



February 16, 2017

MDW Express Transport Ltd.  
3448 Thurston Place  
Abbotsford, B.C. V2T 6Z3

Via email: [mdwexpress@hotmail.com](mailto:mdwexpress@hotmail.com)  
Original via mail

Attention Mr. Gurdeep Chohan

**Re: MDW Express Transport Ltd (CTC Decision No. 01/2017) - Decision Notice**

#### **A. Overview**

In MDW Express Transport Ltd., CTC Decision No. 01/2017 (the "Original Decision"), I found the licensee, MDW Express Transport Ltd. ("MDW") had engaged in numerous violations of the *Container Trucking Act* ("the Act"), the *Container Trucking Regulation* (the "Regulation"), and its Licence. I determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 21 – 28 of the Original Decision. In that regard, I proposed to impose an administrative fine against MDW in the amount of \$9,500.00. Consistent with s. 34(2) of the Act I advised MDW that I would consider its written response to the proposed penalty if it was received within 7 days.

MDW has provided a written response within the required time, stating that it disputes the proposed penalty and providing arguments in support of its position.

#### **B. MDW's Response**

MDW's response is relatively brief and is set forth below in its entirety:

"Thank you for the opportunity to respond to your audit findings. Although we admit that there were some mistakes and discrepancies on our part, we can assure you that we never intentionally meant to cheat or be dishonest with any of our drivers. We value our drivers as they are our best sales representatives to our customers. As you can see, our transition from revenue to hourly was delayed mostly because the hard workers were worried that their pay would decrease. We tried ways to help them achieve the same money through providing "revenue incentive bonuses" however, unfortunately our recording process fell short. As you can see, in many cases drivers were actually paid more. Due to the audit, we have learned some helpful ways to track and keep records going forward.

Also, in the findings we were surprised to see that Lynne felt we delayed the process, as all the information was given and the emails were responded to within her set time frames.

There was a miscommunication in our office regarding the first set of checks issued in September not being mailed out in a timely manner. Accounting said she was told that more checks would be added and thought she had to hold those. In fact, it was not a request to hold, but rather an FYI that there would be more to issue. We take responsibility for this misunderstanding.

As I am sure you are aware, we like all other trucking companies are facing many financial challenges, we feel that the penalty imposed to us is too drastic and we would ask that you consider to waive or considerably reduce the amount.”

We look forward to your reply.”

### C. Consideration of MDW’s Response

Having considered all of the factors and the submissions advanced by MDW, and for the following reasons, I am not persuaded to reduce or refrain from imposing the proposed administrative penalty.

As stated repeatedly in earlier decisions,

“The *Act* is beneficial legislation intended to ensure that licensees pay their employees and independent operators in compliance with the rates established by the legislation (*Act* and *Regulation*). Licensees **must** comply with the legislation,...” (emphasis added).

Drivers are entitled to expect that they will be paid the legislated minimums, and licensees are required to pay these rates. The seriousness of the available penalties, which allow for administrative penalties up to \$500,000.00, suspensions and the cancelation of licences, demonstrate the seriousness of non-compliance.

MDW’s explanation for its failure to pay the required minimum rates, even if accepted, does not, in my view, justify the payment of non-compliant rates. Firstly the explanation implies that MDW’s non-compliant behavior was intentional. It seems apparent that MDW was aware of its obligations under the *Regulation* but chose to ignore them. Secondly, and in any event, the minimum rate structure required under the *Regulation* is not optional. The required minimum rates are mandatory and must be complied with.

Furthermore, MDW does not deny that it engaged in the prohibited practice of “trip splitting”.

MDW’s argument that it responded promptly to requests for information, and that it was therefore surprised with the conclusion that its conduct delayed the process, misses the point. As recorded in the Original Decision, it was MDW’s failure to maintain adequate and compliant records which made the audit challenging and which delayed its progress. The promptness of MDW’s replies to the auditor communications was not the issue here.

In my Original Decision, I found MDW’s record keeping to be inconsistent, inaccurate and incomplete. I further concluded that its inadequate record keeping caused the audit process to be prolonged and challenging. There is nothing in MDW’s response which persuades me otherwise. Proper record keeping is a corner stone to the OBCCTC’s audit function and its rate compliance mandate. It should not come as a surprise that I regard a failure to keep proper records as a serious violation of MDW’s obligations under its licence and the *Act*. To reduce the proposed penalty would, in my view, send the wrong message to MDW and to licence holders generally.

MDW does not deny that its own actions caused payment of the adjustment cheques to be delayed or that it paid certain of its employees outside of the time requirements established by Section 24(1) of the *Regulation*.

Finally, the fact that a company may face financial challenges does not excuse it from the legal requirement to comply with applicable legislation such as the *Act*. Nor does a claim to have sometimes paid more than the minimum required amounts excuse or justify a failure to pay drivers at least the minimum amounts to which they are entitled under the legislation.

#### **D. Conclusion**

Having carefully considered MDW's Response submissions, and taking into account all of the referenced factors and circumstances, I do not accept MDW's submission that the imposition of a penalty of \$9,500.00 is unfairly high. I remain convinced that a \$9,500.00 fine is appropriate here.

In the result I hereby order MDW to pay an administrative fine in the amount of \$9,500.00. Section 35(2) of the *Container Trucking Act* requires that this fine be paid within 30 days of the issuance of this Notice. Payment should be made by delivering to the Office of the BC Container Trucking Commissioner ("OBCCTC") a cheque in the amount of \$9,500 payable to the Minister of Finance.

Finally, I note that MDW may request a reconsideration of the Commissioner's Decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after MDW receipt of this Decision Notice. A Notice of Reconsideration must be:

- a. made in writing,
- b. identify the decision for which a reconsideration is requested,
- c. state why the decision should be changed,
- d. state the outcome requested,
- e. include the name, an address for delivery, and telephone number of the applicant and, if the applicant is represented by counsel, include the full name, address for delivery and telephone number of the applicant's counsel,
- f. signed by the applicant or the applicant's counsel.

Despite the filing of a Notice of Reconsideration, the above order remains in effect until the reconsideration application is determined. This Order will be published on the Commissioner's website.

Yours truly,

**OFFICE OF THE BC CONTAINER TRUCKING COMMISSIONER**

  
Duncan MacPhail  
Commissioner