

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 -

Norman Humble
(“Humble”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Norma Edelman

FILE NO.: 98/294

DATE OF DECISION: June 18, 1998

DECISION

OVERVIEW

This is an appeal by Norman Humble (“Humble”) 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 23, 1998. The Director’s delegate dismissed Humble’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 Humble’s complaint comply with the time limit requirement set out in Section 74(3) of the *Act*?

FACTS

Humble claims he was employed by Surrey Pop & Bottle Ltd. (“Surrey”) until the end of June 1997. He filed a complaint at the Employment Standards Branch alleging that Surrey owed him wages. The undated complaint form was received by the Employment Standard Branch on April 1, 1998.

The Director’s delegate determined that Humble’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.

In his appeal, Humble states that he made the appeal in order to receive his wages and in order to be entitled to Employment Insurance and W.C.B. benefits. It would appear that both the Employment Insurance and the W.C.B. have refused to grant Humble any benefits. According to documents submitted by Humble, Revenue Canada has found that Humble was not an employee pursuant to the *Unemployment Insurance Act*. This finding is shared by Surrey. In its reply to the appeal, Surrey states that Humble was never an employee, but a customer who brought empty bottles and can to their store to exchange for cash. Surrey attached various letters from customers in support of its position.

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.

When I review the facts and the reasons given by Humble for this appeal, I find that I concur with the Determination. Section 74(3) is clear: a complaint must be delivered in writing within 6 months after the last day of employment. Humble's employment was terminated at the end of June 1997. His complaint was received by the Employment Standards Branch on April 1, 1998, which is 9 months after his last day of employment. 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. There is no evidence that Humble gave the Director's delegate any valid reason why his complaint should be investigated outside of the statutory time limit. Further, I find that Humble's appeal does not contain any evidence or argument which would establish that the delegate erred in refusing to investigate the complaint. Therefore, 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 23, 1998 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal