

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 -

Sarwan Singh Jhutti

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 98/309

DATE OF DECISION: June 18, 1998

DECISION

OVERVIEW

This is an appeal, under Section 112 of the *Employment Standards Act*, by Sarwan Singh Jhutti against a Determination which was issued on April 29, 1998 by a delegate of the Director of Employment Standards. The Director's delegate determined that Mr. Jhutti's complaint was filed more than six months after his last day of employment and, therefore, he refused to investigate the complaint.

In his appeal, Mr. Jhutti submits that he was employed by B.S. Forest Service Management Ltd. from February 1, 1997 to April 15, 1997 and that he filed his complaint with the Employment Standards Branch on April 16, 1998. He submits further that his complaint was filed within the statutory time limits because it was not until April 9, 1998 that his former employer refused to pay him for the wage amounts he alleges are owed to him. Prior to that date, he submits, his former employer had promised to pay him once its financial position improved.

The Director's delegate relied on Section 74 and Section 76 of the *Act* in making his Determination.

ISSUE TO BE DECIDED

Did the Director's delegate err in refusing to investigate Mr. Jhutti's complaint?

ANALYSIS

Section 74 of the *Act* sets out the requirements for making a complaint under the *Act*, as follows:

74 Complaint and time limit

- (1) An employee, 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.**

(emphasis added)

The language used in Section 74(3) reflects, in my opinion, one of the purposes of the *Act* as set out in Section 2: "...to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act."

In this case, the time limit for filing a complaint under Section 74(3) expired on October 16, 1997. As noted earlier, Mr. Jhuty did not file his complaint with the Employment Standards Branch until April 16, 1998.

Section 76(2)(a) of the *Act* gives the Director the discretion to refuse to investigate a complaint if the complaint is not made within the time limit set out in section 74.

As the appellant, Mr. Jhuty must demonstrate to this Tribunal that the Determination contains an error such that it should be cancelled or varied. I find that Mr. Jhuty's appeal does not contain any evidence or argument which would establish that the Director's delegate erred in refusing to investigate the complaint which, I note, was filed exactly six months after the statutory time limit established under Section 74(3). I do not accept Mr. Jhuty's submission that Section 74(3) should be read to mean that the six-month time limit does not apply to the facts of this appeal because he was making efforts during that time to obtain payment from his former employer. Further, there is no evidence that he gave the Director's delegate any valid reason why his complaint should be investigated outside of the statutory 6-month time limit.

ORDER

I order, under Section 115 of the *Act*, that the Determination dated April 29, 1998 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC/bls