

An appeal

- by -

Antoinette Akouri
("Akouri")

- 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

ADJUDICATOR: Norma Edelman

FILE No.: 2002/33

DATE OF DECISION: April 4, 2002

DECISION

OVERVIEW

This is an appeal by Antoinette Akouri ("Akouri") pursuant to Section 112 of the Employment Standards Act (the "Act") against a Determination issued on January 15, 2002 by a delegate of the Director of Employment Standards. The delegate found that Akouri did not file her complaint within the time period allowed in the Act and as a result he refused to investigate her complaint. In her appeal, Akouri asks that the Tribunal refer the matter back to the delegate for a full investigation.

ISSUE TO BE DECIDED

The issue in this appeal is whether the delegate erred in deciding not to investigate Akouri's complaint.

FACTS AND ANALYSIS

Akouri worked for the Inter-Cultural Association of Greater Victoria (the "Association") from 1987 to April 25, 2001 as a Child minding(Daycare) Supervisor. From 1996 or 1997 Akouri was subject to a collective agreement between the Association and BCGEU.

Akouri quit her employment at the Association.

On December 18, 2001 Akouri filed a complaint at the Employment Standards Branch ("Branch"). Her complaint included allegations that she was owed wages for statutory holiday pay, overtime, minimum daily pay, holdbacks and mileage.

The delegate concluded that Akouri's complaint was outside the 6-month time limit to file a complaint and as a result he refused to investigate her complaint.

In her appeal, Akouri says she was unaware of her right to file a complaint at the Branch until advised by her MLA on December 14, 2001. She then "wasted no time" and filed her complaint on December 18, 2001. Prior to that time, she tried to get her union to help her with her grievances, but she met with no success.

Both the delegate and the Association replied to Akouri's appeal.

The delegate reiterated his position that Akouri's complaint is out of time. The Association stated it agreed with the Determination. It further stated that if Akouri was not satisfied with how she was represented by her union, her recourse is through the Labour Relations Code and not the Act.

In reply to the delegate and the Association, Akouri again stated the reason she filed her complaint late was because she thought her only recourse for dealing with her complaint was through the grievance procedure set out in the collective agreement. She further said that if no investigation takes place, she will suffer considerable prejudice and the Association could interpret this as a green light to treat other employees in vulnerable positions in the same manner. She then goes on to explain her grievances, which it appears, include not receiving the correct rate of pay as set out in the collective agreement.

The pertinent sections of the Act to consider with respect to this appeal are Sections 74(2), 74(3), 74(4) and 76(2).

Sections 74(2)(3) and (4) state:

74(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(2) of the Act states:

76(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)

Section 74(4) is not relevant to this appeal. Sections 74(2) and (3) are relevant and they state, clearly and unambiguously, that a complaint must be delivered to the Branch within 6 months after the last day of employment.

The Tribunal has consistently interpreted Sections 74(2) and (3) of the Act as being mandatory. In *Burnham* BCEST #D035/96, the Tribunal said:

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.

Furthermore, the Tribunal has accepted that Section 76(2)(a) cannot be interpreted as giving the Director a discretion to ignore the mandatory filing requirements of the Act and to investigate a complaint that did not meet those requirements (see *Director of Employment Standards (Re Bunger)*, BCEST #D301/98; Reconsideration of BCEST #D014/98).

Akouri's last day of employment was April 25, 2001. Her complaint was not delivered to the Branch until almost two months after the statutory time limit for such delivery has passed.

It is a mandatory statutory requirement that a complaint must be delivered to the Branch 6 months after the last day of employment. Neither the delegate nor the Tribunal has the discretion to waive this requirement for any reason, including ignorance of the law.

The delegate was correct in concluding the requirements of Section 74(3) of the Act have not been met and was correct to have refused to investigate the complaint.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the Act, I order that the Determination dated January 15, 2002 be confirmed.

Norma Edelman
Adjudicator
Employment Standards Tribunal