

**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 -

Marva Roth  
("Roth")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 96/267

**DATE OF DECISION:** May 13, 1996

**DECISION**

**OVERVIEW**

This is an appeal by Marva Roth (“Roth”) pursuant to Section 112 of the Employment Standards Act (the “*Act*”) against a Determination Letter issued by the Director of Employment Standards (the “Director”) on April 12, 1996. The Director refused to investigate Roth’s complaint as it was filed out of time. In this appeal Roth claims that her complaint should have been investigated by the Director.

**FACTS**

Roth filed a complaint with the Employment Standards Branch (the “Branch”) which was received on February 16, 1996. The complaint form was dated February 13, 1996. In her complaint Roth stated that she commenced employment with Carl Alfred Tuttle (“Tuttle”) on or about January/February 1988 and the last day worked was February 1, 1991. Roth alleged that Tuttle owed her “3 yrs. of wages”.

The Director refused to investigate Roth’s complaint on the basis that it was not made within the time limits stipulated in Section 74 of the *Act* and, subsequently, the Determination Letter was issued.

**ISSUE TO BE DECIDED**

The issue to be decided in this appeal is whether the Director’s refusal to investigate Roth’s complaint was correct.

**ARGUMENTS**

The Director contends that pursuant to the *Act*, Roth’s complaint is out of time. The last day on which a complaint could have been delivered to an office of the Branch by Roth was July 31, 1991. This complaint was not delivered to an office of the Branch until February 16, 1996.

In her appeal Roth states:

I understand that you have only 6mons. to file a complaint against a employer. But due to the circumstances in my case I was unable to do so. I did not no that this business man was corrupt and lied. Therefore I would like to be heard on how a business or a employer can under oath admit I was his housekeeper. And got no pay for my service's or any benefits of any kind. And I wish to be paid for 3 yrs of employment ”.

Roth goes on to state she received no separation slip from Tuttle and the job was stressful and disturbing. Furthermore, she states she is an injured worker and feels Tuttle “used and abused” her in a cruel and inhumane manner. Finally, she wants him and his company investigated.

In her complaint filed with the Branch, Roth states: “This started as a family matter and he (Tuttle) has denied we were in a relationship....I lost everything. Now I want to be paid as ...an employee...”.

## ANALYSIS

Section 74 of the Act states:

### Complaint and time limit

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 complaint relating to an employee whose employment has terminated must be delivered under subsection (2) within 6 months after the last day of employment.**

(4) A complaint that a person has contravened a requirement of section 8, 10, or 11 must be delivered under subsection (2) within 6 months after the date of the contravention.

Section 76 of the Act states:

### Investigation after or without a complaint

76. (1) Subject to subsection (2), the director must investigate a complaint made under section 74.

**(2) 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) the 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.

(3) Without receiving a complaint, the director may conduct an investigation to ensure compliance with this Act.

Roth's last date of employment was February 1, 1991. Roth's complaint form was dated February 13, 1996 and received by the Branch on February 16, 1996. Clearly, her complaint was made outside the six month time limit which is stipulated in the Act.

The language of Section 74 (2) and (3) of the Act is mandatory as it requires that a complaint **must** be delivered within 6 months after the last day of employment. There is no provision to permit the Director to investigate a complaint received after the time limit has expired. Section 72(2) (a) of the Act allows the Director to refuse to investigate a complaint which is not made with the time limits set out in Section 74 of the Act.

For the above reasons, I conclude that the Director was correct in determining that Roth's complaint was not delivered within the time limits as set forth in the Act, and therefore should not be investigated.

**ORDER**

Pursuant to Section 115 of the Act, I order that the Determination Letter issued on April 12, 1996 confirmed.

---

**Norma Edelman**  
***Registrar***  
**Employment Standards Tribunal**

NE:sf