



May 2, 2018

Orca Canadian Transport Ltd.
12331 77A Avenue
Surrey, BC V3W 2W9

Orca Canadian Transport Ltd. (CTC Decision No. 13/2018) – Decision Notice

A. Overview

In Orca Canadian Transport Ltd. (CTC Decision No. 13/2018) (the “Original Decision”), I found the licensee, Orca Canadian Transport Ltd. (“Orca”) had failed to comply with the minimum rates and fuel surcharge payment required under the *Container Trucking Act* (the “Act”) and *Container Trucking Regulation* (the “Regulation”). The audit findings indicated that Orca owed nineteen drivers adjustments totaling \$10,230.21. The adjustment payments were required because Orca did not pay its I/Os the correct hourly rate (Orca paid an hourly rate inclusive of fuel surcharge) and incorrectly calculated the fuel surcharge owing to I/Os who were paid by the trip. Orca’s payroll practices were found to be in violation of s. 24 of the *Regulation* and it was also determined that Orca paid its I/Os a combination of hourly rates and trip rates during the same pay period in violation of Appendix A to Schedule 1 of its Container Trucking Services Licence.

In the Original Decision, I determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 16 – 21 and proposed to impose an administrative fine against Orca in the amount of \$5,000.00. Consistent with s. 34(2) of the *Act* I advised Orca that I would consider its written response to the proposed penalty if it was received within 7 days.

Orca has provided a written response within the required time, stating that it disputes the proposed penalty.

B. Orca’s Response

Orca’s response is repeated below in its entirety:

“On behalf of Orca Canadian Transport Ltd. I have accepted the mentioned allegations and have paid our drivers accordingly. As such, I do not find a fee of \$5000.00 appropriate, as I understand the mistake made on our part and have resolved it. We would like to ask the commissioner to reevaluate this situation and possibly waive this fee. We understand the mistake made, and going forward we will be sure to pay closer attention to avoid it. Thank you for your consideration.”

Orca seeks to have the penalty waived on the grounds that it has rectified its non-compliance.

C. Consideration of Orca's Response

I am not persuaded to refrain from imposing an administrative penalty. As noted in the Original Decision, Orca is responsible to know its obligations under the *Act* and the Licence and licensees have been reminded that they should not wait until they are audited by the OBCCTC before taking steps to ensure compliance. The onus to become and remain compliant rests entirely with the Licensee.¹

The Original Decision referenced the former Acting Commissioner's January 22, 2016 deadline for licence holders to bring themselves into compliance with the *Act* and *Regulation* and noted that "Orca did not review the legislation at that time and attempt to correct is non-compliant behavior. Rather, Orca waited until it was audited to comply and only corrected its non-compliant payroll practices in September 2017 (16 months after the Acting Commissioner's deadline)."

In each decision where the Commissioner has decided to impose a penalty, the following language is utilized:

The seriousness of the available penalties indicates the gravity of non-compliance with the *Act*. 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, as well as the terms and conditions of their licences, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.

This language is intended to remind licensees that the *Act* allows for the potential issuance of large penalties because the legislation is in place to deter licence holders from engaging in non-compliant behavior. Waiving proposed penalties because a licence holder cooperated with an audit and brought itself into compliance, once non-compliance has been established, undermines the purpose of the available penalties under the *Act* and could suggest that non-compliant behavior is permitted until a licensee is found to be engaged in non-compliant behavior.

D. Conclusion

For the reasons outlined above and in my Original Decision, I do not accept Orca's submission that, once audited, it complied and therefore should not be penalized.

In the result, I hereby order Orca to pay an administrative fine in the amount of \$5,000.00. 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 \$5,000.00 payable to the Minister of Finance.

¹ Lower Mainland Fast Freight Inc. (CTC Decision No. 07/2018) – Decision Notice, p. 3. & Canstar Trucking Ltd.'s Decision Notice (CTC Decision No. 26/2017)

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

OFFICE OF THE BC CONTAINER TRUCKING COMMISSIONER

A handwritten signature in blue ink, appearing to read 'Michael Crawford', is positioned above the printed name and title.

Michael Crawford
Commissioner