

An appeal

- by -

Syncon Investments Ltd., operating as George and Dragon Pub Style Restaurant

- 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: John M. Orr

FILE No.: 2001/379

DATE OF HEARING: August 29, 2001

DATE OF DECISION: August 30, 2001

DECISION

APPEARANCES:

Philip LeSeur	Counsel for Syncon Investments Ltd.
Roberta Burris and Terry Hughes	On behalf of the Director

OVERVIEW

This is an appeal by Syncon Investments Ltd. (“Syncon”) pursuant to section 112 of the *Employment Standards Act* (“the *Act*”) from a penalty determination in the amount of \$500.00 and dated April 20, 2001 by the Director of Employment Standards (“the Director”).

The penalty determination was issued by a delegate of the Director as a result of the failure of Syncon to deliver records in regard to an investigation of a complaint by an employee, Serge Landry (“Landry”).

Syncon appealed the penalty determination on a number of grounds that primarily related to an apprehension of bias. At the hearing of the appeal, counsel for Syncon submitted that the delegate who issued the penalty determination was without jurisdiction as she was the primary investigator of the original complaint by Landry.

ANALYSIS

Counsel for Syncon referred to section 117(2) of the *Act*, which states:

Director’s power to delegate

- 117. (2)** The Director may not delegate to the same person both the function of conducting investigations into a matter under section 76 and the power to impose penalties in relation to that matter.

After some discussions between the two delegates present at the hearing it was conceded that the penalty determination herein should be cancelled.

Having reviewed the determination and the submissions of the parties and in light of the desire of the delegate to withdraw the penalty, I am satisfied that the penalty determination should be cancelled.

ORDER

Pursuant to section 115 of the *Act* I order that the penalty determination in the amount of \$500.00 and dated April 20, 2001 is cancelled.

John M. Orr
Adjudicator
Employment Standards Tribunal