

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 -

Eva Ferdinand
("Ferdinand")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: James Wolfgang

FILE No.: 2000/484

DATE OF DECISION: October 30, 2000

DECISION

OVERVIEW

This is an appeal by Eva Ferdinand (“Ferdinand”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards on September 15, 1999. The Determination found the application to the Branch untimely therefore the Branch had no jurisdiction.

Ferdinand was employed by BDF Properties Ltd. (“BDF”) or (“the employer”) until she was terminated in July 1998 following a robbery at the premises. She filed a complaint with the Branch claiming the employer had terminated her without proper notice or termination pay.

Ferdinand claims the Branch lost her first complaint filed in early September 1998 and she filed a second complaint on January 26, 1999. Ferdinand claims to have had difficulty getting information from the Branch regarding her claim. Finally, on March 21, 2000 she received a letter dated March 17, 2000 from the delegate of the Director who enclosed a Determination dated September 15, 1999. The covering letter indicates the Determination was sent to a different address and Ferdinand claims she never received it.

The Tribunal, under Section 109(1)(b) of the *Employment Standards Act*, extended the time period for appeal until April 19, 2000 and has accepted the appeal of Ferdinand.

ISSUE

Should the Branch review whether the complaint was filed within the 6-month time limit prescribed in Section 74(3) of the *Act*?

ARGUMENT

The Branch made a decision the complaint was beyond the six-month period and ruled they were without jurisdiction.

THE FACTS AND ANALYSIS

The actual date of termination is in dispute. It was during the period July 21, 1998, the last day worked by Ferdinand and July 28, the day on which Ferdinand claims she was terminated. The Determination uses July 22, 1998 as the possible date of termination. There has been little evidence provided to indicate the actual sequence of events. No copy of a Record of Employment was included in the material supplied.

Ferdinand claims she was under a doctor’s care and scheduled to return to work July 30th but was called by the owner’s wife on the 28th to advise her she was terminated. If the date of termination was July 28, 1998 her second complaint is timely by two days.

Ferdinand claims she filed a complaint with the Branch the first week in September. When she checked with the Branch later they had no record of receiving the complaint. Ferdinand filed a second complaint on January 26, 1999. No copy of the January complaint was provided. The Branch did not provide any indication what efforts, if any, were made to determine if Ferdinand had filed an earlier complaint.

There are a number of questions unanswered by both the Branch and Ferdinand. The Branch appeared to have arbitrarily decided that Ferdinand was terminated the day following the robbery without any explanation in the Determination. When the time periods are so critical it would seem necessary to have made a more comprehensive investigation than appears to have been the case. If such an investigation took place it was not reported in the Determination.

It seems unusual for the Branch to take seven and a half months to find the complaint was untimely. Ferdinand claims an officer of the Branch told her in July or August that they were going to question the employer. If the complaint were untimely why would it be necessary to question the employer unless there was still a question of timeliness?

Ferdinand stated she did not receive the Determination dated September 15, 1999 until March 21, 2000. She also claims she tried unsuccessfully on several occasions to get information on her complaint from the Branch.

The time limits in the *Act* should be adhered to whenever possible. One of the purposes of the *Act* is to provide fair and efficient procedures for resolving disputes. However, in view of the fact so little information was provided I feel the matter should be referred back to the Branch to allow a proper investigation as to the timelines of the complaint by Ferdinand. If the Branch finds the complaint was timely they can then determine whether Ferdinand was terminated for just cause or not.

ORDER

The complaint by Ferdinand is referred back to the Branch for investigation as to timeliness. If the complaint is found to be timely the Branch may then determine if the employer had just cause to terminate Ferdinand or whether she is entitled to termination pay in lieu of notice.

Jim Wolfgang

Jim Wolfgang

Adjudicator

Employment Standards Tribunal