

**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 -

Jarnail Dhaliwal  
("Dhaliwal")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 96/254

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

**DECISION**

**OVERVIEW**

This is an appeal by Jarnail Dhaliwal (“Dhaliwal”) 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 March 29, 1996. Dhaliwal’s appeal concerns the Director’s refusal to investigate his complaint as it was filed out of time.

**FACTS**

Dhaliwal filed a complaint with the Employment Standards Branch (the “Branch”) which was received on March 8, 1996. The complaint form was dated March 7, 1996. In his complaint Dhaliwal stated that he commenced employment with P. G . Stucco (“P.G.”) on February 25, 1995 and the last day worked was August 20, 1995. Dhaliwal alleged that he was owed wages by P.G.

The Director refused to investigate Dhaliwal’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 Dhaliwal’s complaint was correct.

**ARGUMENTS**

The Director contends that pursuant to the *Act*, Dhaliwal’s complaint is out of time. The last day on which a complaint could have been delivered to an office of the Branch by Dhaliwal was February 19, 1996. This complaint was not delivered to an office of the Branch until March 8, 1996.

In his appeal, Dhaliwal states he was not aware of the time limits under the *Act*.

## 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.*

Dhaliwall's last date of employment was August 20, 1995. Dhaliwall's complaint form was dated March 7, 1996 and received by the Branch on March 8, 1996. Clearly, his complaint was made outside the six month time limit which is stipulated 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 Dhaliwall'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 March 29, 1996 be confirmed.

---

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

:jel