

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Ronald D. Hill
("Hill")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 1999/103

DATE OF DECISION: May 31, 1999

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Ronald D. Hill (“Hill”) against a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on February 3, 1999. The Determination found that Hill, the complainant, had filed his complaint more than six months after the last date of his employment. Relying on Section 76(2) of the *Act*, the delegate declined to investigate the complaint on the grounds that it was out of time.

Hill appealed the Determination on the grounds that he had not received a formal severance from his employer and presumed that he was eligible to return to work when his health permitted. Consequently, he claimed unpaid overtime for the period March 1, 1992 until September 15, 1994.

ISSUES TO BE DECIDED

The issue to be decided is whether the Director correct in refusing to investigate Hill’s claim.

FACTS

Hill acknowledged in his complaint that he had worked for his former employer Highway Rental & Sales (the “Employer”) from March 1992 until September 15, 1994. In the complaint he claimed overtime for work performed during that period. He stated that he became ill in September 1994 and could not work. According to Hill, he contacted a manager for the Employer, Mrs. Edna Melgaard (“Melgaard”), to notify her of his illness, and she told him that he was not entitled to any additional pay. Melgaard stated to the Tribunal that Hill had asked for a loan, and she had refused him. In his appeal, Hill stated that after he realized his health made him unable to resume working, he filed a complaint seeking the unpaid overtime.

The Employer argued that Hill was not an employee and had filed tax returns (at least in 1994) as a contractor. However, Hill obtained a ruling from Revenue Canada on January 27, 1998 that he had been an employee of 641 Holdings, operating as Highway Rental and Sales for the period January 1, 1992 to September 15, 1994. On January 28, 1998, Human Resources Development Canada approved sickness benefits for a maximum of 15 weeks, beginning October 9, 1994. Rick Steinson (“Steinson”), an accountant, informed the Employment Standards Branch on August 4, 1998 that Hill was not aware that he was an employee of the Employer until the Revenue Canada ruling in January 1998.

ANALYSIS

The Determination was based on the delay between Hill's last day of work for the Employer and the filing of his complaint. The Employer took the position that Hill had been a contractor or perhaps a manager, for the period in question. Hill's position appears to be based on the letter from Mr. Steinson stating that he was unaware of his status as an employee until January 1998, so that the time limit for his complaint should run from that date.

The Tribunal is not bound by a determination of employee status made by Revenue Canada or Human Resources Development Canada. Decisions of these agencies may carry weight before the Tribunal, but they interpret different statutes.

Even if Hill were found to be an employee, he would be bound by Section 74(3) of the *Act*, which states:

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.

Hill acknowledged that his last day of employment was September 15, 1994. The language of the statute is clear. Hill is covered by Section 74(3). The Director's delegate correctly applied Section 76(2)(a) of the *Act*, which gives the Director the authority to refuse to investigate a complaint filed outside of the time limits in Section 74(3).

The statute in this case does not permit either the Employment Standards Branch or the Tribunal to waive the six-month time limit. See *Re Balshine* BC EST #D96/716.

ORDER

For these reasons, the Determination of February 3, 1999 is confirmed.

Mark Thompson
Adjudicator
Employment Standards Tribunal