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-

Cary Lawrence Praetor operating as "C.I.P. International"

("Praetor" or the "employer")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE No.:	1999/510
DATE OF DECISION:	November 3rd, 1999

DECISION

OVERVIEW

This is an appeal brought by Cary Lawrence Praetor, operating as C.I.P. International ("Praetor" or the "employer"), 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 August 13th, 1999 under file number ER 090 132 (the "Determination").

The Director's delegate determined that Praetor owed his former employee, Colleen J. Randall, the sum of $5,537.50 on account of unpaid wages (including 1 week's wages as compensation for length of service) and interest. Ms. Randall's unpaid wages accrued during the period November 1st, 1998 to December 9th, 1998 although her actual employment commenced on or about July 1st, 1998.

These Reasons for Decision address only the timeliness of this appeal.

APPLICATION FOR AN EXTENSION OF THE APPEAL PERIOD

As clearly set set out in the Determination itself, an appeal of the Determination was required to be filed with the Tribunal by no later than September 6th, 1999. On August 19th, 1999, Praetor faxed a note to the Tribunal which reads, in part, as follows:

> "I will be appealing this Determination. But I'm leaving on business on 19th and returning on the 7th/9/99. On my arrival back I will be filling out the relevant forms and submitting directly to your office."

Section 112 of the *Act* states that a request to appeal a determination must be delivered, in writing, to the Tribunal within certain time periods (depending on the mode of service of the determination) and must also set out "the reasons for the appeal". On August 20th, 1999, the Tribunal's Registry Clerk wrote to Praetor advising that his appeal, as it was then constituted, was deficient inasmuch as he had not set out the reasons for appeal, the facts that were in dispute and the remedy that he was seeking. The Tribunal's August 20th letter concluded:

> "The appeal deadline is September 6, 1999. The above requested information must be received by our office by **4:00 pm September 7, 1999.** Information received after this deadline will not be accepted as the appeal will be considered out of time." (**boldface** in original)

Thus, the appellant was granted, in effect, a 1-day time extension from September 6th to the 7th. On September 9th, 1999, the Tribunal's Registry Assistant wrote to Praetor advising that since "the Tribunal did not receive the required information within the timelines given, we consider the appeal to be abandoned. Consequently, we have closed this file". The Tribunal's September 9th letter does not refer to a letter, dated September 8th, 1999, which appears to have been faxed to the Tribunal at 10:54 P.M. on September 8th (it was date stamped September 9th, 8:31 A.M. by the Tribunal) under the signature of C.L. Praetor. Praetor's September 8th letter states that:

> "Mr. Praetor has been delayed in London and will only be back on the 12th September" [and] we also confirm that the person in question (Mrs. Colleen J. Randall) at the time was not employed by CIP legally and therefore no proof is need to be provided in terms of the Employment Act [sic]."

On September 14th, 1999, Praetor again faxed a note to the Tribunal reiterating his position that "Mrs. Randall was not employed by my office full-time [and] I can only presume that this matter is closed." Further, Praetor stated "I cannot appeal unless I am in receipt of the facts as requested by me from your office as this person in question was not formally employed by my company at any stage."

On September 15th, 1999 the Tribunal received a further fax communication, dated September 14th, 1999, from Praetor. In this letter, Praetor acknowledges the following:

- that Ms. Randall was employed on a "temporary basis" for the sum of $3,000 as a "favour and a jester [sic] of good will, not employment as it was highly illegal for her to work";

- that Ms. Randall's employment ended of her own accord and that she was not terminated; and

- "During November Ms. Randall work was of no subsidence [sic] and of value as there was nothing going on, and the dates in my opinion are of no consequence as Ms. Randall had been more than paid at $3,000.00 goodwill [sic]."

Finally, in his September 14th letter, Praetor summarized his position as follows:

- Ms. Randall was not paid a "regular wage" because "if anything, they were highly irregular, as she was not employed";

- "the wage...was highly illegal";

- "she was never employed and left on her own account"; and

- "Ms. Randall was not at any stage employed as under the immergration [sic] laws of the country should she of [sic] been employed she was breaking the law of the country..."

ANALYSIS

Section 112(1) of the *Act* states that an appeal of a determination is not perfected unless it is accompanied by a written memorandum setting out the *reasons* for filing the appeal. Praetor's first submission to the Tribunal, received on August 19th, is nothing more than a statement of an *intention to appeal*. As such, the Tribunal immediately wrote to Praetor and advised him that the reasons for his appeal must be delivered by no later than 4:00 P.M. on September 7th--thus, Praetor was given a 1-day extension of the appeal period.

Notwithstanding that 1-day extension, Praetor still did not file with the Tribunal a written statement setting out the reasons for his appeal until, at the very earliest, September 9th, at which time he alleged that there never was a lawful employment relationship between himself and Ms. Randall ("Mrs. Randall at the time was not employed by CIP legally and therefore no proof is needed to be provided..."). Praetor filed a more complete explanation of the reasons for his appeal on September 15th. In essence, the appellant alleges three grounds of appeal:

1. There never was a subsisting employment relationship between Ms. Randall and himself;

2. In any event, any employment contract was illegal because, I presume, Ms. Randall was prohibited by the terms of her entry visa to work in Canada; and

3. Ms. Randall's employment was not terminated; rather, she quit.

I am not satisfied that the employer complied with the mandates of section 112(1) by providing *written reasons* for appealing the Determination within the statutory appeal period. The employer was given, in effect, a 1-day extension and still only provided the most cursory particulars regarding his reasons for appeal--some two days after the extended appeal period had expired. I might add that, even if the employer's appeal had been filed in a timely fashion, the enumerated grounds of appeal are, in my view, on their face, clearly lacking substantive merit.

The employer's assertion that there was no employment relationship is inconsistent with his position that wages were paid, albeit "irregularly", to Ms. Randall for work performed. Even if Ms. Randall was working in contravention of her entry visa, that issue is separate and apart from her entitlement under the *Act*. Finally, as to the allegation that Ms. Randall "quit", I note that this allegation is inconsistent with the employer's primary position (and only position advanced during the delegate's investigation) that there never was a lawful employment relationship. Further, this allegation, namely, that Ms. Randall quit, was not raised during the delegate's investigation and thus cannot now be raised anew on this appeal (see *Tri-West Tractor Ltd.*, BC EST #D268/96 and *Kaiser Stables Ltd.*, BC EST # D058/97). As noted by the Tribunal in *Niemisto*, BC EST #D99/96, an extension of the appeal period will not be granted where the grounds of appeal are, *prima facie*, without any substantive merit.

ORDER

The employer's request, made pursuant to section 109(1)(b) of the *Act*, for a further extension of the appeal period is refused. Accordingly, pursuant to subsections 114(1)(a) and (c) of the *Act*, this appeal is dismissed and the Determination thus continues in full force and effect.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal