



January 30, 2018

Gantry Trucking Ltd. and TSD Holding Inc.  
7453 124 Street  
Surrey, BC V3W 3X2

C/O Guatam & Associates  
#210-7928-128<sup>th</sup> Street  
Surrey, BC V3W 4E8

## **Gantry Trucking Ltd. and TSD Holding Inc. (CTC Decision No. 14/2017) – Decision Notice**

### **1. Overview**

In Gantry Trucking Ltd. and TSD Holding Inc. (CTC Decision No. 14/2017) (the “Supplemental Decision”), I determined that Gantry Trucking Ltd. and TSD Holding Inc. (together, “the Companies”) failed to comply with the terms of the order made in Gantry Trucking Ltd. and TSD Holding Inc. (CTC Decision No. 14/2017) (the “Original Decision”) and thus failed to comply with the *Container Trucking Act* (the “Act”) and the conditions of their Container Trucking Services Licence. The Supplemental Decision determined that:

The Companies failed to provide satisfactory proof that the monies owed under the Commissioner’s July 6th order were paid on or before October 2, 2017; at times misrepresented their compliance and have not satisfied the auditor that they have corrected their record-keeping practices...

In the Supplemental Decision I concluded that this was an appropriate case to issue a penalty. In that regard, I proposed to impose an administrative fine against the Companies in the amount of \$60,000.00. In accordance with s. 34(2) of the *Act* I advised the Companies that I would consider a written response to the proposed penalty if it was received within 7 days. An extension of that time period was sought and granted and the Companies’ counsel has provided a written response within the extended time period, disputing the proposed penalty and providing arguments in support of the Companies’ position.

### **2. The Companies’ Response**

The Companies advance the following arguments in support of their position that the proposed penalty should not be imposed:

1. The drivers were paid on or before October 2, 2017 as per the Commissioner's order.

The Companies argue that they met the Commissioner's extended October 2, 2017 deadline. In the Original Decision, the Companies were ordered to:

pay forthwith, and in any event no later than August 4, 2017 the adjustment amounts totaling \$295,021.46 found by the auditor to be owing to their drivers (of which \$46,640.41 is owed to the 15 drivers Gantry says it employs or employed and \$248,381.05 is owed to the drivers TSD says it employs or employed);<sup>1</sup>

Commissioner MacPhail extended the above deadline of August 4, 2017 in response to a request from the Companies dated August 16, 2017, stating:

...I will refrain from taking steps to enforce my order of July 6<sup>th</sup>, 2017 until October 2, 2017 on the following conditions:

...

2. the Companies provide satisfactory proof that the monies owed under my July 6<sup>th</sup> order have been paid on or before October 2, 2017.

The Companies argue that "on or before October 2, 2017, all cheques regarding monies found to be owing to the drivers were issued and the drivers were contacted to collect their respective cheques."<sup>2</sup> The Companies further state that the cheques were "prepared by the deadline"<sup>3</sup> and that the driver acknowledgement forms (forms confirming that drivers had received payment) "simply confirm the date the driver decided to pick up their cheque."<sup>4</sup>

It is the position of the Companies that their willingness to post the money owing into trust pending the outcome of a Court of Appeal decision, and their efforts to distribute the money owed once their request for short notice to bring on an application for stay of the order was denied, demonstrates their intent to comply with the Commissioner's order and pay their drivers in full.

2. The Companies were not disingenuous and did not misrepresent cheque distribution dates.

The Companies take issue with the Supplemental Decision's conclusion that the Companies "misrepresented cheque distribution dates to the OBCCTC [Office of the BC Container Trucking Commissioner] auditor."<sup>5</sup> The Companies distinguish between "disingenuous" (the auditor's language) and "misrepresentation" (my language) before arguing that the August 15, 2017 date under consideration by the OBCCTC auditor "indicates the date the cheque was issued to the driver not the date the cheque was distributed or delivered to each driver."<sup>6</sup>

---

<sup>1</sup> The Original Decision, p. 16.

<sup>2</sup> Companies' Submission, January 16, 2018, p. 2.

<sup>3</sup> Companies' Submission, January 16, 2018, p. 2.

<sup>4</sup> Companies' Submission, January 16, 2018, p. 2.

<sup>5</sup> The Supplemental Decision, p. 6.

<sup>6</sup> Companies' Submission, January 16, 2018, p. 5.

---

3. The Companies did not fail to provide records and have corrected deficient record keeping practices.

The Companies highlight a distinction between a failure to provide records and a reasonable delay in providing records. The Companies argue that the delay in providing driver records was “administrative” and should not constitute non-compliance with the *Container Trucking Regulation* (“the *Regulation*”).<sup>7</sup>

The Companies argue that they “are still in the process of changing their [payroll] structure to accord with the auditor’s recommendations,” and that such an undertaking will naturally result in initial implementation challenges.<sup>8</sup>

4. The Companies were and remain compliant with section 24(1) of the *Regulation*.

It is the Companies’ position that they pay their drivers semi-monthly and no later than (5) days after the end of a pay period. Further, the Companies argue that the auditor’s findings of driver short payments was not “conclusively established” in the audit and that the Companies were able to establish that no driver was short paid through the provision of records to the auditor provided on November 9, 2017.<sup>9</sup>

### 3. Consideration of Companies’ Response

#### Introduction

Legislative intent and the purpose of the *Act* were first addressed by a Container Trucking Commissioner in TMS Transportation Management Services Ltd. (CTC Decision No. 08/2016). In considering the arguments brought forward by TMS Transportation Management Services Ltd., the Commissioner stated that:

...the legislation is remedial minimum rate legislation drafted for the purpose of creating fair compensation for container truckers and ensuring that they are paid in a timely fashion. The Commissioner is charged with the responsibility under the *Act* to interpret its provisions to give full effect to this purpose and to exercise his compliance authority to ensure that these objectives are met and the requirements of the legislation are not contravened. The importance of this responsibility is reflected in part in the significant enforcement powers granted to the Commissioner, including the power to impose administrative penalties up to a maximum of \$500,000 (Section 28 of the *Regulation*) and the authority to suspend or cancel a licence (Section 34(1) of *Act*).<sup>10</sup>

---

<sup>7</sup> Companies’ Submission, January 16, 2018, p. 5.

<sup>8</sup> Companies’ Submission, January 16, 2018, p. 6.

<sup>9</sup> Companies’ Submission, January 16, 2018, p. 6.

<sup>10</sup> TMS Transportation Management Services Ltd. (CTC Decision No. 08/2016), paragraph 17, p. 5.

The remedial nature of the *Act* was also discussed in Forfar Enterprises Ltd. (CTC Decision No. 20/2016):

Under Section 8 of the *Interpretation Act* R.S.B.C. 1996 c.238, every enactment must be construed as being remedial, and must be given a fair, large and liberal construction and interpretation as best ensures the attainment of its objectives”.<sup>11</sup>

...In Machtiger v. HOJ Industries [1992] 1 S.C.R. 986, Iacobucci J., speaking for the majority, made it clear that where the objective of an *Act* is to benefit employees (in this case company drivers) then,

“...an interpretation of the *Act* which encourages employers to comply with the minimum requirements of the *Act*, and so extends its protections to as many employees as possible, is to be favoured over one that does not.”<sup>12</sup>

In summary, these decisions make clear that the *Act* is remedial legislation which should be broadly interpreted to the benefit of drivers who provide Container Trucking Services for licensees. In the Supplemental Decision, I was mindful that the purpose of the *Act*, as outlined in TMS Transportation Management Services Ltd. (CTC Decision No. 08/2016), is to create “fair compensation for container truckers and **ensur[e] that they are paid in a timely fashion**” (emphasis added).

1. The drivers were not paid on or before October 2, 2017 as per the Commissioner’s order.

#### Definition of payment

The Companies argue in their submission that they did not fail to “provide satisfactory proof that the monies owed under [the Commissioner’s] July 6th order [were] paid on or before October 2, 2017,” as required by the Commissioner’s August 17, 2017 extension letter.

I do not accept the claim that the drivers were “paid on or before October 2, 2017.” It is my belief that, intentionally or otherwise, the Companies interpreted the Commissioner’s order to mean that the preparation and issuing of cheques on or before October 2, 2017 met the requirements of the Commissioner’s order. This is best evidenced by the language used in the Companies’ submission:

“As per the order, the Companies were granted an extension until October 2, 2017 to **issue payment** to the drivers.”<sup>13</sup>

“On or before October 2, 2017 all cheques regarding monies found to be owing to the drivers **were issued** and the drivers were contacted to collect their respective cheque.”<sup>14</sup>

“As the cheques for payment to each driver **was prepared by the deadline** of October 2, 2017...”<sup>15</sup>

<sup>11</sup> Forfar Enterprises Ltd. (CTC Decision No. 20/2016), paragraph 27, pp. 3-4.

<sup>12</sup> Forfar Enterprises Ltd. (CTC Decision No. 20/2016), paragraph 28, p. 4.

<sup>13</sup> Companies’ Submission, January 16, 2018, p. 2.

<sup>14</sup> Companies’ Submission, January 16, 2018, p. 2.

<sup>15</sup> Companies’ Submission, January 16, 2018, p. 2, emphases added.

However, there is a distinction to be made between preparing and issuing a cheque for the purpose of paying a person versus the actual receipt of money by that person. The word “payment”, for example, is defined in Black’s Law Dictionary, 4th ed., Revised, as “the performance of a duty, promise or obligation, or discharge of a debt or liability, **by the delivery** of money or other value ... where the money ... is **tendered and accepted** as extinguishing the debt or obligation...” (emphasis added).

The Commissioner’s Original Decision ordered the Companies to “pay forthwith and in any event no later than August 4, 2017.” The Commissioner’s August 17, 2017 extension letter directed the Companies to “provide satisfactory proof that the monies owed” had been “paid on or before October 2, 2017.” It also advised that the Commissioner “would refrain from taking steps” to enforce his July 6, 2017 order “until October 2, 2017.”

In each instance cited above the Commissioner employed clear language which should have left no question that it was the payment (including delivery) of the money owed to drivers on or before October 2, 2017 which was required, not the preparation of the cheques.

#### Payment of money owing when funds available

On August 15, 2017, the Companies sought an extension of the original August 4, 2017 order deadline on the grounds that they were suffering a cash-flow problem.<sup>16</sup> In other words, they failed to meet their initial payment deadline and did not take steps to have that deadline extended until well after it had passed. This is a clear breach of the Commissioner’s July 6, 2017 order, which alone would warrant the issuance of a penalty. Yet, the Companies’ statement in their submission that their “standard practice is to issue cheques when it has the funds to cover the amount of the cheque,”<sup>17</sup> further strengthens the argument to penalize the Companies because the payment of drivers at the discretion of a company based upon the companies’ availability of funds is not only a violation of the Commissioner’s order but is a violation of section 24(1) of the *Regulation*, the purpose of which is to ensure, in part, that drivers are paid in a timely and consistent manner.

#### Request to post monies owed in trust

The Companies argue that the auditor wrongly insinuated that the Companies strategically delayed making payment. It is the Companies’ position that their intent to comply is evidenced by the bank draft brought to the Court of Appeal on October 2, 2017 as part of their request for short notice to bring an application for stay of the order.

I do not accept this argument. I note that the pattern of behavior demonstrated by the Companies has been one of waiting until the final day of an order deadline to seek an extension or comply (or in the case of the Commissioner’s July 6, 2017 order to pay by August 4, 2017, to miss a deadline altogether). This is a form of delay and, at the least, demonstrates that the Companies were not intent on following the Commissioner’s order which sought to ensure that drivers were paid “forthwith” and in no event later than the specified date.<sup>18</sup>

---

<sup>16</sup> Audit report, p. 2.

<sup>17</sup> Companies’ Submission, January 16, 2018, p. 3.

<sup>18</sup> Order of Original Decision.

2. The Companies were disingenuous and misrepresented cheque distribution dates.

The Companies have taken issue with the auditor's depiction of their actions as disingenuous "when [the Companies] purported to have paid some adjustments in August 2017."<sup>19</sup> However, the audit findings indicate that twelve days after the Commissioner's August 4, 2017 deadline, the Companies sought an extension of the deadline and in doing so supplied copies of ten cheques payable to its drivers which were dated August 15, 2017<sup>20</sup> and advised the auditor that they "had issued a few cheques already (copies attached)."<sup>21</sup> It wasn't until November 2017, when reviewing proof of payment documents, that the auditor became aware that the August 15, 2017 cheques, which the Companies argue were "picked up by the drivers in August 2017 [and] cleared the Companies' bank accounts in August 2017,"<sup>22</sup> were, in fact, only dated August 15, 2017 and had not been given to the drivers until on or after October 6, 2017.

Therefore, I conclude that the Companies did misrepresent when drivers were paid as the audit demonstrates that the Companies merely prepared cheques in August 2017 but did not give them to the drivers until October 2017. Further, there are no audit records demonstrating that August 2017 cheques cleared the Companies' bank accounts in August 2017.

3. The Companies failure to provide records and the correction of deficient record keeping practices.

In the Original Decision, the Companies were ordered to:

correct their deficient record keeping practices and bring themselves into compliance with paragraph 3, of Appendix D to Schedule 1, and paragraph (g) of Schedule 2 of their CTS Licenses, including by introducing, keeping and maintaining payroll records which properly report and track hours worked, rates of remuneration for drivers, trips completed each day by drivers on their behalf, total compensation before taxes and any other deductions are paid, and any deduction made from the drivers compensation and the reason for the deduction

To confirm that the Companies had complied with the Commissioner's order, on October 4, 2017 the auditor wrote to the Companies and asked that all records of hours worked and wages paid for all company drivers for the pay period September 1 to 15, 2017 be submitted by October 12, 2017.

In their submission, the Companies argue that they did not fail to provide these records; rather there was a delay in providing the requested records. Once provided, the Companies note that the auditor did not conclude that the records were "incorrect, untrue or not authentic."<sup>23</sup>

This argument is irrelevant. The audit report indicates that the requested records were submitted by the required date, meaning there was no delay in providing these records.<sup>24</sup> The Companies' argument with respect to the delays that it characterizes as "administrative in nature" relate to the Companies' failure to provide timely evidence of driver payment more generally, not to their provision of records for

---

<sup>19</sup> Audit report, p. 8.

<sup>20</sup> Audit report, p. 4.

<sup>21</sup> Companies' email correspondence to auditor, August 16, 2017.

<sup>22</sup> Companies' Submission, January 16, 2018, p. 4.

<sup>23</sup> Companies' Submission, January 16, 2018, p. 5.

<sup>24</sup> Audit report, p. 5.

the purpose of determining if the Companies' had corrected their record keeping practices. Based on the records that were provided for the pay period September 1 to 15, 2017, the auditor determined that those records were incomplete, which would indicate that the Companies had not corrected their record keeping practices.

The Companies conclude their arguments by noting that they are still in the process of changing their record keeping practices, suggesting that a new system has been put in place or is in the process of being put into place.<sup>25</sup> If the Companies are "still in the progress of changing their record keeping practices" then they did not comply with the order to correct their deficient record keeping practices on or before October 2, 2017.

4. The Companies were and remain compliant with section 24(1) of the Regulation.

The Companies have argued that I erred in finding that the Companies did not comply with Section 24 (1) of the *Regulation*, which requires company drivers be paid semi-monthly and no later than 8 days after the end of a pay period. As established in sections 1 and 2 of this consideration of the Companies' response, I find that the Companies did not pay money owed to their drivers as ordered and therefore violated the payment timelines required under Section 24(1) of the *Regulation*. This has been proven by the audit and is not a finding which was precipitated by driver allegations.

There are many potential scenarios which might trigger a violation of Section 24 (1) of the *Regulation*. In addition to a failure to pay money following an order of the Commissioner, a failure to pay the correct amount of money owing for Container Trucking Services performed may also represent a violation of Section 24 (1) of the *Regulation*. The Companies' have argued that that auditor's conclusions regarding the likelihood of drivers being short paid are unfounded on the basis that "payments were made in accordance with the hours recorded by the driver himself" and that if hours were not recorded, this demonstrates negligence on the part of the driver.<sup>26</sup>

I do not support the claim that a driver's failure to record information, if that is in fact what occurred, relieves a licensee from their obligation to be compliant with the requirements of the *Act*. In Olympia Transportation (CTC Decision No. 02/2016) and Seaville Transportation Logistics Ltd. (CTC Decision No. 12/2016), the Commissioner established that the onus to become and remain compliant with the requirements of the *Act* rest entirely with the Licensee. In addition, a licensee's decision to base their payroll system on the times recorded by drivers on trip sheets and truck logs is a contravention of Commissioner decisions (see for example Olympia Transportation (CTC Decision No. 02/2016); an August 10, 2016 OBCCTC Record Keeping Requirements Bulletin; and Appendix D to Schedule 1 of the Companies' Container Trucking Services Licence – all of which establish that it is the Companies' responsibility to keep and maintain proper records rather than relying on its drivers to do so.

Further, the auditor found that the requested records were ultimately proven to be incomplete, which led to her conclusion that two drivers were likely short paid. The auditor notes that an analysis of the Companies' truck GPS data revealed "27 terminal trips that...could not [be matched]" with the records

---

<sup>25</sup> Companies' Submission, January 16, 2018, p. 6.

<sup>26</sup> Companies' Submission, January 16, 2018, p. 6.

provided by the Companies.<sup>27</sup> It was not until the auditor completed an investigation that the Companies provided further records which in the result were still found to provide only a partial explanation for the auditor's investigation. I note that the auditor concluded as follows:

If the most recent information provided by [the Companies] is correct, some of the previously unaccounted-for trips to the Terminals may have been adequately explained. Others have not. I have identified two drivers...who appear to have been short paid during the pay period in question. Some of these trips have only a few minutes' difference between the end of this driver's shift (pursuant to the records) and his departure time from the Terminal (pursuant to PMV's GPS Gate Report) but I am mindful that a driver would likely work at least one-half hour after his last exit from a Terminal in order to have time to return to the yard and conduct his post-trip truck inspection.

I have no way of explaining the unaccounted-for trips with respect to trucks... No records have been produced to identify the drivers for the times set out on PMV's GPS Gate Report.<sup>28</sup>

The auditor's conclusion demonstrates a concern that the records may have been inauthentic and, at the least, the auditor had concerns that the Companies had not adequately accounted for some of the findings of her investigation.<sup>29</sup> Therefore, I accept the auditor's conclusion that two drivers were likely short paid and I find that the Companies' submission of incomplete records and failure to provide an adequate explanation for some of the records indicates either:

- a. The delayed records were prepared after the fact in an attempt to cover up short payments to drivers; or
- b. The Companies failed to maintain and submit complete and accurate records for audit purposes which is a violation of Section 25 of the *Act* and Appendix D to Schedule 1 of the Container Trucking Services Licence.

I also note the Companies' submission that their practice is to pay drivers as funds become available. Again, the purpose of section 24(1) of the *Regulation* is to ensure, in part, that drivers are paid in a timely and consistent manner; therefore, the payment of drivers at the discretion of a company based upon the companies' availability of funds is a violation of section 24(1) of the *Regulation*.

#### Conclusion

Having considered the Companies' submissions, and taking into account all of the referenced factors and circumstances, I am not persuaded to reduce or refrain from imposing the proposed administrative penalty of \$60,000.00.

In the result, I hereby order Gantry Trucking Ltd. and TSD Holding Inc. to pay an administrative fine in the amount of \$60,000.00. 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 a cheque in the amount of \$60,000.00 payable to the Minister of Finance.

---

<sup>27</sup> Audit report, p. 5.

<sup>28</sup> Audit report, p. 7.

<sup>29</sup> Audit report, pp. 6 & 7.



---

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

Dated at Vancouver, B.C., this 30<sup>th</sup> day of January, 2018.



---

Michael Crawford, Commissioner