Employment Standards TRIBUNAL

An appeal

- by -

Robert Nehesh Beck
(the "Appellant")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

TRIBUNAL MEMBER: Kenneth Wm. Thornicroft

FILE No.: 2005A/52

DATE OF DECISION: May 27, 2005

DECISION

SUBMISSIONS

Nehesh Robert Beck	on his own behalf
M. Elaine Phillips	for the Director of Employment Standards

INTRODUCTION

This is an appeal filed by Nehesh Robert Beck (the "Appellant") pursuant to section 112 of the *Employment Standards Act* (the "*Act*"). The Appellant appeals a Determination that was issued by a delegate of the Director of Employment Standards (the "Director") on February 25th, 2005 (the "Determination").

Section 103 of the *Act* incorporates several provisions of the *Administrative Tribunals Act* ("*ATA*") including section 36 which states: "…the tribunal may hold any combination of written, electronic and oral hearings" (see also *D. Hall & Associates v. Director of Employment Standards et al.,* 2001 BCSC 575). By way of a letter dated May 16th, 2005, the parties were advised by the Tribunal's Vice-Chair that this appeal would be adjudicated based on their written submissions and that an oral hearing would not be held.

I have before me the section 112(5) record and a brief submission from the Director's delegate dated April 7th, 2005. The respondent employer did not file a submission and the Appellant's submission is limited to his original notice of appeal and an appended 2-page letter dated April 4th, 2005.

BACKGROUND FACTS

By way of the Determination, the Director's delegate concluded: "that the [Appellant's] complaint was not made within the time limit specified in Section 74 of the *Employment Standards Act.*" Section 74(2) of the *Act* states that a complaint under the *Act* must be in writing and delivered to an Employment Standards Branch office. Section 74(3) states that a complaint by an employee whose employment has terminated must be delivered "within 6 months after the last day of employment".

According to the information set out in the Determination, Star Limousine Service Ltd. ("Star Limousine") employed the Appellant as a chauffeur from November 14th, 2000 until March 8th, 2004; his rate of pay was $10.50 per hour. The Director's delegate concluded that the Appellant's last day of work was March 8th, 2004 relying on information contained in the Appellant's complaint form and in the Record of Employment ("ROE") issued to the Appellant by Star Limousine. In the ROE, Star Limousine conceded that it dismissed the Appellant, however, it may be that there was "just cause" for that dismissal in which case the Appellant would not be entitled to compensation for length of service under the *Act* (section 63) or damages for breach of contract under the common law.

The Appellant's complaint was not filed until October 14th, 2004 some 5 weeks after the section 74(3) 6-month limitation period expired. Accordingly, the Appellant's complaint—in which he sought compensation for length of service—was summarily dismissed pursuant to section 76(3)(a) of the *Act.*

REASONS FOR APPEAL

The Appellant seeks payment of "severance pay" and says that the Determination should be varied and referred back to the Director because the delegate failed to observe the principles of natural justice in making the Determination [see section 112(1)(b) of the *Act*].

In his appeal form, the Appellant states that he was unable to file a timely complaint because he was "sick for months" and "ignorant of the law in these matters'. The Appellant further states that "no one advised me…that there was any urgency" and that he finds it "inconceivable that a debt can be cancelled merely by the passage of six months".

FINDINGS AND ANALYSIS

The Appellant does not dispute the period of his employment nor does he dispute the date of his original complaint. On the face of things, the Appellant's complaint is statute-barred by reason of section 74(3) and the delegate did not err in summarily dismissing his complaint. Certainly, there is nothing in the material before me that would lead me to conclude there was a denial of natural justice in this case.

In his April 4th letter, the Appellant referred to his medical condition during the months following his dismissal and suggests that the limitation period should be extended on "justice or equity" grounds. However, unlike, say, the Human Rights Tribunal [see section 22(3) of the *Human Rights Code*], the Director does not have the statutory authority to extend the 6-month limitation period set out in section 74(3) of the *Act* (see e.g., *Keu*, B.C.E.S.T. Decision No. D257/96).

By way of further argument, the Appellant correctly observes that the Director's authority to dismiss an untimely complaint is framed in discretionary language—section 76(3)(a) states that the Director *may* summarily dismiss an untimely complaint. However, the Director's statutory authority to issue a remedy in favour of an employee is predicated on the timely filing of a complaint—section 74(3) does not allow for any discretion: a complaint *must* be filed within 6 months after the complainant's last day of employment.

The Appellant suggests that the 6-month limitation period is arbitrary, however, that time limit is fixed by statute and neither the Director nor this Tribunal have the statutory authority to override the Legislature in this matter. Further, I reject the notion advanced by the Appellant that the Director has an affirmative duty to inform all would-be complainants that there is a 6-month time limit. In any event, I note that the Director has made all reasonable efforts to communicate this latter information by way of the Branch's website and through various Branch publications.

I do wish to note, however, that the Appellant may be able to pursue his claim for "wrongful dismissal" against Star Limousine in another forum. The mere summary dismissal of his complaint as being untimely does not necessarily "cancel" (as the Appellant suggested) any liability that Star Limousine might otherwise have in regard to the Appellant. The Small Claims division of the B.C. Provincial Court currently has a monetary limit of $10,000 (to be increased to $25,000 in the fall of this year) and it may be that the Appellant can lawfully file a breach of contract claim against Star Limousine in that court. I, of course, pass no comment whatsoever regarding the merits of such a "wrongful dismissal" claim; that is a matter about which the Appellant might wish to seek independent legal advice.

ORDER

Pursuant to section 115 of the *Act,* I order that the Determination be confirmed as issued.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal