

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 -

Rebecca A. Catherasoo
("Catherasoo")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/472

DATE OF DECISION: October 18, 1996

DECISION

OVERVIEW

This is an appeal by Rebecca Catherasoo (“Catherasoo”), 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 July 25, 1996. The Determination found that Catherasoo’s complaint was made to the Employment Standards Branch (the “Branch”) outside of the six month time limit contained in Section 74 of the *Act*. For that reason, the Director’s delegate refused to investigate Catherasoo’s complaint.

ISSUE TO BE DECIDED

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

FACTS

Catherasoo was employed as an accounting technician by Stone Lawrie Scheibenpflug (“SLS”) between November 4, 1988 and October 31, 1995.

On May 7, 1996, the Branch received a complaint from Catherasoo alleging non-payment of severance pay by SLS. The complaint form received by the Branch was dated April 25, 1996. The month and date (April 25) are written over an area which was “whited-out” by correction fluid. The complaint form was contained in an envelope which shows that it was deposited in the mail on May 6, 1996.

The Director’s delegate advised Catherasoo on July 25, 1996 that her complaint was out of time. The delegate relied on Section 74 and 76 of the *Act* in making her decision.

Catherasoo appealed this decision to the Tribunal on August 12, 1996. Catherasoo’s appeal does not allege that the Director erred in refusing to investigate her complaint. Rather, in her reasons for the appeal, Catherasoo stated that she was not aware of the time limit for filing an appeal. She further stated that she was laid off on November 1, 1995 and filed a complaint on May 1, 1996. She enclosed a copy of her complaint form which was dated May 1, 1996.

Subsequently, Catherasoo advised the Tribunal that she first learned about her eligibility for severance pay in April, 1996. She also stated that she completed her complaint form on May 1, 1996 and then sent the original to the Branch.

She kept a copy for herself and this copy was sent to the Tribunal. She does not know how the original complaint form came to be “whited-out”. She said that she did not do it.

ANALYSIS

In my view, the Director’s delegate, 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”.

A “month” is defined in the *Interpretation Act* as a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day. To be in time, Catherasoo’s complaint had to be delivered by April 30, 1996. “Deliver” is defined in the *Interpretation Act* as mailing to or leaving with a person, or depositing in a mail box, a document or notice. Catherasoo’s own evidence was that she dated her complaint on May 1, 1996. She did not mail the complaint until five days later. Her complaint, therefore, was filed outside the 6 month time limit set out in the *Act*. 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 #D257/06), Adjudicator Thornicroft made the following analysis of the Director’s discretion under Section 76 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 doubt 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 Catherasoo’s complaint will not be investigated because it was filed late. Whatever other remedies she 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 the Determination dated July 25, 1996 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal