

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 -

Kumar Satish Sharma
("Sharma")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson
FILE NO.: 98/209
DATE OF DECISION: June 18, 1998

DECISION

OVERVIEW

This is an appeal by Kumar Satish Sharma (“Sharma”) pursuant to 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 March 13, 1998. Sharma filed a complaint against his former employer alleging that it had failed to pay wages for work performed between November 18, 1996 and December 14, 1996. The Determination concluded that the complaint was out of time so that the Director lacked the authority to investigate it. Sharma alleged that his former employer had failed to pay him \$105.45 and requested that the Tribunal allow his complaint to be decided on its merits.

ISSUE TO BE DECIDED

The issue to be decided in this case is whether Sharma’s complaint should be investigated by the Director.

FACTS

The facts of this case were not in dispute. Sharma worked for an employer from November 18, 1996 to December 14, 1996, when he was laid off. The Employment Standards Branch received a complaint from Sharma on February 5, 1998 alleging that the employer had failed to pay wages to which he was entitled. A Delegate of the Director responded to Sharma on April 10, 1998 requesting documentation in support of his complaint. Sharma provided his T-4 slip and a copy of a cancelled cheque to substantiate his claim that the employer had not paid his wages in full and completed his 1996 T-4 form improperly. He requested that the employer pay him \$1214.58 in settlement of his claim.

The Director’s Delegate issued a Determination on March 13, 1998 declining to investigate the complaint, citing Section 74 and 76(2) of the *Act*. The Determination stated that there was “no authority to investigate complaints filed beyond” the time limit contained in Section 74.

In his appeal, Sharma referred to his complaint as providing an explanation for the delay in filing his complaint and requested that he be reimbursed for \$104.45, the amount the employer had failed to pay.

ANALYSIS

Section 74 of the *Act* regulates the filing of complaints of violations of the statute as follows:

- (1) An employee, a former employee or other person may complain to the director that a person has contravened
 - (a) a requirement in 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.

This language is firm and reflects the purpose of the *Act* to

provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act,

In this case, the deadline for filing a complaint would have been in June of 1997, approximately seven months before the Employment Standards Branch received Sharma's complaint.

Section 76(2) of the *Act* states:

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...

The appellant in cases before this Tribunal must demonstrate convincingly that the Determination under appeal is incorrect and should be varied or cancelled. Sharma did not present any evidence or legal argument to meet that test. He admitted that he was several months out of time. He did not present a compelling reason to require the Director to investigate an issue raised more than six months after the expiration of a statutory deadline. The Director's Delegate afforded him the opportunity to demonstrate that the discretion in Section 76(2) should be exercised in his favour.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, the Determination of March 13, 1998 is confirmed.

Mark Thompson
Adjudicator
Employment Standards Tribunal