

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

William John Williamson
("Williamson")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/536

DATE OF DECISION: October 3, 1996

DECISION

OVERVIEW

This is an appeal by William John Williamson (“Williamson”), 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 August 30, 1996.

The Determination found that Williamson’s complaint was made to the Employment Standards outside of the six month time limit contained in Section 74 of the *Act*. For that reason, the Director’s delegate refused to investigate Williamson’s complaint.

ISSUE TO BE DECIDED

The issue to be decided is whether the Determination should be varied or cancelled so that Williamson’s complaint would be investigated.

FACTS

Williamson was employed as a deckhand on a fishing boat between June 1, 1994 and August 12, 1995. He filed a complaint with the Employment Standards Branch on August 30, 1996 alleging non-payment of his 30 % share of the value of fish delivered to 34792 B.C. Ltd.

The Determination relies on Section 74 and 76 of the *Act* as the basis for refusing to investigate Williamson’s complaint.

ANALYSIS

Williamson’s appeal does not allege that the Director erred in refusing to investigate his complaint . He merely states: “I feel the Determination was unfair considering the seriousness of this matter.”

In my view, the Director, in refusing to investigate the complaint, merely complied with the statutory dictates of Section 74(3) of the *Act* which states that a complaint “*must be delivered ... within 6 months after the last day of employment*” (emphasis added). In this case the complaint was filed about six months late. There is no statutory discretion on the part of the Director to extend this limitation period.

In a recent decision of the Tribunal (BC EST #D257/96), adjudicator Thornicroft made the following analysis of the Director's discretion under Section 74 of the *Act*:

In the case of a statute-barred complaint, the Director has a discretion concerning whether or not to investigate the complaint upon it being filed, or to dismiss the complaint out of hand without embarking on an investigation. The Director might, for example, continue an investigation with respect to a complaint that was, on its face, filed beyond the six-month limit where there is some doubts as to whether or not the complaint was, in fact, statute-barred. An investigation might also be continued where, pursuant to Section 76(3) of the Act, the Director wished to investigate to determine if, say, the employer had committed other violations of the Act with respect to the complainant, or some other employees. An investigation might also be continued with a view to effecting a settlement under Section 78 of the Act. However whether or not the Director chooses to investigate, if the complaint is statute-barred it must, ultimately, be dismissed.

Section 118 of the *Act* specifically preserves the right of a complainant to file a civil action in the courts. The Director has determined that Williamson's complaint will not be investigated because it was filed late. Whatever other remedies he may have, which might be pursued by way of a civil court action, remain unaffected by the Determination issued in this case.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination dated August 30, 1996 (ER Number 079429) be confirmed.

Geoffrey Crapmton
Chair
Employment Standards Tribunal

GC:sr