



April 5, 2018

Safeway Trucking Ltd.  
15299 68th Avenue  
Surrey, BC V3S 2C1

## **Commissioner's Supplemental Decision Safeway Trucking Ltd. (CTC Decision No.10/2018)**

### **Introduction**

1. On February 21, 2018, in Safeway Trucking Ltd. (CTC Decision No. 05/2018) (the "Decision") I ordered Safeway Trucking Ltd. ("Safeway") to:
  - a. pay forthwith, and in any event no later than March 19, 2018, the four I/Os collectively owed \$11,998.29 for container trucking services performed between June 1, 2014 and June 30, 2016 in the event the confirmation ordered below is not provided;
  - b. by no later than February 26, 2018, provide evidence satisfactory to the auditor that payment has been made to the I/Os represented by Safeway in its letter of January 23, 2018 as having been paid;
  - c. pay forthwith, and in any event no later than March 19, 2018, the 20 company drivers collectively owed \$59,062.54 for container trucking services performed between June 1, 2014 and June 30, 2016;
  - d. send cheques by registered mail to the last known address of all I/Os and company drivers found to owed by the auditor forthwith, and in any event no later than March 19, 2018;
  - e. immediately conduct a self-audit, as directed by the auditor, of all company drivers during the period from July 1, 2016 to January 31, 2018;
  - f. immediately correct its payment practices to ensure that Safeway is making and keeping records of payment to indirectly employed operators in accordance with the *Regulation*; and
  - g. by no later than March 20, 2018, demonstrate to the auditor's satisfaction that it has taken all necessary steps to bring itself into compliance with the *Act* and *Regulation*.
2. An administrative fine was not proposed at that time; however, I advised Safeway that:

...failure to comply with the orders set out in this decision will be viewed as serious non-compliance with the *Act*. Should Safeway not comply with the above orders, a penalty may be imposed under section 34 of the *Act*. Based on the facts in this case, all available penalties will be considered.
3. On March 6, 2018, Safeway's counsel provided a copy of a self-audit undertaken by Safeway for the period of July 2016 to January 2018 and advised that Safeway was "in the process of sending out registered mail for the purpose of tracking down drivers and owner operators, in order to pay the

many outstanding amounts” owing.<sup>1</sup>

4. On March 7, 2018, the Office of the BC Container Trucking Commissioner (“OBCCTC”) auditor wrote to Safeway’s counsel advising that a spot-audit of Safeway’s self-audit records would be undertaken, requesting spot-audit records and reminding Safeway that, contrary to the Commissioner’s order, Safeway had not provided evidence by February 26, 2018 that four independent operators (“I/Os”) collectively owed \$11,998.29 had been paid. The auditor concluded by noting that Safeway had until March 19, 2018 to pay all monies found to be owing in the Decision and demonstrate that they had corrected their payment practices for indirectly employed operators.<sup>2</sup>
5. On March 13, 2018, Safeway’s counsel responded and provided the auditor with all available requested records and noted evidence provided by Safeway indicating that it had made efforts (via registered mail) to locate ex-Safeway drivers owed money, with Safeway’s intention being to issue cheques to those drivers who responded to Safeway’s queries.<sup>3</sup>
6. This Supplemental Decision addresses the auditor’s findings with respect the orders made in the Decision.

#### Independent Operators

7. Under the original audit upon which the Decision was based, Safeway was found to be owing its I/Os \$11,998.29. Safeway’s counsel had previously claimed that Safeway had already paid \$5,566.86 to three I/Os and, therefore, Safeway was ordered to demonstrate that it had in fact paid the \$5,566.86 as represented and pay the additional outstanding amount of \$6,431.43.
8. The auditor reports that no evidence has been submitted by Safeway or its legal counsel to support Safeway’s claim that \$5,566.86 was paid to three I/Os. The auditor has also received no evidence that the additional outstanding amount of \$6,431.43 has been paid. As such, the auditor reports that Safeway has failed to comply with (a), (b) and (d) of the order set out in the Decision.

#### Company Drivers

9. Under the original audit upon which the Decision was based, Safeway was found to be owing adjustment amounts totaling \$59,062.54 to 20 company drivers. On March 13, 2018, Safeway’s counsel provided copies of Canada Post registered mail receipts indicating that Safeway had sent mail to seven company drivers and one I/O identified in the audit. Safeway’s counsel noted in this correspondence that it intended to issue cheques to the recipients of the registered mail once they had contacted Safeway and their identity was confirmed.
10. The auditor reports that no evidence has been submitted by Safeway or their legal counsel indicating that cheques have been issued to any of the 20 company drivers found to be owed money in the Decision. As such, the auditor reports that Safeway has failed to comply with (c) and (d) of the order set out in the Decision.

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<sup>1</sup> Counsel for Safeway Trucking Ltd., email correspondence, March 6, 2018.

<sup>2</sup> OBCCTC auditor letter to Safeway counsel, March 7, 2018.

<sup>3</sup> Counsel for Safeway Trucking Ltd., email correspondence, March 13, 2018.

11. In the Decision, Safeway was also ordered to conduct a self-audit, as directed by the auditor, of all company drivers during the period from July 1, 2016 to January 31, 2018. Safeway submitted monthly statements covering the July 2016 to January 2018 period, detailing each company driver who worked during each month and a break-down of their remuneration. The auditor conducted a spot-audit of Safeway's self-audit records and reports that Safeway has paid the minimum rates required under the *Regulation* from July 1, 2016 to January 31, 2018 and has therefore complied with (e) of the order set out in the Decision.
12. Section 24 (1) of the *Regulation* states that "a licensee must pay remuneration or fuel surcharge owed to a directly employed operator at least semi-monthly and no later than 8 days after the end of a pay period." In undertaking the spot-audit, the auditor found that:
  - One driver sampled was paid for the period August 1-15 on a cheque dated September 7, 2016 and was paid for the period August 16-31 by cheque dated October 15, 2016;
  - Another sampled driver was found to have earned \$4,132.10 in August 2016, but was paid \$2,200.00 by cheque dated September 15, 2016, \$1,000.00 by cheque dated October 17, 2016, and \$932.10 by cheque dated December 7, 2016 which included a memo "balance of August 2016 payroll";
  - Payroll for December 2016 for both drivers sampled was paid by one cheque each dated January 15, 2017; and
  - Payroll for the one driver sampled for July 2017 was paid by one cheque dated August 15, 2017 with the memo "July 2017 payroll".
13. The auditor concludes by noting that Safeway is in contravention of section 24 (1) of the *Regulation* based on the findings of the spot-audit. As such, the auditor reports that Safeway has partially failed to comply with (g) of the order set out in the Decision.

#### Indirectly Employed Operators

14. Under the original audit upon which the Decision was based, Safeway was found to have not provided sufficient evidence to demonstrate that it had ensured payment of indirectly employed operators working for a Safeway I/O. As such, Safeway was ordered to immediately correct its payment practices to ensure that Safeway is making and keeping records of payment to indirectly employed operators in accordance with the *Regulation*.
15. The auditor reports that Safeway has not complied with (f) of the order set out in the Decision as it has not confirmed that its payment practices, as they related to indirectly employed operators, have been corrected. While it is possible the Safeway is currently not using indirectly employed operators, it is still incumbent upon Safeway to, at a minimum, advise the auditor that it is currently not employing indirectly employed operators and articulate a payroll strategy to address the possible future employment of indirectly employed operators.

#### Supplemental Decision

16. I accept the findings of the auditor.

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17. As described above, the auditor has reported that Safeway:
- a. did not comply with the Commissioner's February 21, 2018 order and ensure that the I/Os collectively owed \$11,998.29 for container trucking services performed between June 1, 2014 and June 30, 2016 were paid on or before March 19, 2018;
  - b. did not comply with the Commissioner's February 21, 2018 order and ensure that the company drivers owed \$59,062.54 for container trucking services performed between June 1, 2014 and June 30, 2016 were paid on or before March 19, 2018;
  - c. has undertaken a self-audit which demonstrates that all Safeway company drivers performing container trucking services during the period from July 1, 2016 to January 31, 2018 have been paid in accordance with the minimum hourly rates set out in the *Regulation* but which also demonstrates that drivers were not paid in accordance 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; and
  - d. has not demonstrated to the auditor's satisfaction that the necessary steps have been taken to correct their deficient payment practices as they relate to indirectly employed operators.
18. Under the *Act* generally, and section 16(1)(b)(iii) in particular, Safeway is obligated to abide by the terms of any order issued under the *Act*. Further, it is a condition of Safeway's Container Trucking Services Licences that it complies with all orders.
19. Safeway has failed to comply with the terms of the order made in the Decision and has failed to comply with the *Act* and the conditions of its Licence.
20. As Safeway has not paid the amounts owing to its drivers under the legislation, or complied with my order, I make the following order pursuant to Section 9 of the *Act*.

I hereby order Safeway to:

- a. comply with the order (a), (b) and (d) of the Decision and either confirm payment or attempted payment or pay forthwith, and in any event no later than April 19, 2018, the four I/Os collectively owed \$11,998.29 for container trucking services performed between June 1, 2014 and June 30, 2016;
- b. comply with order (c) and (d) of the Decision and either confirm payment or attempted payment or pay forthwith, and in any event no later than April 19, 2018, the 20 company drivers collectively owed \$59,062.54 for container trucking services performed between June 1, 2014 and June 30, 2016; and
- c. provide to the auditor evidence that for the drivers owed money in (a) and (b), bank drafts (not cheques) have been provided to each driver owed money under this order (who Safeway can demonstrate are in contact with the company) along with a breakdown of the bank draft amount for each driver by no later than April 19, 2018.

21. If the orders in paragraph 20 are not complied with by April 19, 2018, I propose the following penalty under Section 34 of the *Act*:

that Safeway's Container Trucking Services Licence No. 60066(2016) be suspended effective April 20, 2018 and remain suspended until such time as Safeway complies with the above orders.

22. In addition, and for the reasons which follow, I find it is appropriate to impose a penalty on Safeway for its non-compliance to date.

23. As demonstrated above, Safeway has failed to satisfy the auditor that each I/O and company driver owed money under the Decision has been paid. Safeway has been found to be in violation of 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. Safeway has also failed to demonstrate to the auditor's satisfaction that the necessary steps have been taken to correct their deficient payment practices as they related to indirectly employed operators.

24. Regarding the size of the proposed fine, I have applied the relevant penalty quantum factors articulated by Commissioner MacPhail in Smart Choice Transportation Ltd. (CTC Decision No. 21/2016) and decided that an administrative penalty of \$10,000.00 is appropriate in this case. The size of this fine reflects Safeway's ongoing failure to comply with an order of the Commissioner and its ongoing failure to comply with the terms of its Container Trucking Services Licence and the *Act*. The purpose of the fine is also one of general deterrence. In other words, it is meant to send the message to the community that non-compliance with orders will not be tolerated.

25. In the result and in accordance with section 34(2) of the *Act*, I hereby give notice as follows:

- a. I propose to suspend Safeway Trucking Ltd.'s licence as set out in paragraph 21 above in the event that it has not complied with the orders set out in paragraph 20 by April 19, 2018;
- b. I propose to impose an administrative fine against Safeway Trucking Ltd. in the amount of \$10,000.00;
- c. Should it wish to do so, Safeway Trucking Ltd. has 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalties should not be imposed; and
- d. If Safeway Trucking Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to Safeway Trucking Ltd. of my decision to either:
  - i. Refrain from imposing any or all of the penalties; or
  - ii. Impose any or all of the proposed penalties.

26. This decision will be delivered to Safeway Trucking Ltd. and published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 5<sup>th</sup> day of April, 2018.

A handwritten signature in black ink, appearing to read 'Michael Crawford', written in a cursive style.

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Michael Crawford, Commissioner