

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

- by -

Dean M. Gabel  
(" Gabel ")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 96/376

**DATE OF DECISION:** May 5, 2001

## DECISION

### OVERVIEW

This is an appeal by Gabel pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination letter issued by a delegate of the Director of Employment Standards (“Director”) on June 3, 1996. In this appeal Gabel claims that the Director should not have refused to investigate his complaint pursuant to section 76 (2) of the *Act*.

Consideration of this appeal falls under the transitional provisions of the *Act*. Section 128 (3) of the *Act* states:

If, before the repeal of the former Act, no decision was made by the director, an authorized representative of the director or an officer on a complaint made under that Act, the complaint is to be treated for all purposes, including section 80 of this *Act*, as a complaint under this *Act*.

I have completed my review of the written submissions made by Gabel and the information provided by the Director.

### FACTS

Gabel was employed by Phoenix Sprinklers Inc. “Phoenix” as a sprinkler fitter on two “Fair Wage” projects, Websters Corner Elementary School in Maple Ridge and the Justice Institute of B.C. in New Westminster, from January 10, 1994 to April 10, 1995.

Gabel filed a complaint dated September 31, 1995 which was delivered to the Employment Standards Branch (“Branch”) on October 17, 1995.

The Director refused to investigate Gabel’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 June 3, 1996 was issued.

### ISSUE TO BE DECIDED

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

## ARGUMENTS

Gabel argues that:

- he contacted the Branch enquiry line by telephone on with respect to his concerns and requested that a complaint form be mailed to him, which it was;
- he believes that because he filed his complaint before the date the new *Act* came into force, the provisions of the former Act, specifically Section 80(1) should apply to his complaint;
- he states that he had a verbal agreement with Phoenix wherein they agreed that all monies owing would be paid when Phoenix received payment for the Justice Institute project and Phoenix breached that verbal agreement.

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.

Gabel'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*.

Gabel has not provided any reasonable explanation for the delay from the date of the signing of his complaint on September 31, 1995 until the date it was received by the Branch on October 17, 1995.

With respect to the alleged breach of a verbal agreement by Phoenix to defer the payment of the outstanding wages, such an agreement would, in any event, be contrary to Section 4 of the *Act* which states:

**Requirements of this Act cannot be waived**

The requirements of this Act or the regulations are minimum requirements, and any agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.

Further, with respect to Gabel's argument that the provisions of the former Act should apply to his complaint, the transitional provisions of the *Act*, Section 128 (3) clearly state that for all purposes his complaint is to be treated as a complaint under this *Act*.

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 Gabel's complaint.

**ORDER**

Pursuant to Section 115 of *Act*, I order that the Determination letter dated June 3, 1996 be confirmed.

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**

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