

**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 -

Aujlas' Farm Ltd.  
(the "Employer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	Ib S. Petersen
<b>FILE NO.:</b>	98/537
<b>DECISION DATE:</b>	November 6, 1998

## DECISION

### SUBMISSIONS

Mr. Sukhdev Aujla on behalf of the Employer

Mr. James Walton on behalf of the Director of Employment Standards

### ANALYSIS

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 July 16, 1998 which imposed a penalty of \$0.00 on the Employer. The Determination found that the Employer had contravened Section 9(1) of the *Act* (hiring children under 15 years of age without the Director’s permission).

The issue to be decided in this appeal is whether the Determinations should be varied, confirmed or cancelled. The Employer does not dispute the facts but states that it was not aware of the requirement to have the Director’s permission and asks that the penalty be set aside.

Section 9 of the *Act* provides: “A person must not employ a child under age 15 without the Director’s permission”. A similar prohibition was in the former *Act* (Section 50). I find it difficult to accept the Employer’s assertion that it did not know. In any event, the Employer’s knowledge of the statutory requirement is irrelevant: ignorance of the law does not constitute a defence.

That, however, is not the end of the matter. In *Narang Farms and Processors Ltd.*, BCEST #D482/98, at page 2, the penalty process is summarized as follows:

“In my view, penalty determinations involve a three-step process. First, the Director must be satisfied that a person has contravened the *Act* or the *Regulation*. Second, if that is the case, it is then necessary for the Director to exercise her discretion to determine whether a penalty is appropriate in the circumstances. Third, if the Director is of that view, the penalty must be determined in accordance with the *Regulation*.”

The Director’s authority under Section 79(3) of the *Act* is discretionary: the Director “may” impose a penalty. Section 81(1)(a) of the *Act* requires the Director to give reasons for the Determination to any person named in it (*Randy Chamberlin*, BCEST #D374/97). Given that the

power to impose a penalty is discretionary and is not 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*. This means that the Director must set out--however briefly--the reasons why the Director decided to exercise her discretion in the circumstances. The reasons are not required to be elaborate. It is sufficient that they explain why the Director, in the circumstances, decided to impose a penalty, for example, a second infraction of the same provision, an earlier warning, or the nature of the contravention. Nothing in the Determination explain why the Director's delegate elected to exercise her power to issue penalties.

In the circumstances, the contravention of the *Act* not being in dispute, I am not prepared to cancel the Determination. Rather, I prefer to vary the Determination striking out the "\$0.00" penalty. "The *Regulation* does not require that a penalty has been imposed for the previous contravention; it merely requires a contravention." (*Narang Farms*, at page 8). In other words, the Director may rely on this contravention in case the Employer again contravenes the *Act* or the *Regulation*. In the result, the Determination should be varied, striking out the penalty.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated July 16, 1998 be varied, striking out the "\$0.00" penalty.

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