

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 -

Charles Z. Hajek

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 98/550

DATE OF DECISION: September 4, 1998

DECISION

OVERVIEW

This is an appeal by Charles Z. Hajek, under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination which was issued on July 27, 1998 by a delegate of the Director of Employment Standards. The Director’s delegate determined that she did “ ... not have jurisdiction to investigate (the) complaint as it was not received within the time limits specified in Section 74 of the *Employment Standards Act*.”

Mr. Hajek’s position on his appeal is that his complaint was timely, was not frivolous, vexatious or trivial and was not made in bad faith..

This appeal has been decided on the basis of the written submissions and documents before me.

ISSUE TO BE DECIDED

Did the Director’s delegate err in determining that she did not have jurisdiction to investigate Mr. Hajek’s complaint?

FACTS

Mr. Hajek was employed by Finlay Navigation Ltd. (“Finlay”) from June 22, 1996 to October 10, 1997 although his last day of work was September 18, 1997. Mr. Hajek was granted vacation leave from September 18, 1997 to October 10, 1997 to enable him to attend courses at BCIT’s Pacific Marine Training Campus in North Vancouver. Upon his return, his employment with Finlay was terminated.

Mr. Hajek’s complaint under the *Act* is dated April 9, 1998 and was delivered to the Employment Standards Branch office on April 20, 1998.

The Director’s delegate determined that she did not have jurisdiction to investigate Mr. Hajek’s complaint because it was not made within the time limits contained in Section 74(3) of the *Act*.

ANALYSIS

Section 74 of the *Act* sets out the requirements of how and when a complaint may be made under the *Act*:

74. Complaint and Time Limit

- (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.

Subsection 74(3) is of particular relevance to this appeal.

The Tribunal set out its views on the proper interpretation of Section 74(3) in a recent Decision - *Director of Employment Standards* (BC EST#D301/98; Reconsideration of BC EST#D014/98) - as follows:

Section 74(3) of the *Act* requires that a complaint relating to an employee whose employment has been terminated must be delivered, under subsection (2) of section 74, within six months after the last date of employment. The Tribunal has consistently interpreted this provision as being mandatory: see for example, *Burnham* (BCEST #D035/98).

... If the Director is aware that the complaint is not timely under section 74 (3), she is empowered to refuse to investigate it. If there is doubt about the matter at the outset of the investigation, or if the lack of timeliness only becomes apparent during the course of the investigation, the Director is empowered by section 76(2) to stop or postpone it (perhaps pending further submissions from the parties on timeliness) once the investigation has begun.

... Clearly, the Director has no authority to investigate a complaint to which the *Act* does not apply. In our opinion, the Legislature has put untimely complaints into the same category as complaints to which the *Act* does not apply.

When I review the relevant facts of this appeal I find that the Director's delegate did not err in determining that she had no jurisdiction to investigate Mr. Hejek's complaint as it was not delivered within 6 months after his last day of employment. Mr. Hajek's last day of employment was October 10, 1997 and his complaint was delivered on April 20, 1998. That is, the complaint was not delivered within 6 months after the last day of employment. As noted above, when the Director (or her delegate) is aware that a complaint is not timely under Section 74(3), she lacks jurisdiction to investigate the complaint.

ORDER

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

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sa