

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 -

Paul Lynch
("Lynch")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 98/259

DATE OF DECISION: May 27, 1998

DECISION

OVERVIEW

This is an appeal by Paul Lynch (“Lynch”) under Section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination which was issued by a delegate of the Director of Employment Standards on April 16, 1998. The Director’s delegate dismissed Lynch’s complaint as it had not been filed within the statutory time limits.

I have made this decision following a review and analysis of the Determination and written submissions.

ISSUE TO BE DECIDED

Does Lynch’s complaint comply with the time limit requirements set out in Section 74(3) of the *Act*?

FACTS

Lynch was employed by Bee Jay’s Towing (“BJ”) from November 18, 1996 to April 15, 1997 when he was laid off from his job as a tow truck driver. He filed a complaint at the Employment Standards Branch alleging that BJ owed him regular and overtime wages, vacation pay and statutory holiday pay.

The Director’s delegate determined that Lynch’s complaint was received outside of the time limit contained in Section 74(3) of the *Act* and, therefore, no action would be taken on his behalf.

ANALYSIS

Section 74(3) of the *Act* states that a complaint relating to an employee whose employment has terminated must be delivered in writing to the Employment Standards Branch within 6 months after the last day of employment.

In his appeal Lynch states that he thought he had seven years to file a complaint regarding unpaid wages and he was unable to obtain the necessary documents to file a complaint within the 6 month time limit. Lynch provides no particulars regarding the “necessary documents”.

The Director’s delegate submitted a copy of Lynch’s complaint form which was signed and dated on March 11, 1998. The form indicates it was received by the Employment

Standards Branch office in Burnaby on March 16, 1998. It was then forwarded to the Prince George office where it was received on March 18, 1998.

When I review the facts and the reasons given by for this appeal, I find that I concur with the Determination. It is unfortunate that Lynch believed he had seven years to file a complaint. However, Section 74(3) of the *Act* is clear: a complaint must be delivered in writing within six months after the last day of employment. Lynch's employment ended on April 15, 1997. He delivered a complaint to the Employment Standards Branch on March 16, 1998. Therefore, his complaint is considerably outside the six month time limit.

Section 76(2) of the *Act* allows the Director or her delegate to refuse to investigate a complaint which is made outside the time limit set out in Section 74(3). In this case, the Director's delegate has declined to investigate this complaint. In my view, the Director's delegate has not erred by choosing to proceed in that manner. The *Act* does not provide for exceptions to the time limits set out in Section 74(3). I find that the Determination is correct and the appeal should be dismissed.

ORDER

I order under Section 115 of the *Act* that the Determination dated April 16, 1998 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal