Noteworthy Decision Summary

Decision: WCAT-2005-06255 **Panel**: Heather McDonald **Decision Date:** November 23, 2005

Administrative penalties – Category a penalty – Wilful and reckless disregard of the law – Section 196 of the Workers Compensation Act – Section 4.81 of the Environmental Tobacco Smoke Regulation – Policy items D12-196-1 and D12-196-6 of the Prevention Manual

The employer, a pub operator, refused for several months to enforce section 4.81 of the *Environmental Tobacco Smoke Regulation* (ETS Regulation) and build a designated smoking room (DSR). The Workers' Compensation Board (Board) imposed a $2500.00 administrative penalty nine months after the employer complied with the ETS Regulation. The panel confirmed a Category A penalty was appropriate due to the employer's wilful non-compliance. However, the panel reduced the penalty to $1750.00 due to mitigating factors.

The employer operated a pub in a rural community. The Board informed the employer that, as patrons were smoking and using ashtrays provided by the employer, it was in violation of section 4.81 of the ETS Regulation. The employer indicated that he would continue to allow patrons to smoke as he could not afford to build a DSR and had been physically threatened by patrons if he tried to prevent them from smoking. The Board made several visits to the pub over the next two months. Seven months later, the employer informed the Board it had installed a DSR. Nine months later, the Board informed the employer that it was proceeding to penalty action as a result of non-compliance with the ETS Regulation and that it was imposing a Category A penalty of $2500.00. The employer appealed to the Review Division of the Board (Review Division). The Review Division confirmed the penalty of $2500.00.

The panel found the employer was in wilful non-compliance with the ETS Regulation. The employer made a business decision that it was less expensive to contravene the ETS Regulation than it would be to comply with it, particularly as compliance might involve shutting down operations for a period of time. The employer also used threatening language to Board officers. As there was deliberate non-compliance, a Category A penalty was justified.

The panel addressed the employer's argument that a penalty was not warranted to motivate compliance as the Board imposed the penalty nine months after it had complied with the ETS Regulation. The panel noted that policy item D12-196-1 of the *Prevention Manual* regarding the motivating influence of administrative penalties is directed at all employers in British Columbia, not just the particular violating employer. Furthermore, the purpose of administrative penalties is to emphasize that an employer cannot pick and choose when it will decide to comply with the law.

The panel considered the factors in item D12-196-6 with respect to a possible variation of the basic Category A penalty of $2,500.00. The panel found, in light of the threatening behaviour of the pub patrons, the financial concerns of the employer as a small business operation, the fact that the employer did not have a history of previous violations or penalties with the Board, and the employer's concerns about the safety of its staff in enforcing the ETS Regulation, that the penalty should be reduced by 30% to $1750.00.

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Panel: Heather McDonald, Vice Chair

Introduction

The employer operates a pub. The employer is appealing a February 25, 2005 decision by a review officer in the Review Division of the Workers' Compensation Board (Board). In the decision, the review officer confirmed an earlier Board decision dated August 3, 2004 that imposed an administrative penalty of $2,500 against the employer. The review officer found that the employer had contravened section 4.81 of the *Environmental Tobacco Smoke Regulation* (ETS Regulation) and that the circumstances made it appropriate to impose an administrative penalty against the employer. The penalty was a Category A penalty, imposed by the Board for the reason that the employer's repeated non-compliance with the ETS Regulation was with wilful and reckless disregard of the law. The review officer considered the variation factors in relevant Board policy, but decided not to vary the quantum of penalty downward or upward.

In its notice of appeal to the Workers' Compensation Appeal Tribunal (WCAT), the employer requests that the administrative penalty be rescinded.

Issue(s)

Did the employer violate section 4.81 of the ETS Regulation? If the employer contravened the ETS Regulation, should the Board impose an administrative penalty in this case? If an administrative penalty is appropriate, what should be the quantum of the penalty? If an administrative penalty is not appropriate, what, if any, consequences should result?

Jurisdiction and Procedural Matters

WCAT's jurisdiction in this appeal arises under section 239(1) of the *Workers Compensation Act* (Act), as an appeal of a final decision of a review officer under section 96.2(1)(c) of the Act varying a Board order respecting an occupational health and safety matter under Part 3 of the Act.

An employers' adviser from the Ministry of Labour's Compensation Advisory Services represented the employer in these proceedings. In its notice of appeal, the employer requested that its appeal before WCAT proceed on a read and review basis, but subsequently, in its written submissions to WCAT, the employer made an explicit request, with reasons, for an oral hearing. The employer wanted an opportunity to

explain the nature of the interactions between the employer's owner and the Board safety officers, as well as the difficult situation in which the employer found itself dealing with its patrons regarding the ETS Regulation. After reviewing the file material and considering the employer's request, I decided that the appeal could proceed by way of written submissions. The evidence in the file documentation has given me a comprehensive understanding of the situation faced by the employer, as the only hotel pub in a very small, isolated community, with patrons who were committed to smoking in public places. I am satisfied that the issues in this appeal do not turn on matters of credibility, but rather the appropriate interpretation and application of the administrative penalty process under the Act and Board published policy. In my view, the employer would have a reasonable and fair opportunity to present its position on appeal by way of a written submission. The employer did participate in the proceedings, with an employers' adviser providing a written submission on its behalf.

There was no trade union representing the employer's workers, and no worker's representative was identified on the relevant Board inspection reports. The employer indicated to WCAT that there was no joint Health and Safety Committee. Accordingly, WCAT did not invite any such persons or entities to participate as interested parties in these proceedings.

Section 253(1) of the Act states that on an appeal, WCAT may confirm, vary, or cancel an appealed decision or order. Section 250 of the Act provides that WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent. WCAT has jurisdiction to consider the record in the proceedings before it, to consider new evidence, and to substitute its own decision for the decision under appeal. Thus, this is an appeal by way of a rehearing. This is the final level of appeal.

Further, WCAT must make its decision based on the merits and justice of the case, but in so doing, it must apply a policy of the board of directors that is applicable in the case. Section 251 provides that WCAT may refuse to apply a policy only if the policy is so patently unreasonable that it is not capable of being supported by the Act and its regulations. If a WCAT panel considers that a policy should not be applied, that issue must be referred to the WCAT chair, and the appeal proceedings must be suspended until the procedure described in section 251 (involving the referral to the WCAT chair and/or a referral to the board of directors) is exhausted.

Applicable Law and Policy

Section 4.81 of the ETS Regulation provides that an employer must control the exposure of workers at any workplace to environmental tobacco smoke by either prohibiting smoking in the workplace or restricting smoking to designated smoking areas or "by other equally effective means."

The ETS Regulation originally came into effect on January 1, 2000, but a Supreme Court of British Columbia decision dated March 22, 2000 indicated that the Board had

failed to adequately consult with those affected by the ETS Regulation. Accordingly, the Board undertook a process of public consultation. As a result of that process, the Board amended the ETS Regulation effective May 1, 2002, to describe specific requirements for designated smoking areas, whether they be "safe outdoor locations" or "a room structurally separated from other work or break areas." The latter room, a DSR (designated smoking room) must be provided with a separate, non-recirculating exhaust ventilation system which meets specific requirements as described in the ETS Regulation. The amendments also prescribed floor space and other requirements for DSRs and other separate places for smoking in public entertainment facilities.

Section 196 of the Act provides that the Board may impose an administrative penalty on an employer if it considers that the employer has failed to take sufficient precautions for the prevention of work-related injuries or illnesses, or the employer's workplace or working conditions are unsafe, or the employer has failed to comply with Part 3 of the Act, the Regulation or an applicable order. Section 196 also provides that the Board must not impose an administrative penalty if an employer exercised due diligence to prevent the unsafe circumstances.

As the Board's decision to impose an administrative penalty was dated August 3, 2004, the applicable policy is found in the version of *Prevention Manual* (Manual) policy that became effective July 1, 2003.

"Due diligence" is described in Board policy item D12-196-10 of the Manual. The policy states that persons may prove that they exercised due diligence by showing on a balance of probabilities that they took all reasonable care. This involves a consideration of what a reasonable person would have done in the circumstances. The defence of due diligence is available if the person reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if the person took all reasonable steps to avoid the particular event.

Board policy relating to administrative penalties is found in item D12-196-1 of the Manual. That policy provides that the primary purpose of administrative penalties is to motivate the employer receiving the penalty and other employers to comply with the Act and Regulation. The policy says that the Board will consider imposing an administrative penalty when:

- an employer is found to have committed a violation resulting in high risk of serious injury, serious illness, or death;

- an employer is found in violation of the same section of Part 3 or the Regulation on more than one occasion;

- an employer has failed to comply with a previous order within a reasonable time;

- an employer knowingly or with reckless disregard violates one or more sections of Part 3 or the Regulation. Reckless disregard includes where a violation results from ignorance of the Act or Regulation due to a refusal to read them or take other steps to find out an employer's obligation; or

- the Board considers that the circumstances may warrant an administrative penalty.

Policy item D12-196-1 also provides a list of additional factors that the Board will consider in deciding whether to propose or levy the penalty. They include such matters as whether the employer has an overall, effective program for complying with the Act and the Regulation; whether the safety violations resulted from the independent actions of workers who the employer had properly instructed, trained and supervised; the potential seriousness of the injury that might have occurred and the number of people at risk; the extent to which the employer was aware or should have been aware of the hazard or the fact that the Act and Regulation were being violated; and whether an alternative means of enforcing the Act and Regulation would be more effective.

Manual policy item D12-196-11 provides that if the Board decides that despite the existence of grounds to propose an administrative penalty, the penalty is not warranted at the time of the particular violation, the Board may send a warning letter instead, advising that a penalty will be considered if the violation is repeated.

Manual policy item D12-196-2 deals with the issue of whether a violation involves a high risk of serious injury, serious illness, or death. The policy says that the issue will be determined in each case on the basis of the available evidence concerning the likelihood of an injury, illness or death occurring; the number of workers affected; and the likely seriousness of any injury or illness. The policy sets out a list of 11 violations that are assumed, in the absence of evidence showing the contrary, to be high risk. The policy notes, however, that even though a violation is not on the list, the Board may consider the evidence in a case to illustrate that the violation posed a high risk to workers, and may impose an administrative penalty on that basis. In this case, the Board did not proceed to penalty on the basis that the employer's violation involved a violation of a high-risk nature.

Manual policy item D12-196-6 deals with the quantum of administrative penalties. It provides tables for determining the "basic amounts" of penalties. Category A penalties deals with serious injury or illness or death; or high risk of serious injury or illness or death; or non-compliance that was wilful or with reckless disregard. Category B penalties deal with other violations. The basic amount of the penalty is determined on the basis of the employer's assessable payroll for which figures are available at the time

the Board issues the penalty notice. As noted earlier in this decision, the Board proceeded on the basis of a Category A penalty. The Category A penalty was recommended on the ground that the employer had recklessly and wilfully violated the ETS Regulation.

Policy item D12-196-6 also allows for variation factors, whereby the basic penalty amount may be varied by up to 30%, having regard to the circumstances, including the following factors:

(a) the nature of the violation;
(b) the nature of the hazard created by the violation;
(c) the degree of actual risk created by the violation;
(d) whether the employer knew about the situation giving rise to the violation;
(e) the extent of the measures undertaken by the employer to comply;
(f) the extent to which the behaviour of other workplace parties has contributed to the violation;
(g) employer history;
(h) whether the financial impact of the penalty would be unduly harsh in view of the employer's size; and
(i) any other factors relevant to the particular workplace.

Background and Evidence

The basic evidence is adequately described in the Review Division decision, and I will not repeat all the details here. The gist of the matter was that the employer operates the only pub in a small, isolated rural community. Board officers contacted the employer on two different occasions in early April 2003, noting that as patrons were smoking throughout the pub, using ashtrays provided by the employer, the employer was in violation of section 4.81 of the ETS Regulation. The employer's owner was clear that he was allowing the clientele to smoke in the bar, and he told the Board officers that he did not have the financial resources to build a DSR. The owner also told the Board officers that some uncooperative patrons had physically threatened him if he did not allow them to continue smoking in the pub.

Board officers made several subsequent visits to the employer's pub later in April and again in May 2003. The evidence is that the employer's owner:

- indicated that there was no RCMP assistance in the town to help him enforce the ETS Regulation;

- indicated that he was unable and unwilling to comply with any of the ETS options suggested by the Board officers;

- used threatening language to the Board officers, telling them that they represented a threat to his livelihood and that he would respond to further visits with threats. In that context, the owner specifically mentioned that the pub clientele carried knives;

- complained about loss of business in the pub if he were to ban smoking in the pub, and advised that no court would convict him over a smoking issue, so all paperwork should be sent to his lawyer;

- ultimately indicated that he was building a DSR which would be completed as funds became available, but in the meantime, he would not be enforcing the ETS Regulation;

- hung up on a Board officer after a telephone call in which the officer told the owner that there would be a financial penalty, and the owner responded that he would not ban smoking in the pub nor would he pay a penalty under any circumstances.

On November 3, 2003, the employer advised the Board that it had installed a DSR, and on November 18, 2003 a Board officer indicated that the employer was in compliance with the ETS Regulation.

On May 26, 2004, the Board advised the employer that it was proceeding to penalty action regarding the non-compliance with the ETS Regulation on May 21, 2003, and that it was considering a Category A penalty in the amount of $2,500. The employer responded in a letter dated July 5, 2004 to the Board, advising that a penalty was punitive and harsh, and suggesting in the alternative, a Category B penalty of $1,000.

In its written submission dated July 5, 2004 to the Board, the employer stated that it did "not deny that information contained in the file is accurate, but does feel that there are extenuating circumstances that the Board must take into consideration when determining whether to impose a penalty or not." The employer made the following points:

- the location was a small town with only one bar (the employer's pub), the townsfolk are generally rough and tumble in nature and do not react well to government regulation. It is easy for the Board to make an edict about what should be, but it is the hotel owner that must actually implement and enforce the Regulation. In this case, [the owner] is truly fearful that he, his staff and his hotel are at risk from patrons who are not willing to comply with the ETS Regulation;

- as the owner ultimately complied with the ETS Regulation by constructing a DSR, he does not understand why the Board would proceed to penalty action after the employer has achieved compliance. The owner's position is "He got the message.

What more can be accomplished?" Further, with respect to the need to motivate other employers toward compliance, the employer says that there are no other similar employers in the town to see sanctions for non-compliance, so "What's the point then?"

- The owner is concerned that his business will fail due to the cost of the renovations to construct the DSR, and the lost business from patrons who no longer come to the hotel to drink;

- The owner is now afraid for the safety of he and his staff as the smoking room is where almost all his patrons go, and as it is a rowdy bunch all confined in one small room, he feels his staff are at risk from fights and aggressive behaviour. The owner wonders how the Board can rationalize creating an unsafe environment for his workers regarding the DSR, and asks what will happen if his staff is assaulted?

The employers' adviser suggested that if the Board did decide to impose a penalty, the penalty should be Category B, not Category A. The employers' adviser submitted that when one views the evidence in context, the employer did not act with reckless disregard or willfulness, and that the Board had exaggerated the matter by proceeding to a Category A penalty. The employers' adviser pointed out that in the May 21, 2003 inspection report, the Board officers stated that "to avoid any possible confrontation with patrons in the bar, we met with [the owner] outside the pub." The employers' adviser said that this suggested that the Board officers were afraid to even discuss the ETS Regulation with patrons around. The employer submitted that it was unfair, in that context, to expect the owner to fearlessly implement and enforce the ETS Regulation on a daily basis. The employers' adviser went on to state:

> If one reads the information carefully, keeping in mind that [the owner] is clearly fearful of the financial impact of the implementation and losing his livelihood and that the patrons will react negatively and perhaps even violently, it is not a surprise that some of the exchanges with the Board staff are emotional. How else would one reasonably react when there is a perceived threat as noted? Is this willful and reckless disregard as contemplated by the Act and policy? I would think not, this is a small business confronted with a significant threat to its very existence, and a real fear of physical harm from the public to staff, owner and premise.

In the Review Division decision dated February 25, 2004, the review officer confirmed the findings of a violation of the ETS Regulation by the employer. He went on to find that it was appropriate for the Board to have imposed an administrative penalty in this case, stating in part as follows:

> There is no evidence to indicate that pub owners, including this pub owner could not refuse service to uncooperative patrons, if there were any, or

> that the RCMP would no longer keep the peace. The fact that the employer said they would not prohibit smoking is persuasive evidence that the employer knew that had control over their patrons….

The review officer concluded that the evidence overwhelmingly supported that the employer had acted "willfully or with reckless disregard" in continuing to refuse to comply with the ETS Regulation in a timely manner. Thus he found a Category A penalty to be appropriate. With respect to the variation factors in Manual policy D12-196-6, the review officer found the factors for raising and lowering the penalty to be about equal. Therefore he confirmed the basic penalty of $2,500 proposed by the Board.

On appeal to WCAT, the employer does not deny the basic facts of the case, but submits that the owner's behaviour did not constitute reckless disregard or wilful disobedience of the ETS Regulation. He was unsure what to do in order to satisfy the Board officers and, as well, keep his business alive. "At first and quite naturally," he states that he felt that the risk of losing his business was greater than that of the Board enforcing the ETS Regulation. Repeated contact with the Board led him to understand that compliance was critical, and once he was clear on how he could both obey the law and keep his business, he built the DSR when he could afford it. The employer submits that that it did not need to be motivated by way of penalty to comply with the ETS Regulation – rather, it needed to overcome its financial problems and its fears for staff safety in trying to stop patrons from smoking in the pub. The employer repeats the submission it made to the Board that there was no need to motivate other employers in this case, as there were no other pub owners for some distance. Further, the employer says that it is mystified how the Board can levy a penalty many months after it has complied with the Regulation.

The employer takes issue with the review officer's comments quoted earlier in this decision that suggest the owner's fears were unfounded and that the RCMP would have been available to assist with enforcement. The employer says that its problems and fears were very real and "should not be dismissed out of hand in such a disrespectful and bureaucratic manner."

Reasons and Findings

Did the employer contravene section 4.81 of the ETS Regulation?

The evidence supports (and the employer has not disputed this in its submissions to the Board or to WCAT), that the employer was in violation of section 4.81 of the ETS Regulation on May 21, 2003, when a Board officer inspected the pub. Section 4.81 of

the ETS Regulation requires employers to use "effective means" to control their workers' exposure to environmental tobacco smoke. At the time of the May 21, 2003 inspection, the employer was not controlling the exposure of workers in the pub to environmental tobacco smoke by any effective means.

Should the Board impose an administrative penalty or should there be other consequences in this case? If an administrative penalty is appropriate, should it be a Category A or B penalty, and what should be its quantum?

Under section 196 of the Act and Board policy in D12-196-10 of the Manual, the Board may impose an administrative penalty in circumstances where an employer has failed to comply with a Regulation or an applicable order, or in a situation where an employer has not exercised due diligence (taken all reasonable care) to prevent the unsafe circumstances involved in the breach of the Regulation or the order. The evidence in this case leads me to confirm the Review Division decision that found it appropriate for the Board to have imposed an administrative penalty against the employer in this case.

I disagree with the employer's submissions that it was not in deliberate, wilful non-compliance with the ETS Regulation. It is clear that the employer took into account its financial circumstances, the hostility of its patrons to a no-smoking rule, the financial disadvantage of refusing service to patrons who smoked, the cost of constructing a DSR in a timely way, and the risk of Board enforcement of the ETS Regulation. The employer's choice was to consciously disobey the ETS Regulation and he made it clear to the Board officers that he was prepared to take the risk of enforcement action. The employer also made it clear that he would construct a DSR according to the time schedule he chose, which would be dictated by his business financial requirements, and that he would not be making any attempts to comply with the ETS Regulation in the meantime. The employer essentially made a business decision that it was less expensive to contravene the ETS Regulation than it would be to comply with it, particularly as compliance might involve shutting down operations for a period of time. In light of that evidence, together with the evidence of threatening language used by the employer's owner to the Board officers, I agree with the review officer's finding that there is "overwhelming evidence" of a willful contravention of the ETS Regulation that also supports the Board's decision to proceed by way of a Category A penalty against the employer.

One of the employer's arguments is that a penalty was not warranted to motivate compliance by the employer, given that the penalty was actually imposed by the Board approximately nine months after the employer had completed construction of the DSR and brought the pub in compliance with the ETS Regulation. Further, with respect to the need to motivate other employers to comply, the employer has relied on the fact that there are no other pubs in the vicinity of the employer's operation to be aware of the penalty as a motivating influence.

The employer's argument essentially interprets the Manual policy such that if, despite delays and initial refusals to comply with a specific provision of the Act or Regulation, an employer has ultimately achieved compliance, the Board cannot subsequently impose an administrative penalty if the delay in enforcement proceedings means that the actual decision to impose the penalty occurs after the employer's ultimate compliance.

Manual policy, however, does not state that the main purpose of administrative penalties is to motivate the employer receiving the penalty, and other employers, to comply with the specific section of the Act or Regulation which the Board alleges the employer has violated in the specific case. Rather, Manual policy D12-196-1 states that: "The main purpose of administrative penalties and similar levies is to motivate the employer receiving the penalty and other employers to comply with the Act and regulations." The purpose of the first step in penalty proceedings (advising the violating employer about the fact of violation and the fact that the Board is pursuing penalty action) is often to make an employer take a specific section of the Act or Regulation seriously, and to motivate compliance with that particular statutory or regulatory provision. But that first step sometimes may take place after an employer has achieved compliance, if the evidence in a case supports the need to motivate an employer to take the requirements of the Act and Regulation seriously, as a general matter. And in any event, the due process requirements of enforcement proceedings often result in delay. Thus where the Board does impose a penalty, the decision to proceed with penalty action may not occur until after an employer has eventually complied with the Regulation, and the actual imposition of the penalty may well not occur until months after an employer has finally achieved compliance. The purpose of imposing an administrative penalty upon an employer is to bring recognition to that specific employer, as well as other employers in British Columbia, of the importance of complying with the Act and Regulation in general. The imposition of an administrative penalty emphasizes the concrete reality that failure to comply may have significant financial consequences, and that an employer cannot pick and choose when it will decide to comply with the Act and Regulation. And I emphasize that Manual policy regarding the motivating influence of administrative penalties is not directed at just the particular violating employer and its competitors in the immediate vicinity of the violation, but rather to all employers in British Columbia.

I confirm that it was appropriate for the Board to have imposed an administrative penalty against the employer in this case. To waive a penalty for this employer would be to send a message to other employers that at least for some time, one can ignore with impunity the Regulation and the attempts of Board officers to enforce it.

The basic amount of penalty for a Category A penalty in this case calculated to $2,500. I have considered the variation factors in Manual policy D12-196-6 and I have decided to vary this aspect of the review officer's decision. The variation factors require a

weighing of circumstances, and there is a certain degree of subjectivity inherent in that task. In this case, I have taken seriously the evidence regarding the propensity of the pub patrons to act out in a violent manner when requested to comply with a no smoking rule in the pub. It is noteworthy that in the May 21, 2003 inspection report, Board officers were themselves careful to avoid a confrontation with the pub clientele and met with the employer's owner outside the pub to discuss the ETS Regulation. I also accept the employer's evidence that it could not depend on enforcement assistance from the RCMP, and thus the pub workers were really alone and vulnerable to angry patrons if they attempted to enforce the ETS Regulation. The evidence is that there was no RCMP detachment in the vicinity. I also note that in a recent decision, *WCAT Decision #WCAT-2005-05507* (October 18, 2005), the evidence was consistent with that of the employer in this case; part of the evidence in that case was described as follows in the decision:

> … The OHO [occupational hygiene officer] admitted, however, that he did not expect the police would really enforce the ETS Regulation by removing pub customers who continued to smoke in the pub. The evidence is that the local RCMP detachment was not willing to become involved in enforcing the ETS Regulation for pub owners or the Board. The OHO testified that the Board did not expect pub staff to put themselves at risk of violence from hostile customers, and that he advised workers to walk away from confrontations. The OHO testified that even Board officers tried to avoid patrons whenever possible, as a safety measure. The OHO indicated that 2002 was a trying time for Board officers, pub owners, pub workers and pub clientele.

In light of the extent to which the behaviour of the pub patrons contributed to the employer's violation of the ETS Regulation, the financial concerns of the employer as a small business operation, the fact that the employer did not have a history of previous violations and/or penalties with the Board, and the employer's concerns about the safety of its staff in enforcing the ETS Regulation, I have decided that it is appropriate to vary the Category A penalty downward by 30%. This results in an administrative penalty of $1,750.

Conclusion

For the foregoing reasons, I vary the Review Division decision dated February 25, 2005. I confirm the aspects of the Review Division decision that found the employer in violation of section 4.81 of the ETS Regulation, and that confirmed the Board's decision to impose an administrative penalty of the Category A type against the employer. I vary the Review Division decision, however, by varying the basic penalty amount of $2,500 downward by 30%, resulting in an administrative penalty of $1,750.

Expenses of the appeal proceeding were not requested and therefore none are awarded.

Heather McDonald
Vice Chair

HMc/hb

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