

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-

Natalie Patricia Parnell

(“Parnell”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 1999/586

DATE OF DECISION: November 22nd, 1999

DECISION

OVERVIEW

This is an appeal brought by Natalie Patricia Parnell (“Parnell”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on September 15th, 1999 under file number ER 090349 (the “Determination”). The Director’s delegate dismissed Parnell’s complaint because it was filed outside the 6-month time limit (running from the last day of employment) provided for in section 74(3) of the *Act*.

FACTS

Parnell’s last day of work with her former employer, 4 Seasons Electrical Mechanical Contractors of B.C. Ltd., was June 11th, 1998. On December 10th, 1998 Parnell filed a complaint with the B.C. Human Rights Commission alleging that her former employer “refused to continue to employ me because of sex (pregnancy) contrary to section 13 of the *Human Rights Code of B.C.*”.

On February 18th, 1999, according to the information set out in the Determination, Parnell filed a complaint (dated December 4th, 1998) with the Employment Standards Branch in which she alleged that her former employer had failed to pay overtime wages and that her employment was terminated because of her pregnancy.

ISSUE TO BE DECIDED

Parnell challenges the delegate’s finding that that her complaint was not filed with the Victoria office of the Employment Standards Branch until February 18th, 1999. Parnell asserts in her appeal form that “this complaint was delivered by myself to the Employment Standards Branch located at Suite 400-3960 Quadra St. in Victoria, B.C. on December 4, 1998”. I might add that if Parnell’s evidence is accepted, her complaint would have been filed within the statutory 6-month time limit.

ANALYSIS

In my view, it was not inappropriate for the delegate to rely on the “date stamp” on Parnell’s complaint in determining that her complaint was filed outside the statutory 6-month time limit. In the ordinary course of events, one can presume that the date stamp is a reliable record as to the date of filing. However, in this case, there is other evidence before me which leads me to conclude, on the balance of probabilities, that Parnell’s complaint was, in fact, filed on or about December 4th, 1998--in which case, as noted above, it would have been a timely complaint.

First, the complaint is dated December 4th, 1998 which is consistent with Parnell’s assertion that she filed the complaint on that day.

Second, the complaint was prepared with the assistance of a counsellor with the Military Family Resource Centre in Victoria--the counsellor met with Parnell on December 2nd and on that date reviewed two documents with her--a human rights complaint and an employment standards complaint--both of which were to be filed straight away. One has to wonder why the human rights complaint was filed (there is no dispute about this) but the employment standards complaint was not. One explanation, advanced by Ms. Parnell, is that in December 1998 both the Employment Standards Branch and the Human Rights Commission were cooperating on a joint "pilot project"; accordingly, the employment standards complaint may have been immediately redirected, upon filing with the Employment Standards Branch, to the Human Rights Commission. The evidence before me shows that the Human Rights Commission did have an employment standards complaint in its file; in the ordinary course of events, if a complainant attempted to file an employment standards complaint with the Human Rights Commission one would expect that the complaint would have been refused or returned to the complainant. Thus, it may be that the employment standards complaint made its way to the Human Rights Commission's file by being forwarded directly from the Employment Standards Branch office.

Finally, the delegate, as noted above, relied solely on the date stamp and the absence of any information in the Branch file to indicate that the complaint was filed on or about December 4th, 1998. The delegate, of course, does not have any independent knowledge as to the date of filing whereas Parnell's evidence--if it is accepted--is based on her own personal knowledge. Given that the Parnell's evidence is corroborated in some fashion by the other evidence before me (for example, the statement of the MFRC counsellor), I conclude, on the balance of probabilities, that her complaint under the *Act* was filed within the statutory 6-month time limit.

Of course, by so finding, I am not expressing any view as to the merits of Parnell's complaint, only that it is deserving of investigation [at least with respect to the unpaid overtime claim; the "pregnancy claim" may well be properly deferred to the Human Rights Commission in light of section 76(2)(e) of the *Act*] because it is not statute-barred.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be referred back to the Director for further investigation regarding:

1. unpaid overtime; and
2. termination by reason of pregnancy.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal