

**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 -

Drs. Hughes & Jennings, Optometric Corporation  
("Hughes & Jennings" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Ib S. Petersen

**FILE NO.:** 1999/84

**DATE OF HEARING:** April 19, 1999

**DATE OF DECISION:** May 3, 1999



- On May 4, 1998 Dr. Hughes (“Hughes”) stated to Perry that she was being laid off “because of the situation”. In the circumstances of this case, including the employer’s explanations, the delegate concluded that the filing of the complaint was the most probable cause for the termination.
- Perry was pregnant and had intended to work until the end of July, but had no intention of returning to work for the Employer after the birth of her child. The delegate awarded compensation for the termination up until the end of July.

The issue to be decided in this appeal is whether the Employer terminated Perry’s employment because she filed a complaint with the Branch.

It is trite law that the appellant has the burden to show that the Determination is wrong. In my view, the Employer has failed to meet that burden. While the Employer’s appeal submission states that the comment--Perry being laid off because of “the situation”--is taken out of context, Hughes did not appear at the hearing to testify as to whether these words were, in fact, said, and if they were, what they meant and in what context they were said. Perry’s evidence--unequivocally--was that Hughes had used those words when he told her that her employment was at an end after she had made the complaint to the Branch. The Employer did not argue that it had cause for the termination. However, the Employer referred its concerns with respect to Perry’s performance. In those circumstances, I find it difficult to accept that the Employer offered Perry full-time employment as suggested. Perry denied having been offered full-time employment. In the circumstances of this case, including the timing of the termination, those words make it more probable than not that Perry was terminated because she had made a complaint under the *Act*.

In the result, I dismiss the appeal.

**ORDER**

Pursuant to Section 115 of the Act, I order that Determination in this matter, dated January 22, 1999 be confirmed.

**Ib Skov Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**