

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

John C. Faulkner
("Faulkner")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 96/213

DATE OF DECISION: May 21, 1996

DECISION

OVERVIEW

This is an appeal by Faulkner pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against an unnumbered Determination issued by a delegate of the Director of Employment Standards (“Director”) on March 12, 1996. In this appeal Faulkner claims that the Director should not have refused to investigate his complaint pursuant to section 76 (2) of the *Act*.

I have completed my review of the written submissions made by Faulkner, Marjon Auto Gallery Inc. (“Marjon”) and the information provided by the Director.

FACTS

Faulkner was employed by Marjon as Sales Manager from January 1, 1994 to December 31, 1994.

Faulkner’s accountant filed a complaint to the Employment Standards Branch (“Branch”) dated December 15, 1995 along with a covering letter dated December 23, 1995.

The Director refused to investigate Faulkner’s complaint on the basis that it was not made within the time limits stipulated in Section 74 of the *Act* and, subsequently, a determination letter dated March 12, 1996 was issued.

ISSUE TO BE DECIDED

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

ARGUMENTS

Faulkner argues that:

- his accountant contacted the Branch by telephone on March 9, 1995 with respect to his concerns;
- his accountant was advised at that time that his concerns were a matter for Revenue Canada and not the Branch;
- as soon as Revenue Canada advised that they were unable to assist him, he filed his complaint with the Branch;
- he believes that although he did not file a complaint in accordance with the technical requirements of the *Act*, by virtue of the telephone call from his accountant he has “complied with the spirit of the act.”

The Director contends that:

- pursuant to section 76 (2), the Director has the discretion to refuse to investigate a complaint if the complaint has not been made within the time limit of section 74 (3) (4)
- the complaint was not filed within the time limits as required under the provisions of section 74 (3) or (4);

ANALYSIS

Section 74 of the *Act* states:

Complaints 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.

Should a complaint not be delivered to an office of the Branch within the time limits set forth in section 74 (3) above, the Director is required to consider the provisions of section 76 which 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.

Faulkner's submissions acknowledges that no complaint in **writing** was delivered to the Branch **within 6 months** after his last day of employment as required by section 74 of the *Act*.

Faulkner has not provided any reasonable explanation for the delay of almost 1 year in the filing of his complaint. I am not persuaded that any compelling reason exists for me to query the exercise of the Director's discretion in refusing to investigate this complaint.

I therefore conclude, based on the information provided, that the Director quite correctly and in a manner consistent with the *Act*, refused to investigate Faulkner's complaint.

ORDER

Pursuant to Section 115 of *Act*, I order that the Determination letter dated March 12, 1996 be confirmed.

Hans Suhr
Adjudicator
Employment Standards Tribunal

May 21, 1996
Date

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