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 -

International Express Aircharter Ltd.

Operating as Regency Express Flight Operations
("International Express" or the "Company")

- of a Determination issued by -

The Director of Employment Standards (the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 1999/111

DATE OF HEARING: June 2, 1999

DATE OF DECISION: July 7, 1999

DECISION

APPEARANCES

Mr. Arthur Harrison on behalf of International Express

Ms. Lynn Coxon on behalf of herself

FACTS AND ANALYSIS

This is an appeal by International Express pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on February 8, 1999 which determined that Ms. Coxon ("Coxon") was entitled to payments on account of overtime and statutory holidays. As the Company did not respond to the delegate's request for information and Employer Records, he based his findings on Coxon's information. As I understand it, the merits of the Determination is that Coxon is entitled to pay for work during her lunch break and that she worked a total of 9.5 hours per day. The Director's delegate ordered International Express to pay \$2,052.94 to Coxon.

International Express takes issue with the findings and conclusions of the Director's delegate. The Company has several grounds of appeal. The only ground I need to deal with is the claim that it operates within federal jurisdiction and is, therefore, not governed by provincial employment standards legislation. If, as argued by International Express, it is not subject to provincial employment standards legislation, the Determination must be set aside.

The constitutional issue was first raised by International Express in its correspondence with the Tribunal. Nevertheless, jurisdiction is a fundamental matter. Whether or not it had been brought to the attention of the delegate is irrelevant and I do not accept the delegate's argument, in a submission to the Tribunal, that International Express has attorned to the provincial jurisdiction.

At the hearing, Mr. Gill ("Gill"), who testified on behalf of International Express, explained that he Company's operations has two components: first, it operates a flight school and, second, an air cargo business. The evidence was that the Company transports cargo for various customers, including Purolator and UPS, to destinations in Washington, Alaska and in British Columbia. At the time of Coxon's employment, between March and August 1998, it also operated a passenger service between Nanaimo and Abbotsford. It owns or operates seven aircraft out of Boundary Bay Airport where, as well, its office is located. Its operations are, among others, licensed and regulated by Transport Canadian. This evidence was not in dispute.

As a rule, labour relations and employment contracts are under provincial jurisdiction. However, the applicability of provincial legislation in these areas may be outside provincial jurisdiction if the undertaking, business or service is an integral element of the federal jurisdiction over some other matter (see, for example, *Construction Montcalm Inc. v. Minimum Wage Commission*, <1979> 1 S.C.R. 754). Under Sections 91 and 92 of the *Constitution Act, 1867*, aeronautics is under federal jurisdiction *(Johannesson v. West S. Paul*, <1952> 1 S.C.R. 292). The evidence clearly supports that the Company is in the air transportation business: it operates air planes and moves cargo both provincially and internationally. In my view, therefore, it is within the federal jurisdiction.

In the result, the Determination must be set aside.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determinations in this matter, dated February 8, 1999 be cancelled.

Ib Skov Petersen Adjudicator Employment Standards Tribunal