

**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 -

Great Pacific Fire Protection Ltd.  
(" Great Pacific Fire ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 2000/056

**DATE OF HEARING:** April 10, 2000

**DATE OF DECISION:** April 18, 2000

**DECISION**

**APPEARANCES**

Robert James Hull	on his own behalf
Crystal Fraser	on her own behalf
No appearance	for the Director of Employment Standards

**OVERVIEW**

This is an appeal filed on February 2nd, 2000 by, and in the name of, Robert James Hull, pursuant to section 112 of the *Employment Standards Act* (the “Act”). Hull purports to appeal a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on January 12th, 2000 under file number ER 093323 (the “Determination”) against Great Pacific Fire Protection Ltd. (“Great Pacific Fire”).

The Director’s delegate determined that Great Pacific Fire terminated the employment of its bookkeeper/secretary, Ms. Crystal Fraser, without proper written notice or just cause and, accordingly, owed Ms. Fraser the equivalent of 2 weeks’ wages as compensation for length of service (see section 63 of the *Act*). A total sum of \$926.87 was awarded to Ms. Fraser (inclusive of concomitant vacation pay and interest).

By way of the Determination, the Director also levied a \$0 penalty pursuant to section 98 of the *Act* and section 29 of the *Employment Standards Regulation*.

**ISSUE TO BE DECIDED**

The first issue to be addressed is whether this appeal is properly before the Tribunal. In my view, and I expressed this view at the appeal hearing, this appeal is fatally defective.

I dismissed this appeal at the hearing giving brief oral reasons; this decision sets out, in a more complete manner, my reasons for dismissing the appeal.

**FACTS AND ANALYSIS**

As noted above, this appeal was filed in the name of Robert James Hull. Mr. Hull was formerly an officer (president) and director of Great Pacific Fire but resigned both positions on February 8th, 1999. I take it that Mr. Hull and Great Pacific Fire’s only other principal, Mr. Robert Kozak, had some sort of falling out and that the company is no longer an operating entity. Although, to my knowledge, no formal insolvency proceedings have been taken against Great Pacific Fire, I also understand that the company may be insolvent.

Mr. Hull, since he was neither an officer or director of Great Pacific Fire when this appeal was filed (on February 2nd, 2000), did not have any implied authority to act on behalf of Great Pacific Fire nor was he specifically authorized by the sole remaining principal, Mr. Kozak, to file an appeal of the Determination. An appeal of the Determination may only be filed by Mr. Kozak (Great Pacific Fire's sole remaining principal) or his authorized designate; it should be noted that, in the event of such an appeal being filed, Great Pacific Fire will first have to obtain an extension of the appeal period as the time for filing an appeal has now expired.

Although Mr. Hull seemed to be under the contrary impression, Hull is *not* personally liable under the Determination although, at some future point, a section 96 (*i.e.*, directors'/officers' personal liability for unpaid wages) determination may be issued against him. Should that latter event happen, of course, Mr. Hull will then be entitled to appeal the section 96 determination issued against him. However, as matters presently stand only an authorized agent of Great Pacific Fire can appeal the Determination presently before me and, clearly, Mr. Hull has neither express nor implied authority to act on behalf of Great Pacific Fire.

Further, even if Mr. Hull *did* have authority to act on behalf of Great Pacific Fire, this appeal would inevitably have been dismissed, in any event, on its merits. As set out in the Determination, the critical events occurred on October 26th, 1998 and involved only Ms. Fraser and Mr. Kozak--apparently some sort of dispute arose between the two that led to Ms. Fraser either quitting or being terminated. There is a dispute between the latter two individuals regarding whether Ms. Kozak quit or was terminated. The delegate concluded, based on the evidence before her, that Ms. Fraser's employment was terminated or, at the very least, the events in question gave rise to a reasonable belief on her part that she had been terminated.

If Great Pacific Fire wishes to challenge the delegate's findings of fact, it is incumbent on that firm to present the evidence of Mr. Kozak since Mr. Hull would only be able to present hearsay evidence regarding the key facts in dispute. I should note that Mr. Hull attended the appeal hearing on his own, without any witnesses, and most particularly, without Mr. Kozak.

## **ORDER**

Pursuant to sections 114(1)(c) and 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$926.87** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance. It follows that the \$0 penalty is also confirmed.

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**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**