

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-

Veena Reddy
("V. Reddy")

-of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE No.: 97/122

DATE OF DECISION: APRIL 28, 1997

DECISION

OVERVIEW

This is an appeal by Veena Reddy ("V. Reddy") pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination Letter issued on February 7, 1997 by the Director of Employment Standards (the "Director"). The Determination advised V. Reddy that her complaint was dismissed as it had not been filed within the statutory time limits.

ISSUE TO BE DECIDED

Should v. Reddy be entitled to the assistance of the Director in recovering wages that she alleges are owed to her by her former employer, Dynamic Copies Ltd. ("Dynamic") ?

ANALYSIS

v. Reddy was employed by Dynamic from November 1, 1995 to March 30, 1996. She filed a complaint at the Employment Standards Branch on December 9, 1996.

On February 7, 1997, the Director issued a Determination which advised V. Reddy that her complaint was filed outside the six month time limit, and as a result, no action would be taken regarding her complaint.

V. Reddy appealed the Determination on February 25, 1997. In her reasons for the appeal V. Reddy states that the Determination is in error and she wants the Tribunal to make an order against Dynamic for payment of wages.

Section 74 (2) and 74 (3) of the *Act* requires that a complaint relating to an employee whose employment has terminated must be delivered to an office of the Employment Standards Branch within six months after the last day of employment. V. Reddy argues that these sections of the *Act* are not applicable to her case as she was "...not terminated...but...left (her) employment with the consent of (Dynamic) to commence (her) own business". These sections of the *Act*, however, are applicable to V. Reddy's situation. Section 74(3) of the *Act* means that regardless of whether the employee terminates her own employment (as V. Reddy did), or the employer terminates the employment of the employee, the employee must file a complaint within 6 months of the last day of work. v. Reddy quit her employment on March 30, 1996. She filed a complaint on December 9, 1996. There is no question that v. Reddy filed her complaint beyond the 6 month time limit.

Section 76(2) 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 has declined to investigate the complaint. In my view, the Director has not erred by choosing to proceed in that manner. 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 v. Reddy from pursuing other legal remedies.

ORDER

I find the Determination is correct and the appeal should be dismissed.

Pursuant to Section 115 of the *Act*, I order that Determination Letter dated February 7, 1997 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal