

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 -

Bill Brad
("Brad")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE No.: 97/603

DATE OF DECISION: September 17, 1997

DECISION

OVERVIEW

This is an appeal by Bill Brad (“Brad”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated July 17, 1997 which was issued by a delegate of the Director of Employment Standards (the “Director”). Brad alleges that the delegate of the Director erred in the Determination by concluding that Brad’s complaint had not been received within the time limits provided in Section 74(3) of the *Act*.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the complaint filed by Brad was received within the time limits provided in Section 74(3) of the *Act*.

FACTS

Brad was employed by Hoskins Ford Sales Ltd. (“Hoskins”) from October, 1993 to September, 1996. Brad filed a complaint alleging that Hoskins owed overtime wages. Brad’s complaint was received by the Employment Standards Branch on March 27, 1997.

The delegate of the Director determined that as Brad’s last date of employment was September 26, 1996, as noted on his complaint form, the receipt of the complaint on March 27, 1997 was beyond the time limits provided for in Section 74(3) of the *Act*.

Brad states in his submission to the Tribunal that the date of September 26 was incorrectly placed on his complaint form as he inadvertently consulted the wrong year’s calendar. Brad further states that the correct date for his last date of employment for Hoskins actually was September 27, 1996. Brad further submits that he was paid commissions for the entire month of September 1996 and that an acquaintance contacted him by telephone on September 27, 1996 at Hoskins.

ANALYSIS

The time limit for filing a complaint with the Employment Standards Branch is found in Section 74(3) of the *Act* which provides:

Section 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.

Although I am satisfied that Brad's last date of employment was likely September 27, 1996, this conclusion alone does not ensure the success of Brad's appeal.

The *Interpretation Act* requires that 'month' as utilized in Section 74(3) of the *Act* be defined as a period calculated from a day in one month to a day numerically corresponding to that day in the following month, **less one day**.

The application of the definition of month to Brad's complaint reveals that the **last** date on which Brad could have delivered a complaint pursuant to the provisions of Section 74 of the *Act* was **March 26, 1997**.

Brad's complaint was delivered to an office of the Employment Standards Branch on **March 27, 1997** therefore it was **not** received **within** the six months limit set by Section 74 of the *Act*.

For all of the above reasons, the appeal by Brad is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 17, 1997 be confirmed.

Hans Suhr
Adjudicator
Employment Standards Tribunal