



An appeal

- by -

Barbara Miller  
("Miller")

- 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:** Paul E. Love

**FILE No.:** 2001/408

**DATE OF DECISION:** July 20, 2001

## DECISION

### OVERVIEW

Barbara Miller, a former employee (“employee”) of Roxas Advertising Agency Ltd. Operating as Savingumoney.com, ceased employment on May 23, 2000. She filed an appeal on March 14, 2001, well after the six month time period provided in s. 74(3) of the *Act*. While the employee alleged medical reasons for the late appeal, the nature of the medical reasons and evidence of medical condition were not provided to the Tribunal. The time limits set out in s. 74(3) of the *Act* are mandatory, and it is not open to an Adjudicator to relieve against a failure to file a written application within 6 months of the date the employee last worked. One of the purposes of the *Act* is to provide “*fair and efficient procedures for resolving disputes over the application and interpretation of the Act*”, just and speedy resolution to employment disputes, as set out in s. 2 of the *Act*. Even if there was jurisdiction to extend the time limits, which I found there is not, I would decline to extend time in this case as no evidence was presented by the employee supporting her allegations of a medical reason for a failure to file in time. It would be neither fair nor efficient to permit an employee an extension of time some 4 months after the deadline for filing an appeal. I therefore dismissed the appeal.

### ISSUE

Does the Tribunal have any discretion to extend the time for filing of an appeal beyond 6 months from the date of termination of employment?

### ARGUMENT

The employee argued that the time limits should be relaxed because she would have “made different decisions and choices last year if I were not so out of my mind”. The complainant also argued that she made a verbal complaint and argued due to her lack of knowledge in regard to the definition of wages, the complaint should be considered.

### THE FACTS

This is an appeal based on written submissions received from the employee and the Delegate, from a Determination dated May 4, 2001. Ms. Miller, a former employee of Roxas Advertising Agency Ltd operating as Savingmoney.com ( “Roxas”) ceased her employment on May 23, 2001. She filed a complaint under the Act on March 14, 2001. The Delegate did not investigate the complaint after determining that the complaint was not filed within six months of the last date of work. While the applicant alleges that “she would have made different decisions and choices last year if I were not so out of my mind”, there is no medical evidence presented which evidences any incapacity of the appellant to file an appeal.

## ANALYSIS

In an appeal under the *Act*, the burden rests with an appellant, in this case the employee, to show an error in the Determination such that I should vary or cancel the Determination. The time limits for the filing of a complaint are set out in s. 74(3) of the *Act* as follows:

*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*

The provisions of the *Act* are mandatory. The Tribunal has held, in the past that there is no discretion in the Tribunal to relieve against the mandatory time limits for the filing of complaints set out in the *Act*. See, *BCEST #D 257/96, Williamson, BCEST #D282/96, Campbell, BCEST #D061/96, Dhaliwal, BCEST #D062/96*.

The complaint was clearly out of time. While the employee has alleged an excuse for not filing within time, there is no evidence to support the excuse tendered, and therefore I find that no reason has been advanced for missing the time limit. One of the purposes of the *Act* is to provide “fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*”, just and speedy resolution to employment disputes, as set out in s. 2 of the *Act*. Even if there was jurisdiction to extend the time limits, which I found there is not, I would decline to extend time in this case as no evidence was presented by the employee supporting her allegations of a medical reason for a failure to file in time. It would be neither fair nor efficient to permit an employee an extension of time some 4 months after the deadline for filing an appeal. I therefore dismiss the appeal.

## ORDER

Pursuant to s. 115 of the *Act*, I confirm the Determination dated May 4, 2001

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**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**