

An appeal

- by -

Baljit Bhandar

- 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:** John Savage

**FILE No.:** 2004A/148

**DATE OF DECISION:** October 26, 2004

## DECISION

### SUBMISSIONS

Baljit Bhandar, the complainant, for the appellant

Connie Jansen, for the Director of Employment Standards

### INTRODUCTION

The Appellant filed a complaint with the Employment Standards Branch January 29, 2004. The complaint was that regular wages were owed for work done for Vita Mills Inc. The last day of work for the complainant was December 10, 2001.

By Reasons for Determination dated July 19, 2004 the Delegate for the Director of Employment Standards declined to investigate the complaint.

The complainant filed an appeal to the Employment Standards Tribunal August 27, 2004.

### FACTS

The facts are straightforward and not in dispute.

The complainant's last day of work was December 10, 2001. The complainant alleged that he was owed wages by the Employer.

The complainant gave reasons why the complaint was late. A complaint was not made until January 29, 2004 because the complainant "...had to attend multiple court dates..." on an unrelated but serious matter.

### ANALYSIS

The *Employment Standards Act*, R.S.B.C. 1996, Chap. 113, establishes a time frame for a complaint to the Director:

- 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)(l).
- (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.

- (3.1) Subsection (3) applies to an employee whose employment is terminated following a temporary layoff and, for that purpose, the last day of the temporary layoff is deemed to be the last day of employment referred to in subsection (3).
- (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.  
1995, c. 38, s. 74; 2002, c. 42, s. 38.

A complaint relating to a terminated employee must be made within 6 months of the last day of employment.

Section 76(3) allows the Director to refuse to investigate a complaint if the complaint is not made within the time limits prescribed in section 74(3):

- (3) The director may refuse to accept, review, mediate, investigate or adjudicate a complaint or may stop or postpone reviewing, mediating, investigating or adjudicating a complaint if
- (a) the complaint is not made within the time limit specified in section 74(3) or (4),...

This is what the Delegate of the Director did. She refused to investigate the complaint because the complaint was not made within 6 months of the termination of employment.

The right to make a complaint to the Director is a statutory right. It follows that the provisions of the statute must be followed to perfect that right.

Section 74(3) provides that the complaint “must be delivered...within 6 months after the last date of employment”. The term “must” is clear and unequivocal. It is mandatory.

On numerous occasions this Tribunal has found that the language of section 74(3) is mandatory and requires that the complaint be delivered within 6 months of the last date of employment: *Re Campbell*, [1996] B.C.E.S.T.D. no. 68 (QL), (26 February 1996), BCEST #D 061/96 (Edelman), *Re Reddy*, [1997] B.C.E.S.T.D. No. 126 (QL), (28 April 1997), BCEST #D 163/97 (Edelman), *Re Harris*, [1997] B.C.E.S.T.D. No. 120 (QL), (21 March 1997) BCEST #D 124/97 (Pawluk), *Re Lesiuk*, [2003] B.C.E.S.T.D. No. 147 (QL), (29 April 2003), BCEST #D 147/03 (Wolfgang).

It should be noted that the fact that the complaint was not delivered in a timely manner under the *Employment Standards Act* does not prevent the complainant from pursuing remedies outside the mechanisms of the *Employment Standards Act*:

118 Subject to section 82, nothing in this Act or the regulations affects a person's right to commence and maintain an action that, but for this Act, the person would have had the right to commence and maintain. 1995, c. 38, s. 118.

The complaint is that the complainant was not paid for work done. If that is so, there are other legal avenues available to address that matter, subject to the provisions of the *Limitation Act*, R.S.B.C. 1996, Chap. 266.

In this case the complaint was made to the Employment Standards Branch over two years after the last date of employment. Since the complaint was made after and not within 6 months after the last date of employment the Delegate did not err in refusing to exercise the statutory power to investigate the

complaint. The mechanisms of the *Employment Standards Act* are not available to remedy the complainant's complaint.

## **ORDER**

Pursuant to section 115 of the Act I order that the Determination of the Delegate to refuse to investigate the complaint be confirmed. The appeal is dismissed.

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**John Savage**  
**Member**  
**Employment Standards Tribunal**