

**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 -

Abdul Rahman Rahmani  
("Rahmani")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 96/304

**DATE OF DECISION:** May 4, 2001

**DECISION**

**OVERVIEW**

This is an appeal by Abdul Rahman Rahmani (“Rahmani”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination Letter issued by the Director of Employment Standards (the “Director”) on April 16, 1996. In this appeal Rahmani claims that the Director should not have refused to investigate his complaint.

**ISSUE TO BE DECIDED**

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

**FACTS**

Rahmani was employed by Janitech Computer Service (“Janitech”) as a computer technician from July 8, 1995 to July 31, 1995. Rahmani filed a complaint with the Employment Standards Branch (the “Branch”) which was received on April 11, 1996. The complaint form was dated March 18, 1996 and alleged that wages in the amount of \$126.00 were owing by Janitech.

The Director refused to investigate Rahmani’s complaint on the basis that it was not made within the time limits stipulated in Section 74 of the *Act* and, subsequently, the Determination Letter was issued on April 16, 1996.

**ARGUMENTS**

Rahmani contends that he was not aware that there was a time limit for the filing of a complaint against his former employer.

The Director contends that pursuant to the *Act*, Rahmani’s complaint is out of time. The last day on which a complaint could have been delivered to an office of the Branch by Rahmani was January 30, 1996. This complaint was not delivered to an office of the Branch until April 11, 1996.

**ANALYSIS**

Section 74 of the Act states:

*Complaint 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.*

Section 76 of the Act 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 relation 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.*

Rahmani's last date of employment was July 31, 1995. Rahmani's complaint form was dated March 18, 1996 and received by the Branch on April 11, 1996. Clearly, his complaint was not made within the six month time limit which is stipulated in the *Act*.

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. Section 72(2)(a) of the *Act* allows the Director to refuse to investigate a complaint which is not made with the time limits set out in Section 74 of the *Act*. In this case the Director has chosen to refuse to investigate Rahmani's complaint. I am not persuaded that any compelling reason exists for me to query the exercise of the Director's decision in refusing to investigate this complaint.

For the above reasons, I conclude that the Director was correct in determining that Rahmani's complaint was not delivered within the time limits as set forth in the *Act*, and therefore should not be investigated.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination Letter issued on April 16, 1996 be confirmed

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**

NE:jel