

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 -

Burt Campbell
("Campbell")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/211

DATE OF DECISION: May 13, 1996

DECISION

OVERVIEW

This is an appeal by Burt Campbell (“Campbell”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) against Determination No. CDET# 001439 issued by the Director of Employment Standards (the “Director”) on March 6, 1996. In this appeal Campbell claims that the Director should not have refused to investigate his complaint.

FACTS

Campbell was employed by Protective Holdings Ltd. (“P.H.”) as a caretaker from December 16, 1994 to May 31, 1995. Campbell filed a complaint with the Employment Standards Branch (the “Branch”) against P.H. which was received on January 4, 1996. The complaint form was dated December 22, 1995 and alleged that regular wages and overtime wages were owing by P.H.

The Director refused to investigate Campbell’s complaint on the basis that it was not made within the time limits stipulated in Section 74 of the *Act* and, subsequently, Determination No. CDET# 001439 was issued.

ISSUE TO BE DECIDED

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

ARGUMENTS

Campbell contends that he was not aware that there was a time limit for the filing of a complaint against his former employer.

The Director contends that pursuant to the *Act*, Campbell’s complaint is out of time. The last day on which a complaint could have been delivered to an office of the Branch by Campbell was November 30, 1995. This complaint was not delivered to an office of the Branch until January 4, 1996.

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.

Campbell's last date of employment was May 31, 1995. Campbell's complaint form was dated December 22, 1995 and received by the Branch on January 4, 1996. Clearly, his 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 within 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 Campbell'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 Determination No. CDET 001439 be confirmed

Norma Edelman
Registrar
Employment Standards Tribunal

NE:sf