

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 -

Shinder Singh Sandhu

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/531

DATE OF DECISION: August 22, 1997

DECISION

OVERVIEW

This is an appeal by Shinder Singh Sandhu, under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination which was issued by a delegate of the Director on Employment Standards on June 23, 1997. The Director’s delegate decided that Section 74(3) of the *Act* (Compliant and Time Limit) prevented any action being taken on behalf of Mr. Sandhu. Mr. Sandhu’s appeal is based on his submission that he was “... not properly terminated and therefore have been given ineffective notice.”

I have made this decision following a review and analysis of the Determination and written submissions.

ISSUE TO BE DECIDED

Does Mr. Sandhu’s complaint dated March 14, 1997 comply with the time limit requirements set out in Section 74(3) of the *Act*?

FACTS

Mr. Sandhu began his employment as a lumber stacker with Swiftwood Forest Products Ltd. on October 21, 1994. His last day of work with Swiftwood was on June 14, 1996. On June 17, 1996 Mr. Sandhu was injured in an accident which prevented him from reporting to work that day. His physician, Dr. Gill, gave him a note stating that he “will require sometime off work.” Swiftwood terminated Mr. Sandhu’s employment and issued him a Record of Employment (“ROE”) on July 5, 1996. In box #19, the ROE indicated Code A (“Shortage of Work”) as the reason for it being issued. It also showed “Not returning” as the expected date of recall in box #20. Mr. Sandhu submitted a complaint to the Employment Standards Branch on March 14, 1997.

The Director’s delegate determined that Mr. Sandhu’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.

ANALYSIS

Section 74(3) of the *Act* states:

Complaint and time limit

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 an employee whose employment has terminated must be delivered under subsection (2) within 6 months after the last day of employment.

(4) A complaint that a person has contravened a requirement of section 8, 10 or 11 must be delivered under subsection (2) within 6 months after the date of the contravention.

Mr. Sandhu acknowledges in his appeal that his employment was terminated on July 5, 1996 when he went to his employer to receive his pay cheque. He submits that the Determination is wrong because he was “ ... misinformed as to time limitations.” By that he means that he was given what he believes to be contradictory information by an employee of the Employment Standards Branch on its telephone Inquiry Line. Mr. Sandhu submits that he was told that:

- the 6 - month time limit for making a complaint would start on the day he was terminated (i.e. July 5, 1996); and
- Section 67(1) of the *Act* prevents an employer from giving notice of layoff to an employee who is on medical leave.

Mr. Sandhu argues that: his employment was not terminated properly; and, any notice of layoff should not have become effective until after he was available for work.

Section 67 of the *Act* states:

Rules about notice

67.(1) A notice given to an employee under this Part has no effect if

(a) the notice period coincides with a period during which the employee is on annual vacation, leave, strike or lockout or is unavailable for work due to a strike or lockout or medical reasons, or

(b) the employment continues after the notice period ends.

When I review the facts and the reasons given by Mr. Sandhu for his appeal, I find that I concur with and confirm the Determination. I do so for the following reasons. The Director's delegate found that Mr. Sandhu's employment was terminated by Swiftwood on July 5, 1996. Mr. Sandhu does not challenge that finding and expressly acknowledges that he was "... given the termination papers on July 5, 1996." Swiftwood did not purport to give notice of termination to Mr. Sandhu on July 5, 1996 (or ant any time between June 14, 1996 and July 5, 1996). Rather, it terminated his employment without notice. Thus, Section 67 of the *Act* does not assist Mr. Sandhu in this appeal. If Mr. Sandhu believed that he had been given notice contrary to the provisions of Section 67 and if he wished to seek a remedy under the *Act* he was required to make a complaint within the six month time limit set out in Section 74(3). Likewise, if he believed that his employment was terminated on July 5, 1996 in contravention of the *Act*, he was required to make a complaint within the six month time limit if he wished to seek a remedy under the *Act*. Section 74(3) is clear: a complaint must be delivered in writing within six months after the last day of employment. Mr. Sandhu acknowledges that his employment was terminated on July 5, 1996. His complaint was dated and delivered on March 14, 1997 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 Section 74 (3). Thus, the Director's delegate did not err in rejecting Mr. Sandhu's complaint.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal