

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act*

-by-

Carpenters Shop Local 1928 on behalf of  
Guillermo Osorio, Sr., Jozef Chromy, Otto F. Flamenco,  
Jesus Dominguez, Juan M. Vasquez and Guillermo A. Osorio

(the “Employees”)

-of a Determination issued by-

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 96/592

**DATE OF DECISION:** December 12th, 1996

## **DECISION**

### **OVERVIEW**

This is an appeal brought by the Carpenters Shop Local 1928 on behalf of six former employees (the "Employees") of M & J Woodcrafts Ltd. pursuant to section 112 of the Employment Standards Act (the "Act") from Determination No. CDET 004096 issued by the Director of Employment Standards (the "Director") on September 25th, 1996.

The Director determined that none of the employees' complaints was filed within the six-month statutory time-limit set out in section 74(3) of the Act and, accordingly, dismissed the complaints pursuant to section 76(2)(a) of the Act.

### **FACTS**

By way of a letter dated September 18th, 1995, the Carpenters Shop Local 1928 transmitted a number of complaints to the Burnaby office of the Employment Standards Branch. The complaints were submitted as a result of the employees' dismissals, all of which occurred on either February 28th or March 3rd, 1995, from their employment with a firm known as M & J Woodcrafts Ltd. I understand the employer is a cabinet manufacturer.

It has been suggested by the union representing the employees that they were merely given notice of temporary layoff and not notice of dismissal. I cannot agree--in each case the employee received a letter signed by the president of M & J Woodcrafts Ltd. that clearly states the employee was being terminated.

The September 18th letter from the employees' union is marked with two date stamps, in each case indicating a particular date when the letter was "RECEIVED". The letter was apparently received at the Burnaby office of the Employment Standards Branch on September 22nd, 1995 and at the Surrey Branch office on September 25th, 1995.

The particulars of the employees' complaints, as set out in the various complaint forms, are as follows:

<u>Employee</u>	<u>Position</u>	<u>Relief Sought</u>
Juan Manuel Vasquez	sander	two weeks' severance pay
Otto Fabricio Flamenco	sander	two weeks' severance pay
Jesuis Dominguez	sander	two weeks' severance pay
Guillermo Antonio Osorio	sander	two weeks' severance pay
Guillermo Osorio	machine operator	two weeks' severance pay
Jozef Chromy	machine operator	two weeks' severance pay

### **ISSUE TO BE DECIDED**

Were the complaints filed within the six-month time limit set out in section 74(3) of the Act?

### **ANALYSIS**

Although the employees' complaints were filed with the Employment Standards Branch prior to the repeal of the "old" *Employment Standards Act* (S.B.C. 1980, c. 10), the complaints must be treated "for all purposes" as complaints filed under the current Act [see section 128(3) of the Act] because the Director did not make any decision with respect to the complaints until after the new Act came into force (on November 1st, 1995). In any event, I do not believe that anything turns on this point as the former Act also provided for a six-month time limit for the filing of a complaint (see section 80 of the former Act).

On this latter point, the employees' union representative asserts that the Director's delegate (*i.e.*, an "authorized representative") "obtained information from the Union regarding who had not been given termination notice in accordance with the act within the six month time limit". There is nothing in the record before me to corroborate this assertion and I should note that this assertion is contradicted by the employment standards officer in question.

There is no evidence before me that any of the employees filed a *written complaint and delivered that complaint to an office of the Employment Standards Branch*, as required by section 74(2) of the Act, prior to September 22nd, 1995. Accordingly, given the six-month time limit provided for in section 74(3) of the Act, each of the employees' complaints was time-barred before the date of filing. That being so, the Director, relying on her statutory discretion under section 74(2)(a) of the Act,

simply refused to continue to investigate the employees' complaints. In my view, the Director has not erred by choosing to proceed in that manner. It may be that the employees are entitled to pursue their claims in another forum (e.g., Small Claims Court)--this is a matter about which I pass no opinion--however, their complaints cannot proceed under Part 10 of the Act as they are time-barred.

**ORDER**

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 004096 be confirmed.

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**