

An appeal

- by -

Gloria Gush, a Director or Officer of Glocon Traffic Control
(“Gush” or the “appellant”)

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2001/277

DATE OF DECISION: June 13, 2001

DECISION

OVERVIEW

This is an appeal filed by Gloria Gush (“Gush” or the “appellant”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Ms. Gush appeals a Determination that was issued against her, pursuant to section 96(1) of the *Act*, by a delegate of the Director of Employment Standards (the “Director”) on March 29th, 2001 under file number ER025-316 (the “Determination”).

The Director’s delegate determined that Ms. Gush owed a total sum of \$27,069.39 on account of unpaid wages payable to 17 former employees of Glocon Traffic Control Ltd. (“Glocon”). As previously noted, the Determination was issued in accordance with the provisions of section 96(1) of the *Act* which reads as follows:

Corporate officer’s liability for unpaid wages

96. (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months’ unpaid wages for each employee.

By way of letters dated May 29th and June 1st, 2001 the parties were advised by the Tribunal’s Vice-Chair that this appeal would be adjudicated based on the parties’ written submissions and that an oral hearing would not be held (see section 107 of the *Act*). In addition to the appellant’s initial submission filed with her notice of appeal, I also have before me written submissions filed by some of the respondent employees (Michelle Etchart, Karen Davenport, Tammy Purcha, Corina Kalesnikoff) and by the Director’s delegate. It should be noted that the appellant did not file a reply to any of the respondents’ various submissions.

ISSUES ON APPEAL

Ms. Gush’s reasons for appeal are set out in a memorandum (identified as “Schedule A”) prepared by her legal counsel and appended to her appeal form. This latter memorandum also addresses an appeal of a separate section 96 determination issued against her husband and fellow director, Richard Gush (BC EST #D312/01). Ms. Gush’s reasons for appeal are as follows:

- “The Director erred in refusing to consider payroll information requested of the corporate employer in connection with the determination of the amounts for which a director may be held liable under the *Employment Standards Act*”.
- “The Director made a determination concerning the amount of director’s liability on a basis which is unknown to the Directors, which is not clear on

the face of the record, and which appears to hold the Directors liable for two years worth of overtime wages for all Complainants save one.”

- “The Director failed to employ procedural fairness *vis a vis* [sic] the Directors of the corporate employer in refusing to consider the very information requested by the Director but delivered to the wrong office.”

FINDINGS AND ANALYSIS

As noted in the section 96 Determination now under appeal, a separate determination was also issued against the corporate employer, Glocon Traffic Control Ltd., on March 29th, 2001 in the total amount of \$29,616.02. This latter corporate determination was never appealed; indeed, Ms. Gush’s solicitors state, in the submission filed on her behalf, that:

1. The Director of Employment Standards made determinations in respect of Glocon Traffic Control Ltd. (the “Employer”), Gloria Gush (a Director of the Employer) and Richard Gush (a Director of the Employer) on March 29, 2001 and all under ER File No. 025-316.

2. 17 Complainants alleged that they were employed by the Employer at various times between February 7, 1999 and February 7, 2001, and the Director determined that the Complainants were owed in total the sum of \$29,616.02. *The Employer does not take issue with nor appeal from that determination.*

(my italics)

In light of the above admission, the various amounts determined to be owed to the 17 former employees is now a matter of *res judicata*; in other words, that issue has been finally determined. The only issues that could now be properly before me relate to Ms. Gush’s status, the 2-month “wage liability ceiling”, or any of the statutory defences set out in subsection 96(2).

Ms. Gush does not deny that she was a Glocon officer and director when the wage claims of the 17 respondent employees crystallized. None of the defences set out in subsection 96(2) is in issue here. Ms. Gush suggests that the delegate did not properly consider certain payroll information but I fail to see the relevance of that assertion in light of the fact that the employees’ various unpaid wage claims have now been finally determined--apparently, since no appeal was filed, to the satisfaction of Glocon (a company of which Ms. Gush was the principal).

I might add, in any event, that the material before me discloses that the delegate *did*, in fact, have all relevant payroll information in hand prior to issuing the Determination. The delegate met with Glocon representatives on four separate occasions for the purposes of reviewing and auditing its payroll records and, as a result of these meetings, Glocon amended its records to

bring them into compliance with the *Act*. In light of the foregoing, it seems to me to be quite wrong to suggest that any of Ms. Gush, Mr. Gush or Glocon was denied “procedural fairness”.

Finally, I simply cannot accept the assertion that the basis for issuing the Determination is “not clear on the face of the record”. The Determination sets out the respective wage claims of the 17 employees in some detail, the background facts relating to the issuance of the corporate determination are incorporated by reference. Section 96 is stated, in the body of the Determination, as being the legal foundation for Ms. Gush’s personal liability and a copy of section 96 is appended to the Determination. Although the various employees’ unpaid wage claims *do* span a period greater than 2 months, the total amount of each individual employee’s claim does not, so far as I can gather based on the material before me, exceed the 2-month wage liability threshold set out in section 96(1) of the *Act*.

The appeal is dismissed.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$27,069.39** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal