

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 -

Cheryl Lockhart
("Lockhart")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE No.: 2000/552

DATE OF DECISION: January 02, 2001

DECISION

OVERVIEW

This is an appeal by Cheryl Lockhart (“Lockhart”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination issued July 21, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that Lockhart’s complaint against her former employer had not been received by the Employment Standards Branch (the “Branch”) within the time limits contained in Section 74(3) of the *Act*. Consequently, the delegate did not investigate Lockhart’s complaint.

Lockhart appealed on the grounds that the delegate had incorrectly analyzed the evidence concerning the date she mailed her complaint to the Branch.

The case was decided based on written submissions.

ISSUE TO BE DECIDED

The issue to be decided in this case is whether Lockhart identified an error of fact or law in the Determination so that an investigation of her complaint should proceed.

FACTS

Lockhart was employed by Cromwell Restoration Ltd. (“Cromwell”) from January 2, 1997 to January 27, 1999. Cromwell terminated Lockhart’s employment on January 27, 1999 and paid her two weeks’ compensation for length of service. No dispute arose about the compensation for length of service. Lockhart alleged that she did not receive overtime and annual vacation pay and that she was entitled to a share of Cromwell’s profits, as well as a salary increase.

The Branch received Lockhart’s complaint at its Surrey office on August 16, 1999, beyond the six-month time limit set out in Section 74(3) of the *Act*. The complaint was dated May 30, 1999. The Director’s delegate initially notified Lockhart and Cromwell that she intended to exercise her discretion under Section 76(2) of the *Act* and proceed with her investigation.

The envelope in which the complaint was sent to the Branch was stamped “Received July 27, 1999 by _____.” No signature appeared in the blank line on the stamp, which was not a design used by the Branch. An uncancelled metered postage stamp dated July 23, 1999 was on the envelope. The envelope was addressed to a location in Surrey where the Branch office was located until April 30, 1999. During the period in question, Canada Post forwarded mail to the new address of the Branch office.

The complaint form and a letter from Lockhart were dated May 30, 1999. An unsigned letter was attached to the complaint. The letter, written on plain paper stated that the author had received the complaint in error, then resealed the envelope, stamped it and put the envelope in an outgoing mail box. For some reason, according to the letter, the envelope with the complaint

was not mailed, and the office closed for the summer. When the author of the letter found the envelope in August he or she had personally to the current address of the Surrey office of the Branch. There was no evidence of how the Branch received the envelope.

A second delegate of the Director took over the file after the Branch received the complaint. She examined the envelope and found that the metered stamp on the original envelope containing the complaint had not been processed by Canada Post. The stamp was not cancelled, and the envelope did not have an orange barcode on the bottom. The delegate concluded that the letter had not been mailed. Lockhart told the delegate that she had placed a stamp on the envelope and given it to a friend to mail. The delegate found that the second envelope was addressed in Lockhart's handwriting. Lockhart suggested that she would ask her friend to explain what had happened to the original envelope, but never provided any information on this point to the delegate. Prior to issuing the Determination, the delegate invited Lockhart to explain her concerns with the receipt of the complaint, but Lockhart did not provide any explanation beyond the text of her appeal.

The delegate found that the writing style of the letter written by the person who forwarded the complaint to the Branch strongly resembled Lockhart's, including typographical or grammatical errors.

On the balance of probabilities, the delegate found that Lockhart had falsified evidence to give the appearance that she had filed the complaint within the six-month time limit established by the *Act*.

Lockhart's appeal was based on assertions that Canada Post might have delivered the envelope in question without cancelling the stamp or placing the bar code on it. She argued that grammatical errors of the sort contained in the letter accompanying her complaint and the letter from the person who forwarded the complaint to the Branch were not uncommon. Lockhart also asserted that the delegate who issued the Determination had not kept her informed of the progress of the investigation as had the delegate who previously was responsible for her file.

ANALYSIS

The purposes of the *Act* as stated in Section 2(d) are to:

Provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act,

To implement this purpose, the *Act* establishes an enforcement framework that emphasizes rapid processing of alleged violations. Section 74 establishes requirements for the filing of complaints as follows:

(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.

Section 76(2)(a) permits the Director to refuse to investigate a complaint if it is not made within the time limits in Section 74(3).

In this case, the Branch did not receive Lockhart's complaint within 6 months of the last day of her employment. After examining the physical evidence of the complaint and accompanying documents, the delegate found that the complaint had not been delivered within the time limit in the *Act*. She found no compelling reason to exercise the Director's discretion under Section 76(2)(a) to proceed with the investigation.

The appellant in cases before this Tribunal must demonstrate that the determination under appeal contains an error of fact or law. Lockhart failed to present any evidence in support of her appeal to indicate that the delegate's conclusions were incorrect in any way. Her appeal consisted of unsupported statements that Canada Post might have processed her complaint incorrectly. When offered the opportunity to present other evidence in support of her appeal, Lockhart did not respond.

In keeping with the general framework of the *Act*, the language of Section 74 establishes firm requirements that a complaint must be in writing and must be delivered to the Branch within 6 months of the last day of employment. The statute does not permit the Tribunal to waive these requirements.

ORDER

For these reasons, the Determination of July 21, 2000 is confirmed.

MARK THOMPSON

**Mark Thompson
Adjudicator
Employment Standards Tribunal**