BC EST # D252/97

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 -

Dan Grant
("Grant")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 97/334

DATE OF DECISION: June 14, 1997

DECISION

OVERVIEW

This is an appeal by Dan Grant ("Grant") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") from a Determination dated April 9, 1997. The Determination advised Grant that his complaint was dismissed because it had not been filed within the statutory time limits. Grant's former employer, Northside Cedar Products Ltd., was notified of the appeal and submitted a statement in support of the Determination. The case was decided based on written submissions.

ISSUE TO BE DECIDED

The appeal requires me to decide if Grant's complaint should be allowed to proceed so that he can pursue a claim for length of service compensation and deductions from wages.

FACTS

Grant was first employed at Northside Cedar Products Ltd. (The "Employer") in May 1988. On June 24, 1996 he and a number of other employees were laid off because the Employer lacked an adequate supply of logs to run the operation. According to the Employer, it attempted to recall him again in August 1996, but was unsuccessful in contacting him. The Employer stated that "a few of these employees returned to work as conditions and fibre supply warranted." It asserted that it had tried to contact Grant without success. The Employer further stated that its practice was to issue "separation certificates", (presumably a Record of Employment) when an employee requested it. In this case, the Employer issued a record of employment on January 15, 1997 after Grant requested it. Grant asserted that the Record of Employment was issued in December 1996. Grant requested a letter of recommendation from the Employer for another job in late January or early February 1997. The Employer enclosed a copy of an undated reference letter in the materials he provided to the Tribunal.

Grant claimed length of service compensation for eight years of service with the Employer. He maintained in his appeal that he was told that he would be returning to work and that he was not told that his employment had ended. He asserted that the six month time limit in the *Act* should have started on the date he received a record of employment. Grant filed his complaint with the Employment Standards Branch on March 19, 1997. On the complaint Grant stated that the last day he worked for the Employer was

June 24, 1996. The Record of Employment listed June 26, 1996 as the "last day worked." Grant submitted an undated statement over the names of 18 "employees of Northside Cedar Products Ltd.," including himself. The document states that the mill was closed on June 24, 1996 because of a backlog of chips stored on the mill site. Workers were told they would be called back as soon as possible. Since then, five employees, including Grant, have not been called back except for the week of July 29-August 2, 1996, when Mr. Ken Grant worked.

ANALYSIS

Section 74(3) of the *Act* establishes a six-month time limit "after the last day of employment" for the filing of complaints relating to an employee whose employment has terminated. It is mandatory. In other words, the statute does not allow for the Director's Delegate or this Tribunal to make exceptions. Therefore, the issue in this case is what was Grant's last day of employment. If the last day of employment is June 1996, the appeal must be dismissed.

By his own statements on the complaint to the Employment Standards Branch and on the Record of Earnings, Grant's last day of employment was either June 24 or 26, 1996. There was no evidence of an undertaking by the Employer that he would be re-employed on any regular basis. Even the statement of the employees alleged that the Employer told employees at the time of the June 24, 1996 shutdown that they would be called back to work "as soon as possible." In any case, that fact pattern would not have overcome the clear statutory language. The intent of the statute is that the time limit should run from the date when an individual ceased working, not when a Record of Employment or another document was issued.

ORDER

For these reasons, I find that the Determination is correct, and the appeal should be dismissed. Pursuant to Section 115 of the *Act*, the Determination dated April 9, 1997 is confirmed.

Mark Thompson
Adjudicator
Employment Standards Tribunal