



July 24, 2019

MDW Express Transport Ltd.
3448 Thurston Place
Abbotsford, B.C. V2T 6Z3

A-Can Transport Ltd. and MDW Express Transport Ltd. (CTC Decision No. 07/2019) – Decision Notice

A. Overview

In A-Can Transport Ltd. and MDW Express Transport Ltd. (CTC Decision No. 07/2019) (the “Original Decision”) I found that A-Can Transport Ltd. (“A-Can”) violated sections 23 and 25 of the *Container Trucking Act* (the “Act”) by not complying with the established rate and record keeping requirements. I further found that A-Can violated section 6.17 of its Container Trucking Services Licence when it transferred truck tags without the Commissioner’s approval. A-Can was ordered to pay an administrative penalty of \$20,000.00.

MDW Express Transport Ltd. (“MDW”) was found to have violated section 24 of the *Act* by deducting money from an employee’s pay and section 24(1) of the *Container Trucking Regulation* when it did not pay its driver within the prescribed timeframe. MDW’s failure to pay for training time was also found to be a violation of section 23 of the *Act* which makes clear that licensees cannot offer or pay any less than the section 22 rates when seeking to employ or retain a trucker. MDW was ordered to pay an administrative penalty of \$5,000.00.

Consistent with section 34(2) of the *Act*, A-Can and MDW were given 7 days to provide a written response setting out why the proposed penalty should not be imposed.

A-Can did not provide a written response within the time specified in the notice.

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

B. MDW’s Response

MDW responded to the Original Decision by noting that it had, since its last audit, corrected its dispatch processes but conceded that a few payroll errors found by the auditor did occur. MDW also seeks clarification regarding the holding back of a portion of the Complainant’s final pay for 30 days to “protect itself against potential traffic light fines”. MDW questions why a licence holder is “not allowed to hold back any money (for any pending red-light tickets) for any period of time when a driver quits or no longer works” for a licence holder. MDW concluded its submission by seeking clarification from the Commissioner about the Office of the BC Container Trucking Commissioner’s (“OBCCTC”) truck tag policy and the licence change in control policy. MDW asks that the penalty be reduced or eliminated on the basis that its violations were unintentional.

C. Consideration of MDW's Response

I have responded separately to MDW's queries regarding OBCCTC truck tag and change in control policy and I note that in paragraph 16 of the Original Decision the auditor described the payroll errors conceded by MDW as "minor." As the errors were found to be minor and the money was paid by MDW after the errors were identified, the penalty in the Original Decision was not proposed in response to these payroll errors. Rather, the penalty was proposed in response to MDW's failure to pay for training time, the deduction of money from a driver's pay cheque and the holding back of money from a driver's final pay (paragraph 32 of the Original Decision).

Regarding the last, in the Original Decision, I ruled that MDW violated the *Act* and Licence when it held back money from a driver's final pay. MDW states that the hold back was to "protect [itself] against potential traffic light fines."

Appendix E to Schedule 1 of the Container Trucking Services Licence prohibits the setting off or deduction of Business Costs from a driver's compensation. Business Costs are defined in the Licence and do not include fines for red light violations. Red light fines are levied against the registered owner of the vehicle driven by someone who has been found (via red light camera) to have violated the *Motor Vehicle Act*. Section 24(1) of the *Container Trucking Regulation* states that a licensee must pay remuneration to a directly employed operator (employee) at least semi-monthly and no later than 8 days after the end of a pay period. Therefore, a red light fine could be set off or deducted from an employee's pay if the licensee can demonstrate that it has been penalized for a red light violation that occurred while one of its employees (not independent operators) was operating one of its vehicles and the employee receives the remuneration owed to them (minus the set off or deduction) within the time period established by section 24(1) of the *Container Trucking Regulation*.

In this case, MDW conceded that it held back "\$300.00 + for 30 days" from the driver's final pay. A red light fine had not been issued to MDW. Rather MDW stated in its June 11, 2019 submission that the hold back was intended to "protect [MDW]...against potential traffic light fines." MDW did not deduct a specific amount of money from the Complainant's final pay (the exact amount substantiated by evidence of the red light fine) then pay the Complainant within the required timeframe – which would have been permitted. Rather, MDW held back an unsubstantiated sum of money to cover potential future costs and withheld that amount for over 30 days. This is in violation of section 24 of the *Act* which prohibits such a deduction and in violation of section 24 (1) of the *Regulation* which requires that a licensee pay an employee at least semi-monthly and no later than 8 days after the end of a pay period. For this reason, MDW was penalized.

D. Conclusion

A-Can

A-Can has not responded to the penalty proposed in the Original Decision. In the result, I hereby order A-Can 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 A-Can Transportation Ltd. may request a reconsideration of this 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.

MDW

Having carefully considered MDW'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 MDW to pay an administrative fine in the amount of \$5,000.00. 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 \$5,000.00 payable to the Minister of Finance.

Finally, I note that MDW Express Ltd. may request a reconsideration of this 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:

- g. made in writing;
- h. identify the decision for which a reconsideration is requested;
- i. state why the decision should be changed;
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- k. 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
- l. 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 24th day of July, 2019.



Michael Crawford, Commissioner