

An appeal

- by -

Darren Imrie
("Imrie")

- 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

TRIBUNAL MEMBER: Kenneth Wm. Thornicroft

FILE No.: 2005A/18

DATE OF DECISION: March 30, 2005

DECISION

SUBMISSIONS

Darren Imrie

on his own behalf

THE APPEAL

This is an appeal filed by Darren Imrie (“Imrie”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). Mr. Imrie appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on January 7th, 2005 on the ground that the delegate “failed to observe the principles of natural justice in making the determination” [section 112(1)(b) of the *Act*].

The delegate summarily dismissed Mr. Imrie’s unpaid wage complaint against his former employer, Cost Less Express Ltd. (“Cost Less”), under section 74(3) of the *Act* as having been filed more than (by one day) “6 months after the last day of employment”. Accordingly, the Director’s delegate never considered the merits of Mr. Imrie’s claim for \$5,000 in unpaid “commissions”.

Mr. Imrie did not request an oral appeal hearing and I am fully satisfied that this appeal can be properly adjudicated based solely on the parties’ written submissions—this latter position was communicated to the parties by the Tribunal’s Vice-Chair in her March 22nd, 2005 letter to them. I have before me the section 112(5) “record” and Mr. Imrie’s appeal form and attached one-page statement further elaborating his ground of appeal. Neither, Cost Less (the respondent employer), nor the delegate filed any submission with the Tribunal regarding this appeal.

THE DETERMINATION

On December 12th, 2004 Mr. Imrie filed a complaint against Cost Less in which he claimed \$5,000 in unpaid “minimum monthly commissions” pursuant to his employment agreement with Cost Less. In his complaint he alleged that he worked for Cost Less as an “account manager” during the period August 4th, 2003 to June 11th, 2004.

Section 76(3)(a) of the *Act* provides, among other things, that the Director may refuse to accept, investigate or adjudicate a complaint if it “is not made within the time limit specified in section 74(3) or (4)”. Section 74(3) states: “A complaint relating to an employee whose employment has terminated must be delivered under subsection (2) within 6 months after the last day of employment”. Section 74(2) states that a complaint must be made in writing and delivered to an Employment Standards Branch office. In order to facilitate the filing of complaints, the Director has prepared a “Complaint and Information Form” and, I understand, will accept complaints that have been delivered by fax or via the internet.

The relevant portions of the delegate’s “Reasons for the Determination” are set out below:

A “month” is defined in the *Interpretations* [sic] *Act* as a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day.

Imrie’s last day of employment was June 11, 2004. The time for filing a complaint started on June 12, 2004. Therefore, Imrie’s complaint had to be filed no later than December 11, 2004. Since

Imrie did not file his complaint until December 12, 2004, the complaint was not made within the time specified in Section 74 of the *Employment Standards Act*.

FINDINGS AND ANALYSIS

As noted above, Mr. Imrie appeals the Determination on natural justice grounds. More particularly, he says that he was, in effect, misled by information about time limits posted on the Director's website and contained in the "self-help kit" the Director requires most complainants to complete. As I conceive Mr. Imrie's ground of appeal, he is essentially arguing a principle that is known in law as "officially induced error".

I find I need not address that latter issue since, in my view, the Determination is patently unreasonable on its face (and therefore issued in contravention of the principles of natural justice) and, additionally, is founded on an error of law.

Mr. Imrie's complaint was apparently filed on December 12th, 2004 and, according to the delegate, it should have been filed by no later than December 11th, 2004. December 11th and 12th, 2004 fell, respectively, on a Saturday and a Sunday. It is my understanding that all Employment Standards Branch offices are closed on weekends. Presumably, Mr. Imrie's complaint was filed by fax or internet—the record before me does not disclose *how* the complaint was filed, only that it was filed on December 12th, 2004.

The delegate turned her mind to the definition of "month" in section 29 of the *Interpretation Act* but failed to turn her mind to section 25(3) of that same legislation:

Calculation of time or age

25. (3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

If the limitation period expired on December 11th, 2004, by reason of section 25(3) of the *Interpretation Act*, that limitation period was extended to Monday, December 13th, 2004. Since Mr. Imrie's complaint was filed on December 12th, 2004, it was not statute-barred by reason of section 74(3) of the *Act*.

ORDER

Pursuant to section 115(1)(a) of the *Act*, I order that the Determination be varied to indicate that Mr. Imrie's complaint was filed within the statutory time limit. Since the delegate did not consider the merits of Mr. Imrie's complaint, pursuant to section 115(1)(b) of the *Act*, I am referring the matter of Mr. Imrie's unpaid wage entitlement, if any, back to the Director for further investigation.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal