

EMPLOYMENT STANDARDS TRIBUNAL

In the Matter of an Appeal Pursuant to Section 112 of the
Employment Standards Act, R.S.B.C. 1996, c. 113

- by -

William R. Geyer
("Geyer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ian Lawson

FILE NO.: 97/804

DATE OF DECISION: February 19, 1998

DECISION

OVERVIEW

This is an appeal by William R. Geyer ("Geyer") pursuant to s. 112 of the *Act*. The appeal is from a Determination issued by Debbie Roberts, a delegate of the Director of Employment Standards on October 28, 1997. The Determination held that Geyer's complaint regarding overtime pay could not be investigated because it was filed more than 6 months after his employment with Cost Plus Painting and Decorating Inc. ("Cost Plus") had terminated.

Geyer filed an appeal on November 6, 1997. The parties were allowed until December 1, 1997 to file written submissions in response to the appeal. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

FACTS

Geyer was employed by Cost Plus from July 22, 1996 to January 31, 1997, when Geyer says he was laid off. On August 25, 1997 Geyer filed a complaint with the Employment Standards Branch, alleging that Cost Plus had failed to pay him overtime wages during the period of his employment, totalling \$756.00. In his submission, Geyer states that he had expected to be called back to work for the "upcoming season", but he does not specify which season of the year is meant by that phrase. He says that Cost Plus led him to believe that he would be returning to work and that "all outstanding pay would be settled come year end."

Mr. Gilles Cardinal responds for Cost Plus by stating:

There were categorically no promises given to Mr. Geyer when we laid him off in January, 1997. We are a small painting contracting company but our hiring practices are not strictly seasonal. We maintain a core crew and hire new employees if the work load grows. Unfortunately, if contracts decline, we sometimes must let some employees go. There are NEVER [*sic*] promises issued with Separation Slips.

Even assuming Mr. Geyer's line of reasoning is that he hoped to be rehired in the summer, should he not have contacted us by April, May or June at the latest, when most summer work has been contracted out. At that point he would have been well within the six month time limit to complain if he thought he had been mistreated. Not only did he not contact us, but he gave our company as a reference, which I provided to his employer by phone. We assumed he was working.

ISSUE TO BE DECIDED

This appeal requires me to decide whether the Director properly refused to investigate Geyer's complaint because it was filed beyond the statutory limitation period.

ANALYSIS

Section 74 of the *Act* sets out the requirements for filing complaints as follows:

- 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.

The language chosen by the legislature in enacting subsections (3) and (4) of section 74 is mandatory and very clear. Complaints must be received within 6 months after the last day of employment, or within 6 months after the date of certain contraventions of the *Act*. There are no exceptions which might allow someone like Geyer to seek an extension of time, or which might allow late filing of a complaint for any reason.

The reasons advanced by Geyer are therefore of little assistance in deciding whether the Determination appealed from is correct. Unfortunately, if a complaint is filed later than the 6-month periods prescribed, it does not meet the definition of "complaint" under the *Act* and has no status. Similarly, if a person fails to make a complaint in writing, the issue raised is simply not a "complaint" under the *Act*. I must therefore dismiss Geyer's appeal.

ORDER

After carefully considering the evidence and argument, I find that the Determination made by Debbie Roberts on October 28, 1997 is correct and the appeal should be dismissed. Pursuant to s. 115 of the Act, I order that this Determination is confirmed.

Ian Lawson
Adjudicator
Employment Standards Tribunal