BCEST #D209/98

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

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APPEARANCES/SUBMISSIONS

Mr. Balwinder Thind

on behalf of Ruby

Ms. Judy McKay

on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the "*Act*"), against a Determination of the Director of Employment Standards (the "Director") issued on December 8, 1997 which imposed a penalty of \$0.00 on the Employer. The Determination noted that the Employer had contravened Sections 18(1) and 63(1), (2) and (4) of the Act in the termination of an employee, Ms. Terri Johnson. The Determination stated:

"Ruby Enterprises Ltd. Has contravened a specified provision of a Part of the Employment Standards Act or a Part of the Employment Standards Regulation, this is a penalty in the amount of \$0.00 for these contraventions.

A further contravention by Ruby Enterprises Ltd. Of these specified provisions will result in a penalty of \$150.00 per employee by the contravention as set out in Section 29 of the Employment Standards Regulation. Contraventions beyond that may result in penalties to a maximum of \$500.00 per affected employee."

The Employer claims that the Determination is wrong and that a penalty is improper in the circumstances. The Employer asks that the penalty be set aside.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the Determinations should be varied, confirmed or cancelled.

ANALYSIS

In my view, the Director's authority under Section 79(3) of the Act is discretionary: the Director "may" impose a penalty. Section 98 of the Act provides the Director's delegate with the discretion to impose a penalty in accordance with the prescribed schedule. Section 29 of the

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Regulation establishes a penalty escalating from 0.00 to a maximum of 0.00 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 0.00 for each 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.

Ib Skov Petersen Adjudicator Employment Standards Tribunal