



May 11, 2017

Sunlover Holding Co. Ltd.  
Box 88592, RPO Newton  
Surrey, BC V3W 0X1

Via email  
Original to follow via mail

## **Sunlover Holdings Co. Ltd (CTC Decision No.10/2017) - Decision Notice**

### **A. Overview**

In *Sunlover Holdings Co. Ltd.* (CTC Decision No. 10/2017) (the “Original Decision”), I found the licensee, Sunlover Holdings Co. Ltd., (“Sunlover”) had failed to pay compliant rates to its Company Drivers and I/O’s and that as of the date of the Original Decision there still remained outstanding adjustments owing to Sunlover’s Company Drivers totaling \$45,796.30. I also found that Sunlover had unnecessarily delayed the audit process:

“... by advancing arguments which were little more than audit driven attempts to find any off-set or argument to avoid or reduce its statutory obligation to pay the rates required under the Act and Regulation. These arguments lacked specifics and had little chance of success. As a result, payments to company drivers have been unnecessarily delayed.”

In the Original Decision I determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 30 – 40. In that regard, I proposed to impose an administrative fine against Sunlover in the amount of \$7,000.00. Consistent with s. 34(2) of the *Act* I advised Sunlover that I would consider its written response to the proposed penalty if it was received within 7 days.

Sunlover 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. Sunlover’s Response**

Sunlover’s response is relatively brief and is set forth below in its entirety:

“We think penalty should be there to us. We always cooperate with audit and paid to the drivers. Regarding retro pay to owner operators we were very cooperative and paid around 80% of money before auditors outcome and wait for the auditor to give final amount owing to each owner operator and paid balance 80% on the same day when auditor gave us final amount.

In the same audit, auditor didn’t able to figure out that we are making error in calculating vacation pay and we continue doing same error till next audit is done. So I feel this is an honest mistake we did but will pay to the drivers and just want please get us out of fines help we commit to do business honestly and fairly and go ahead cooperating your office and industry and grow.”

### C. Consideration of Sunlover's Response

Having considered Sunlover's response, 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.

Sunlover does not deny that it failed to pay compliant rates. Rather it argues that it should not be subject to an administrative fine essentially because it cooperated during the audit process, relied upon the auditor's findings and made an honest mistake. I do not accept these arguments for the following reasons.

First of all, I do not accept that Sunlover was fully cooperative during the audit process. As I found in the Original Decision, and as I have noted above, Sunlover delayed the audit and sought to avoid its statutory obligation to pay compliant rates by advancing arguments which were often lacking in specifics and which had little chance for success.

Furthermore I am not persuaded by the argument that Sunlover's noncompliant behaviour is to be regarded as non-culpable, and therefore to be excused, because it was entitled to wait until it received the audit results before taking steps to bring itself into compliance. As previously stated on numerous occasions and as I made clear in the original decision:

"...the onus to become and remain compliant rests with the Licensee. Licensees should not rely on Commission auditors to determine if they are or are not compliant. See for example Olympia Transportation Ltd. (CTC Decision No. 02/2016)." (at paragraph 22)

Moreover, as recorded in the Original Decision, Sunlover did not take steps to bring itself into compliance upon receiving the auditor's vacation pay error calculations. As of the date of the Original Decision, \$45,796.95 remained owing to Company drivers.

Finally it is relevant that, Sunlover did not pay the majority of the retroactive monies owing to its I/O's until after the January 22<sup>nd</sup>, 2016 deadline for payment imposed by the former Acting Commissioner.

In summary, I reject the arguments advanced by Sunlover in its Response submission and remain convinced for the reasons articulated in the Original Decision that a \$7,000.00 administrative fine is appropriate here.

### D. Conclusion

Having carefully considered Sunlover's Response submissions, and for the reasons outlined above and in

my Original Decision, I do not accept Sunlover's submission that I should refrain from imposing the proposed penalty of \$7,000.00.

In the result I hereby order Sunlover to pay an administrative fine in the amount of \$7,000.00. 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 \$7,000.00 payable to the Minister of Finance.

Finally, I note that Sunlover may request a reconsideration of the Commissioner's Decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after Sunlover's 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