



December 4, 2018

Hutchison Cargo Terminal Inc.
195-4851 Miller Road
Richmond, BC V7B 1K7

Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018) – Decision Notice

A. Overview

In Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018) (the “Original Decision”), I determined that Hutchison Cargo Terminal Inc. (“Hutchison”) failed to pay its drivers the correct hourly rate, trip rates and fuel surcharge required under the *Container Trucking Act* (the “Act”) and *Container Trucking Regulation* (the “Regulation”) and misclassified two I/Os under its Container Trucking Services Licence (the “Licence”). Further, Hutchison was not able to supply records for the period between September 2014 and September 2017, thus impacting the audit calculations for all Hutchison drivers. Hutchison also missed repeated auditor deadlines to supply records and conduct calculations. An administrative penalty of \$20,000.00 was proposed and, consistent with s. 34(2) of the Act, Hutchison was given 7 days to provide a written response setting out why the proposed penalty should not be imposed.

Hutchison provided a written argument in response to the proposed penalty within the specified timeframe. I have considered Hutchison’s submission and provide the following Decision Notice.

B. Hutchison’s Response

Hutchison asks that the proposed penalty be reconsidered. Hutchison’s current President states that the company’s failure to produce records was not a strategy to mitigate the amount of money owing under the audit, but the result of action undertaken by the previous president of Hutchison. Hutchison notes that following the departure of the previous President and Manager, steps have been taken to ensure future compliance and all monies found to be owing under the audit have been paid.

C. Consideration of Hutchison’s Response

A company is its own person. A licensed company must comply with the terms and conditions of the Licence, Act and Regulation and may be penalized if it does not. This is regardless of who owned or managed the company under licence during the period under audit. The penalty is directed at the company.

Hutchison’s audit demonstrates that previous management at Hutchison did not comply with the Licence, Act and Regulation and, therefore, Hutchison has been found to be non-compliant. I do not accept Hutchison’s argument that the licensee is not responsible for its historic non-compliance.

D. Conclusion

Having carefully considered Hutchison's submission, and for the reasons outlined above and in my Original Decision, I will not refrain from imposing a monetary penalty. In the result, I hereby order Hutchison Cargo Terminal Inc. to pay an administrative fine in the amount of \$20,000.00. Section 35(2) of the *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 \$20,000.00 payable to the Minister of Finance.

Finally, I note that Hutchison Cargo Terminal Inc. 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 company'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; 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 4th day of December, 2018.



Michael Crawford, Commissioner