

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 -

Gurvinder S. Dhaliwal
("Dhaliwal")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE No.: 98/239

DATE OF DECISION: July 13, 1998

DECISION

OVERVIEW

This is an appeal by Gurvinder S. Dhaliwal 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 31, 1998. Dhaliwal filed a complaint against his former employer alleging that it had failed to pay wages for work performed between March 25, 1997 and September 1, 1997. The date of the complaint was March 17, 1998, and it stated that Dhaliwal had worked for the employer in Alberta from July 1997 until September 1, 1997. The Determination concluded that the complaint was out of time so it would not be investigated. In addition, the Determination noted that the Act applied only to wages earned by an employee working in British Columbia. Dhaliwal's appeal stated that he was out of the country attending to family matters after the end of his employment and requested that the Tribunal allow his complaint to be decided on its merits.

ISSUES TO BE DECIDED

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

FACTS

The facts of this case were not in dispute. Dhaliwal worked for an employer in British Columbia from March 25, 1997 to July 14, 1997. From July 20, 1997 until September 1, 1997, he worked for the same employer in Calgary. On September 1, 1997, he received a telephone call from a relative asking him to accompany his mother on a trip to India. Dhaliwal stated that, prior to leaving Calgary, he asked the employer for wages owed him for work in British Columbia and in Calgary. According to the complaint, he never received the wages he believed were due to him. The Employment Standards Branch received a complaint from Dhaliwal on March 17, 1998, seeking payment of his wages.

The Director's Delegate issued a Determination on March 31, 1998 declining to investigate the complaint, citing Section 74 of the Act. The Determination further stated that the Act applied only to wages earned while an employee was working in British Columbia.

In his appeal, Dhaliwal reiterated that he was out of the country during the six months after he ceased working for the employer.

ANALYSIS

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

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.

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 January of 1998, approximately two months before the Employment Standards Branch received Dhaliwal'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

the complaint is not made within the time limit in section 74.

The Act is clear that complaints must be filed within six months after the last date of employment. The Tribunal has consistently interpreted this provision as being mandatory (see Burnham, BC EST #D035/98). Section 76 of the Act specifies the circumstances under which the Director is empowered to refuse to investigate a complaint. In cases such as this one, where the issue of timeliness is clear, the Director is required to refuse to investigate a complaint. In addition, the Determination correctly stated that the Act gives the Employment Standards Branch the authority to collect wages earned in British Columbia.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, the Determination of March 31, 1998 is confirmed.

Mark Thompson
Adjudicator
Employment Standards Tribunal