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 -

Pheng Praseuth operating as Thai's Coffee Shop and
Convenience Store
("Praseuth")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NO.: 1999/158

DATE OF DECISION: May 31, 1999

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the *"Act"*) by Pheng Praseuth operating as Thai's Coffee Shop and Convenience Store, ("Praseuth") of a Determination issued on February 26, 1999 by a delegate of the Director of Employment Standards (the "Director"). In the Determination, the Director found Linda Esovoloff ("Esovoloff") to be an employee of Praseuth and that Praseuth had contravened Sections 27(1), 40(1) and (2), 45(b) and 58(1)(a) and 58(3) of the *Act* in respect of the employment of Esovoloff, ordered Praseuth to cease contravening the *Act*, to comply with the requirements of the *Act* and to pay an amount of $8687.19

In addition to the appeal submission from Praseuth, the Tribunal received several submissions from persons not directly involved in the complaint. Without deciding whether such persons have any standing to participate in the appeal, I have reviewed and considered the submissions and have not found them to add any further substance to the merits of the appeal. The Tribunal has decided an oral hearing is not required in this case.

ISSUE TO BE DECIDED

The single issue is whether Praseuth has met the burden of persuading the Tribunal that the Determination ought to be varied or canceled because the Director erred in fact or in law in concluding Esovoloff was an employee of Praseuth.

FACTS

The facts are not in dispute. Praseuth simply disagrees with the the conclusion made by the Director from those facts. The findings of fact are clearly set out in the Determination. In the appeal, Praseuth notes the following statements:

> (a) Miss Evoloff was attending class at Selkirk College and placed in the Thai Coffe Shop for limited workplace training. At that time, Mr. Praseuth contended that he would under no circumstances hire any employee as the business certainly could not justify the need as daily volume was extremely limited (approximately $100/day). She agreed that she was not an employee and was collecting welfare funds.

(b) Certainly, should the business at some future date require an employee, the labour market is both diverse and skilled. Miss Evoloff is unskilled and would not fill the requirements.

The second statement of fact made in the above submission is irrelevant and the first statement of fact was addressed in the findings of fact made in the Determination.

ANALYSIS

Section 1 of the *Act* defines who is included in the definition of employee:

> ***"employee"*** *incudes*
>
> *(a) a person, including a deceased person, receiving or entitled to wages for work performed for another,*
>
> *(b) a person the employer allows, directly or indirectly, to perform work normally performed by an employee,*
>
> *(c) a person being trained by an employer for the employer's business,*
>
> *(d) a person on leave from an employer, and*
>
> *(e) a person who has a right of recall;*

The Director found Esovoloff to be an employee of Praseuth for the purposes of the *Act* on the basis of paragraph (b), that she was being allowed by Praseuth to *"perform work normally performed by an employee"*. In the *Act*, work is also defined:

> ***"work"*** *means the labour or services an employee peforms for an employer whether in the employee' residence or elsewhere.*

Based on the facts, I can find no error in fact or law with the conclusion of the Director that Esovoloff was an employee for the purposes of the *Act*. The definition of *"employee"* in the *Act* is sufficiently broad and inclusive to justify the factual conclusion that Esovoloff was performing work normally performed by an employee.

Additionally, the conclusion of the Director is consistent with the objectives of the *Act*, one of which is to encourage compliance with minimum standards of employment for a person who performs "work" for an employer.

In *Machtinger v. HOJ Industries Ltd.*and *Helping Hands v. Director of Employment Standards* (1995) 131 D.L.R. (4th) 336 (B.C.C.A.) the Court stated:

> The ESA is remedial legislation. Consistent with s. 8 of the Interpretation Act, R.S.B.C. 1979, c. 206, the ESA should be given such fair, large and liberal construction as best insures the attainment of its objects

We also note with approval the following comment from *Machtinger v. HOJ Industries Ltd.*, (1992) 91 D.L.R. (4th) 491 (S.C.C.) that:

> . . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protection to as many employees as possible is favoured over one that does not.

The appeal is denied.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated February 26, 1999 be confirmed, together with whatever interest has accrued since the date of issuance pursuant to Section 88 of the *Act*.

David Stevenson
Adjudicator
Employment Standards Tribunal