

An Application for Reconsideration

- by -

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

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

pursuant to Section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: John M. Orr

FILE No.: 2002/354

DATE OF DECISION: September 9, 2002

DECISION

INTRODUCTION

This is an application filed by Cary Lawrence Praetor operating as C.I.P. International ("Praetor") pursuant to section 116 of the Employment Standards Act (the "*Act*") for reconsideration of an adjudicator's decision ("the original decision") issued on November 5, 1999 (BC EST # D493/99). The application also includes, by necessary association, reconsideration of the subsequent quantum decision BC EST #D052/00.

The original decision was issued in response to an appeal by Praetor of a Determination issued by the Director of Employment Standards ("the Director"). The fundamental issues related to whether a claimant, Mark Randall ("Randall") was employed by Praetor at the time of his dismissal and whether his employment was terminated without cause. Praetor raised a number of arguments at the appeal hearing including the application of section 65 (1) of the *Act* and that C.I.P. International was an incorporated entity and that Randall was employed by the corporation and not Praetor himself. The adjudicator in the original decision dismissed all of these arguments and confirmed the Determination except for some recalculations that were referred back to the Director. These recalculations were completed and on February 18, 2000 the Tribunal varied the original Determination in quantum only.

The Tribunal received the request for reconsideration on June 14, 2002 and this decision relates only to the issue of the timeliness of this application.

THE TIMELINESS OF THE APPLICATION

The Determination was issued on June 28, 1999. Praetor's appeal was heard on October 18, 1999 and the original decision dismissing the appeal was issued on November 5, 1999. However, as the decision called for some recalculation of the quantum of the Determination, the matter was referred back to the Director. Submissions were requested and received and the Tribunal issued the final adjudication on February 18, 2000.

As noted the Tribunal received this application for reconsideration on June 14, 2002 some 2 years and 4 months after the final decision was issued. The application appears to have been energized by certain enforcement proceedings being taken in the Supreme Court of British Columbia by the Director to try to recover the amount of the Determination on behalf of the employee. In light of the extraordinary lateness of the application, the Tribunal, in a letter to the parties dated June 20, 2002, requested that they file submissions with respect to the timeliness of the application.

In his submission dated August 5, 2002 Praetor explains that he had left Canada on business after filing his initial appeal. He claims that he never received the final decision BC EST #D052/00. He claims that he was under the impression that the whole case had been dropped. He also raises a number of issues relating to the enforcement proceedings that are more properly addressed to the Supreme Court.

The Director, in a submission dated July 16, 2002 opposes the request for reconsideration based on the 28-month delay and that application was only filed to prevent enforcement of the Determination. The Director points to several discrepancies in the explanations given by Praetor for the delay. The Director

points out that Praetor acknowledges that he returned to Canada in February 2001 and yet the application was not filed for some 16 months after his return. The Director points out that there is no reasonable explanation for the delay and also that there is little merit to the grounds suggested for reconsideration noting that even if CIP is a corporate entity it is not registered in B.C. and therefore Praetor would be liable personally in any case as a director.

Randall submits that this application is consistent with Praetor's stated decision that he would never pay Mr. Randall a dollar.

Although strict time limits govern the appeal process (see section 112 of the Act), there is no statutory time limit governing reconsideration applications. Nevertheless, the Tribunal has held that applications for reconsideration must be filed within a reasonable time in light of the particular complexities of the case at hand; a party who does not seek reconsideration within a reasonable time period must provide a cogent explanation for their tardiness. In the absence of a reasonable excuse for filing a tardy application, the Tribunal may exercise its discretion to simply refuse to reconsider the decision in question.

In *Director of Employment Standards (Valorosos)*, (BC EST # RD046/01) a reconsideration panel summarized the Tribunal's jurisprudence regarding the timeliness of reconsideration applications and reiterated the long-standing rule that an unexplained delay in making application, standing alone, might be a sufficient justification for refusing reconsideration.

A 28-month delay in applying for reconsideration is sufficiently lengthy as to demand an explanation. The Tribunal is under a statutory mandate to ensure that disputes arising under the Act are adjudicated in a fair and expeditious manner [see section 2(d) of the Act]. The Tribunal has dismissed a number of applications for reconsideration as untimely where the delay involved has ranged from five to six months -- see e.g., *Director of Employment Standards (KEA Foods)*, BC EST # D526/00; *Director of Employment Standards (Athlone Travel)*, BC EST # RD129/01; *Director of Employment Standards (Unisource Canada)*, BC EST # D122/98; *Director of Employment Standards (Medowvale Holdings)*, BC EST # D530/00; and *Director of Employment Standards (Valorosos)*, supra.

Praetor alleges that he did not receive the final decision issued by the Tribunal (BC EST #D052/00) dated February 18, 2000. However, there is a letter on file addressed to the Tribunal from Praetor. The letter is dated February 18th 2000 and acknowledges receipt of the February 18th decision as follows:

Date: 28.02.00
To Employment Standards Tribunal
Suite 890, 360 West Georgia Street
Vancouver, British Columbia V6B 6B2
Tel: 604-775-3512

Re: Letter Dated 18.02.00

To: Norma Edelman – BC EST #D052/00 – 2000/63

I receipt (*sic*) of your letter per above

This letter clearly notes the decision number and acknowledges receipt. At the end of the letter Praetor again confirms that he is receiving the correspondence from the Tribunal. It ill behoves him at this point to deny receipt of the document and to deny any knowledge of the decision dismissing his appeal.

In my view, this application has not been filed in a timely fashion and I am not fully satisfied with its explanation as to why this application was not filed more promptly. In addition the extraordinary delay is clearly prejudicial to the employee, who has been without payment of his rightful wages for almost three years.

ORDER

Pursuant to section 116 of the Act, the application for reconsideration of Decisions #D493/99 and #D052/00 is refused.

John M. Orr
Adjudicator
Employment Standards Tribunal