(3). It is also clear that Section 76(2)(e) allows the Director to refuse, stop or postpone an investigation if legal action on the same matter is commenced in court.

The same kind of requirements and powers have existed for many years under earlier employment standards legislation. There is a very good reason for giving the Director the power to refuse, stop or postpone investigation of a complaint. The reason is to prevent the same issue or complaint from being "prosecuted" under two different legal processes. This *Act* establishes minimum standards of compensation and conditions of employment for employees. It also provides fair and efficient procedures for resolving disputes related to the *Act*. A person who chooses to take legal action outside of the processes established under this *Act* should not be permitted to take action under this *Act* when the other legal action has given an unsatisfactory result.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination # CDET 00564 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

February 29, 1996

Date

GC:nc