

**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 -

Ruby Enterprises Ltd.  
("Ruby" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Ib S. Petersen

**FILE NO.:** 97/942

**DATE OF DECISION:** May 13, 1998



*Regulation* establishes a penalty escalating from \$0.00 to a maximum of \$500.00 for each contravention of a specified provision. The Director, or her delegate, has no discretion to determine the amount of the penalty once she, or her delegate, has determined that a contravention of a specified provision of the *Act* has occurred. I agree with my colleague in *Randy Chamberlin*, BCEST #D374/97, that Section 81(1)(a) of the *Act* requires the Director to give reasons for the Determination to any person named in it. Given that the power to impose a penalty is discretionary and is not to be exercised for every contravention, the Determination must contain reasons which explain why the Director, or her delegate, has elected to exercise that power in the circumstances. It is not adequate to simply state that the person has contravened a specific provision of the *Act* or *Regulation*. In my view, the Determination go no further than stating that the Employer contravened the *Act*. Nothing in the Determinations explain why the Director's delegate elected to exercise her power to issue penalties. In the result, the Determinations should be set aside.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated December 8, 1997 be cancelled.

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