



October 30, 2017

Canstar Trucking Company Limited
7098 – 150 A Street
Surrey, BC V3S 2E2

Canstar Trucking Company Limited (CTC Decision No. 26/2017)

A. Overview

In *Canstar Trucking Company Ltd.* (CTC Decision No. 26/2017) (the “Original Decision”), I found the licensee, Canstar Trucking Company Limited, (“Canstar”) had failed to pay its Company Drivers in accordance with the legislation.

In the Original Decision, I determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 13 – 18 and proposed to impose an administrative fine against Canstar in the amount of \$1,500.00. Consistent with s. 34(2) of the *Container Trucking Act* (the “Act”) I advised Canstar that I would consider its written response to the proposed penalty if it was received within 7 days.

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

B. Canstar’s Response

Canstar’s response notes that over the course of the audit, it fully cooperated with the auditor, accepted their decision and paid its employees the amounts owing. Because Canstar was unable to provide the auditor with evidence indicating that some of its employees had performed less than 2340 hours of service on behalf of any licensee, it agreed to pay, retroactively, \$26.28 per hour to those employees the auditor identified who had been paid \$25.13. Canstar seeks to have the penalty waived on the grounds that this is its first audit and that its non-compliance was unintentional.

C. Consideration of Canstar’s Response

I am not persuaded to refrain from imposing an administrative penalty. It has been and remains the position of the Office of the BC Container Trucking Commissioner (“OBCCTC”) that the onus to become and remain compliant with the requirements of the *Act* rest entirely with the Licensee. Licensees should not rely on OBCCTC auditors to determine whether or not they are compliant, nor should they wait until an OBCCTC audit process is undertaken before taking steps to ensure compliance. Canstar should not have waited until it was audited to correct its non-compliance. Therefore, I reject the argument advanced by Canstar in its response submission and remain convinced for the reasons articulated in the Original Decision that an administrative fine is appropriate here.

D. Conclusion

Having carefully considered Canstar's response submission, and for the reasons outlined above and in my Original Decision, I do not accept Canstar's submission that I should refrain from imposing a penalty.

In the result I hereby order Canstar to pay an administrative fine in the amount of \$1,500.00. 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 a cheque in the amount of \$1,500.00 payable to the Minister of Finance.

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



Michael Crawford
Deputy Commissioner