

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 -

Ron Balshine
("the Complainant")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 96/716

DATE OF DECISION: February 16, 1997

DECISION

OVERVIEW

This is an appeal by Ron Balshine pursuant to Section 112 of the *Employment Standards Act*

(the “Act”) from an unnumbered Determination issued by Graeme J.A. Moore as a delegate of the Director of Employment Standards on November 7, 1996. The Determination advised Mr. Balshine that his complaint was dismissed as it had not been filed within the statutory time limits. Mr. Balshine’s former employer, Imp-Pak Packaging Corporation, Impact Packing Systems, was notified of the appeal, but did not present evidence or argument. The appeal was decided on the basis of written submissions only.

ISSUE TO BE DECIDED

The appeal requires me to decide if Mr. Balshine should be entitled to the assistance of the Director in recovering wages he alleges were due him when his former employer ceased operations.

FACTS

Mr. Balshine provided evidence that he was employed by Imp-Pak Packaging Corporation as a commissioned sales representative in March 1992. By the fall of that year, the company was failing financially, and senior management, officers and directors contacted the Employment Standards Branch for assistance in recovering wages owed. Mr. Moore represented the Director of the Branch. The corporation ceased operating on or about October 31, 1992. During the calculation of wages owing to employees, both the Director and Imp-Pak Packaging were represented by counsel. Mr. Moore inspected payroll records and other documents and received a list prepared by the vice-president and controller of the company of employees to whom wages were owed. The trustee of the company conducted a payroll audit. All parties conceded that Mr. Balshine’s name did not appear on the company’s records, although there was no explanation for the omission. Mr. Moore arranged for the recovery of wages for employees listed on the company’s records in August 1993, and the business of Imp-Pak Packaging Corporation was dissolved. Its remaining assets were liquidated and disbursed to creditors.

On March 31, 1995, Mr. Balshine wrote to Mr. Moore, enquiring why his name had not been included on the list of employees entitled to compensation prepared in the fall of 1992.

Mr. Balshine attached documents to his letter showing that he was owed \$29,500. He reported that he had presented his request for payment of salary and commissions to the Executive Secretary of the corporation in the presence of Mr. Brian Birmingham, President of Impact, in October 1992. According to Mr. Balshine, he left the country a short time later and did not return until early in 1994, when he discovered that other employees had received wages owed them. Mr. Balshine presented a statement from Mr. Birmingham

dated November 29, 1996 confirming that he was owed \$29,500 at the time Imp-Pak Packaging was dissolved, plus payroll information supporting his case.

ANALYSIS

The Director's position is that Mr. Balshine's claim was not filed within the statutory time limits. Furthermore, the assets of the company had been liquidated, so there were no funds available to pay Mr. Balshine's wages.

Mr. Balshine argued that he had contacted Mr. Moore as soon as he was aware that he had not been paid and that there were "possible assets" of Imp-Pak which could be used for payment. He further asserted that the Saskatchewan Economic Development Corporation received a tax credit upon the dissolution of Imp-Pak which could be used to secure payment.

Section 74(3) of the *Act* requires that a complaint relating to an employee whose employment has terminated must be delivered within six months after the last day of employment. In addition, Section 74(2) of the *Act* requires that a complaint must be in writing and delivered to the office of the Employment Standards Branch. Although Mr. Balshine apparently contacted Mr. Moore in March 1994, the earliest record of a formal communication from Mr. Balshine is March 31, 1995, almost two years beyond the six month time period contained in the statute. There is no record of a written complaint filed in the format prescribed by the Employment Standards Branch.

Mr. Balshine's frustration is understandable. Except for his case, the process for recovery of wages under the *Act* seemed to work properly, i.e., wages were paid and the assets of the firm were liquidated for the benefit of other creditors in a timely fashion. Section 76(2)(a) of the *Act* states that the Director "may refuse to investigate a complaint" which was not made within the time limits in Section 74(3). In this case, the Director did investigate Mr. Balshine's case and declined to act on his behalf for valid reasons. The *Act* does not provide for exceptions to the time limits in Section 74(3). The Director's Determination and this decision do not preclude Mr. Balshine from pursuing other legal remedies.

ORDER

After reviewing the evidence before me, I find that Mr. Moore's Determination is correct and the appeal should be dismissed. Pursuant to Section 115 of the *Act*, the Determination Dated November 7, 1996 is confirmed.

**Mark Thompson
Adjudicator
Employment Standards Tribunal**