

An appeal

- by -

Cheryl Marshall  
("Marshall")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2001/726

**DATE OF DECISION:** November 28, 2001

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Cheryl Marshall (“Marshall”) of a Determination that was issued on September 26, 2001 by a delegate of the Director of Employment Standards (the “Director”).

Marshall had filed a complaint with the Director under the *Act* against her former employer, United Furniture Warehouse Ltd. (“United”). The Determination concluded the complaint had not been filed within the time allowed in the *Act*, ceased the investigation of the complaint and closed the file.

In this appeal, Marshall asks the Tribunal to cancel the Determination, require the Director to accept the complaint and refer the matter back to the Director for investigation.

### ISSUE

The issue in this appeal is whether Marshall has provided any reason for the Tribunal to cancel the decision of the Director to cease investigating her complaint.

### FACTS

The complaint form indicates that Marshall was employed by United from February 9, 2000 to December 22, 2000 as Office Manager at a rate of \$2700.00 a month. Her complaint was for overtime and length of service compensation.

The Determination was based on the following findings of fact:

On the complaint, Marshall stated that her last day of work was December 22, 2000. The complaint was received in the Human Rights office and the Employment Standards office on June 20, 2001 and August 14, 2001, respectively. The Human Rights office had sent a letter confirming the date received in their office. However, the Human Rights office sent the complaint to the Employment Standards office on August 14, 2001. . . .

There is no reason stated in the letter why there was a delay of almost two months before the complaint was directed to the Employment Standards office. Peijan Shen, the Complaints analyst at the Human Rights office was contacted. He said he delivered the complaint to the Employment Standards office a couple of days after Cheryl Marshall requested him to do so. However, he did say she had made

the request earlier to another colleague who was no longer with the Human Rights Commission. There was no file entry to corroborate what she had said.

The Director relied on the provisions of subsections 74(2) and (3) of the *Act*, which state:

74. (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.*

The Director applied paragraph (a) of subsection 76(2) in reaching the decision not to investigate the complaint.. That provision says:

76. (2) *The director may refuse to investigate a complaint or may stop or postpone investigating a complaint if*
- (a) *the complaint is not made within the time limit in section 74 (3) or (4),*

## **ARGUMENT AND ANALYSIS**

Marshall argues that the delay from the date the complaint was delivered to the Human Rights office, June 20, 2001, until the date the complaint was delivered to the Branch, August 14, 2001, was not her fault. She blames Canada Post and the Human Rights Commission. She says that delivery to the Human Rights Commission should be considered to be delivery to the Branch.

The time limit allowed in the *Act* for filing a complaint is very generous and in most cases will provide a complainant with ample time to decide to file a complaint, frame the details of the complaint and deliver the complaint to an office of the Branch. An individual who leaves delivery of the complaint to the last minute runs the risk that some accidental circumstance will cause the complaint not to be delivered until after the statutory deadline has expired. That is the situation affecting Marshall in this appeal.

Notwithstanding the circumstances and whether such circumstances provide a reasonable explanation for the delay, there is no escaping that the complaint was not delivered to the Branch until nearly two months after the statutory time limit for such delivery had passed. The requirements in the *Act* for filing complaints are clear and unambiguous. The Tribunal has consistently interpreted these provisions as being mandatory. In *Burnham*, BCEST #D035/98, the Tribunal stated:

The language of section 74(2) and (3) of the Act is mandatory as it requires that a complaint must be delivered within 6 months after the last day of employment.

There is no provision to permit the Director to investigate a complaint received after the time limit has expired.

In keeping with the approach taken by the Tribunal, it is a mandatory statutory requirement that a complaint “*must be delivered to an office of the Employment Standards Branch*”. I cannot, therefore, accept the suggestion that delivery to the Human Rights Commission office should be deemed to have satisfied that requirement.

As well, while the language in Section 76 might suggest the Director has a discretion to investigate a complaint not meeting the time limits for filing in Section 74, such is not the case. As noted in *Burnham, supra*, there is no provision in the *Act* that allows the Director to investigate a complaint filed out of time. In *Director of Employment Standards (Re Bunger)*, BC EST #D301/98; (Reconsideration of BC EST #D014/98), the Tribunal accepted that Section 76(2)(a) could not be interpreted as giving the Director a discretion to ignore the mandatory filing requirements of the *Act* and to investigate a complaint that did not meet those requirements.

The Director was correct in concluding the requirements of Section 74 of the *Act* had not been met and was correct to have refused to investigate the complaint. The appeal is dismissed.

## ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated September 26, 2001 be confirmed.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**