

An appeal

- by -

Yvonne Padmore  
("Padmore" or "Employee")

- 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:** Paul E. Love

**FILE No.:** 2003A/311

**DATE OF DECISION:** March 3, 2004

## DECISION

### SUBMISSIONS

Dennis Watson

on behalf of Yvonne Padmore

Ken Elchuk

on behalf of the Director of Employment Standards

### OVERVIEW

This is an appeal by an employee, Yvonne Padmore (“Padmore” or “Employee”), from a Determination dated October 29, 2003 (the “Determination”) issued by a Delegate of the Director of Employment Standards (“Delegate”), pursuant to the *Employment Standards Act, R.S.B.C. 1996, c. 113* (the “Act”). Padmore was dismissed from her employment with the Hudson’s Bay Company on October 8, 2002. She claims that she filed a complaint with the Branch on April 17, 2003. The Employment Standards Branch (“Branch”) acknowledges receipt of her claim filed on May 16, 2003.

The Delegate issued a Determination finding that Padmore failed to file her complaint with the Branch within six months after the last day of employment, and therefore ceased the Director’s investigation of her complaint. Padmore appeals from that Determination, and submits that the Tribunal has jurisdiction to relieve against the time limits pursuant to natural justice, and section 109(1)(a) of the Act.

I dismissed the appeal and confirmed the Determination. Compliance with the six month time period for filing of a complaint with the Branch is mandatory. The Tribunal has no jurisdiction to relieve against the consequences of the failure to file a complaint within six months of the date of termination. It was unnecessary for me to determine the date of receipt of Padmore’s complaint by the Branch, as it was clear on either date, the employee could not demonstrate that she complied with the time limit set out in section 74(3).

### ISSUE:

Did the Employee identify any error in the interpretation or application of the six month limit for filing a complaint set out in section 74(3) of the *Act*?

### FACTS

The Tribunal determined that this case did not require an oral hearing. I decided this case after considering the notice of appeal filed by the Employee, the written submissions of the Delegate and the record provided by the Delegate. The Employer did not file a written submission.

Yvonne Padmore was hired by the Hudson’s Bay Company on June 2, 1986. She worked until October 5, 2002 and her employment was terminated on October 8, 2002. The Employer alleged dishonest conduct by Padmore, and Padmore disputes the Employer’s allegations. Padmore filed a complaint with the Employment Standards Branch alleging that she was terminated without just cause, and was entitled to compensation for length of service. Padmore claims that she filed her complaint on or about April 17,

2003. The Branch does not acknowledge receiving a complaint filed on that date. Padmore subsequently filed a complaint on May 16, 2003. The Delegate determined that the complaint was not filed within six months of the last date of work, and ceased investigating the matter.

### **Employee's Argument:**

The employee's representative argues that the Director erred in law and failed to observe the principles of natural justice. Padmore seeks relief from the six month time limit under section 76(3) so that the Director can hear her case. Padmore argues that the Delegate cannot prove that the employee's application was filed past the six month time limit, as the Branch lost Padmore's initial application. Padmore argues that she is completely innocent of the charges filed by the Employer. The employee's representative submits that the Tribunal has the authority to extend the time limits in the "spirit of natural justice". Padmore relies on *Wei, BC EST #D585/01*, and *Wright, BC EST #D422/01*. The employee's representative argues that the Tribunal has the power to extend time limits under section 109(1) of the *Act*, and should extend the time limits for the Delegate to hear Padmore's case.

### **Delegate's Argument:**

The Delegate indicates that the Employee admitting to being terminated on October 7, 2002. The Employer's evidence was that Padmore was terminated on October 8, 2002. The Delegate says that regardless of whether the employee filed a complaint on April 17, 2003 as she claimed, or on the later date a complaint was received by the Branch, the complaint was not filed within six months of the date of termination as required by section 74(3) of the *Act*. The Delegate relies on *Burnham, BC EST #D035/96*, and *Director of Employment Standards (Re Bunger), BCEST #D301/98* for the proposition that the time limits for filing a complaint are mandatory, that there is no jurisdiction to relieve against non-compliance with the time limit, and the Director has no authority to investigate a complaint to which the *Act* does not apply. The Delegate further says that section 109(1) of the *Act* does not empower the Tribunal to modify or extend the filing limits set out in section 74(3).

## **ANALYSIS**

In an appeal of a Determination, the burden rests with the appellant, in this case the Employee, to demonstrate an error such that I should vary or cancel the Determination.

In this appeal, Padmore asks that I extend time for the filing of her complaint with the Branch. The time limit for filing complaints is set out in section 74(3) of the *Act*:

74. (1) An employee, former employee or other person may complain to the director that a person has contravened
  - (a) a requirement of Parts 2 to 8 of this Act, or
  - (b) a requirement of the regulations specified under section 127(2)(1).
- (2) A complaint must be in writing and must be delivered to an office of the Employment Standards Branch
- (3) A complain relating to an employee whose employment has terminated must be delivered under subsection (2) within 6 months after the last day of employment.

It is unnecessary for me to determine whether Padmore filed her complaint initially on April 17, 2003 as she claimed, or on May 16, 2003 which is the date the Branch received her complaint. Padmore acknowledged to the Delegate that her last day of work was October 8, 2003, from which the Delegate concluded that her last date of work was October 8, 2002.

Section 74(3) of the *Act* provides that an employee whose employment is terminated must file a complaint within six months after the last day of employment. On either the date the employee claims she first filed the complaint, or on the date that the branch acknowledges receipt of a complaint, Padmore has not complied with section 74(3) of the *Act*, and her complaint is out of time.

The wording of section 74(3) of the *Act* is mandatory, and there is no discretion in either the Delegate or the Tribunal to relieve against time limits: *Burnham, BC EST #D035/96*, and *Director of Employment Standards (Re Bunger), BCEST #D301/98*. While section 76(3) provides some discretion to refuse to accept, review, mediate, investigate, adjudicate, a complaint, the Delegate only has this discretion with respect to complaints which are filed in time. I note that there are sound policy reasons underlying the limitation period, because the *Act* is intended to provide a fair and efficient procedure for resolving disputes over the application and interpretation of the *Act*.

I have considered Padmore's argument with regard to section 109(1)(b) of the *Act*. Section 109(1)(b) reads as follows:

- 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;

It is apparent that the Tribunal does have a discretion to extend time limits with regard to the hearing of appeals and reconsideration applications. Section 109(1)(b), however, does not cloak an Adjudicator with the power to relieve against the consequences of an Employee's failure to comply with mandatory statutory time limits for the filing of a complaint with the Employment Standards Branch.

## **ORDER**

Pursuant to s. 115 of the *Act* the Determination dated October 29, 2003 is confirmed.

---

**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**