

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 -

Victoria Boutilier
("Boutilier")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE No.: 97/282

DATE OF DECISION: June 12, 1997

DECISION

OVERVIEW

This is an appeal by Victoria Boutilier (“Boutilier”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on April 11, 1997. Boutilier alleges that the delegate of the Director erred in determining that her complaint was not received within the time limits set forth in the *Act*.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Boutilier’s complaint was delivered to an office of the Employment Standards Branch within the time limits set forth in Section 74 of the *Act*.

FACTS

Boutilier was employed by Fraser Pet Hospital Ltd. (“Fraser”) as a veterinary receptionist/assistant.

Boutilier’s last day of employment was September 6, 1995.

Boutilier delivered a complaint to the Burnaby office of the Employment Standards Branch on March 6, 1996.

A delegate of the Director issued a Determination dated April 11, 1997 which stated that the complaint was not received within the time limits set forth in Section 74 of the *Act* and therefore the file had been closed.

ANALYSIS

I would firstly express my serious concerns with respect to the length of time it took the Employment Standards Branch (**13 months**) to issue a Determination advising a complainant that the complaint was not received within the statutory time limits. This lengthy delay, in my view, seems to be at odds with the stated purposes of the *Act* as set forth in Section 2 of the *Act*, especially 2 (d) which states: *(d) to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.*

I will now deal with the merits of this appeal.

Section 74 of the *Act* sets forth the time limits for delivering a complaint and provides:

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.*

(emphasis added)

There is no dispute that Boutilier's complaint was delivered on March 6, 1996.

The *Interpretation Act* defines month as a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day.

The application of this definition to Boutilier's complaint clearly reveals that the **last** day on which Boutilier could have delivered a complaint pursuant to the provisions of Section 74 of the *Act*, was **March 5, 1996**.

Boutilier's complaint therefore, was not delivered to an office of the Employment Standards Branch **within** the six months limit set by Section 74 of the *Act*.

For all of the above reasons, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination be confirmed.

Hans Suhr
Adjudicator
Employment Standards Tribunal