

An appeal

- by -

Warren Sumpter

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** John M. Orr

**FILE No.:** 2001/360

**DATE OF DECISION:** July 5, 2001

## DECISION

### OVERVIEW

This is an appeal by Warren Sumpter (“Sumpter”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination (File No.046915) dated April 23, 2001 by the Director of Employment Standards (the “Director”).

The Tribunal decided that it was fair and reasonable in this case that the appeal be heard by way of written submissions.

Sumpter appeals from the Director’s determination that his complaint was barred by the expiration of time because he had not filed a written complaint within the six months following his last day of work for his employer.

### FACTS AND ANALYSIS

On March 12, 2001 Sumpter filed a written complaint form alleging that his employment had been terminated without cause and without compensation for length of service. He also claimed for unpaid overtime, statutory holiday pay and vacation pay. He states on the complaint form that his last day worked for the employer was August 28, 2000.

The Director determined that in accordance with section 74 of the *Act* Sumpter’s complaint had to be filed within 6 months after the last day of employment, which would have been February 28, 2000. The Director determined that she was unable to start an investigation and that the file would be closed.

Sumpter alleges in his appeal that he spoke to someone at the Employment Standards Branch (“the Branch”) on February 15<sup>th</sup> and that he was told that he had until the end of March to file his appeal. He alleges that at no time was he told about impending deadline dates. He claims to have met with a delegate of the Director and that it was not until after the interview started that the delegate told him he was out of time. He feels that he was misled about the time limits.

Section 74 of the *Act* provides as follows:

- 74.** (1) *An employee, former employee or other person may complain to the director that a person has contravened*
- (a) *a requirement of 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 a an employee whose employment has terminated must be delivered under subsection (2) **within 6 months** after the last day of employment.*

There have been many decisions of this Tribunal that have held that the language of section 74(2) and (3) is mandatory and that there is no provision to permit the Director to investigate a complaint received after the time limit has expired. See for example: *Re: Campbell* [1996] BCEST #D061/96, *Re: Chea* [1997] BCEST #D114/97, *Re: Reddy* [1997] BCEST #D163/97.

It is unfortunate that Sumpter missed the deadline by only a couple of weeks and alleges that he was misled about the date. I note that the 6 month deadline is clearly set-out at the top of the form that Sumpter used to file his complaint. Nevertheless I see no reason to depart from the earlier decisions that concluded that there was no power in the director or the Tribunal to extend the statutory time limit.

I am not persuaded that there is any basis upon which I can require the Director to investigate a complaint that has been filed after the expiration of the time limit. Therefore, I conclude that the appeal should be dismissed and the determination confirmed.

## **ORDER**

I order, under Section 115 of the *Act*, that the determination is confirmed.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**