



April 20, 2021

Aheer Transportation Ltd.
8970 River Road
Delta, BC V4G 1B5

Aheer Transportation Ltd. (CTC Decision No. 01/2021) – Decision Notice

A. Overview

1. In Aheer Transportation Ltd. (CTC Decision No. 01/2021) (the “Decision”) I found that Aheer Transportation Ltd. (“Aheer”) failed to pay its independent operators (“I/Os”) correct trip rates and for all trips performed in accordance with section 23 of the *Container Trucking Act* (the “Act”) and Schedule 1 Appendix E (Payment of Compensation). I also found Aheer in breach of the Act, the *Container Trucking Regulation* (the “Regulation”), the Commissioner’s Rate Order, and Schedule 1 Appendix A (Prohibited Practices) section 1(g) of its Container Trucking Services Licence (“CTS Licence”) for paying its I/Os and company drivers a hybrid of trip and hourly rates that included paying its company drivers an incorrect trip rate. I also found that Aheer owed one (1) I/O \$22,069.91 for the period between February 2015 and April 2015 as the result of incorrect trip rate payments.
2. Aheer paid all monies found to be owing during the course of the audit, with the exception of the \$22,069.91 owing to the one I/O. In the Decision, Aheer was ordered to pay a total adjustment in the amount of \$22,069.91 to the I/O by no later than April 5, 2021. An administrative penalty of \$60,000.00 was also proposed. It was explicit in the Decision that the penalty was based on Aheer’s failures to pay the correct trip rates and for all trips performed and on its use of a hybrid payment method.
3. Consistent with s. 34(2) of the Act, Aheer was given 7 days to provide a written response setting out why the proposed penalty should not be imposed. The Company provided a written argument in response to the proposed penalty within the specified timeframe. I have considered the Company’s submission and provide the following Decision Notice.

B. The Company’s Response

4. Aheer asks that the proposed penalty be reduced or not imposed in part on the basis that the penalty “appears” to have been imposed because of its alleged failure to compensate an I/O correctly in 2015. Aheer makes several submissions around why it should not be penalized for its failure to pay \$22,069.91 to one I/O. Aheer also argues that, in general, the penalty is disproportionate and onerous and does not take into account the financial impact and hardship of the penalty.

C. Consideration of the Company's Response

The penalty “appears” to have been imposed because of Aheer’s alleged failure to compensate an I/O correctly in 2015

5. Aheer argues that it should not be penalized for failure to pay the amount owing to the I/O because the Office of the BC Container Trucking Commissioner (“OBCCTC”) should not have entertained a 5-year-old complaint, the OBCCTC has failed to make rules regarding complaints resulting in a lack of uniformity and arbitrariness in its decision making, and the statutory framework does not require Aheer to maintain records after 4 years so it is a corollary that the OBCCTC must not entertain complaints after 4 years. Aheer also argues that it should not be penalized for failure to pay the amount owing to the I/O because the OBCCTC has already conducted an audit for the relevant period.
6. Aheer was not penalized in the Decision for its failure to compensate an I/O correctly in 2015. Paragraph 71 of the Decision specifically notes that Aheer was penalized for “failure to pay the correct trip rates and/or failure to pay for all trips performed to thirty-six (36) I/Os for the period between May 1, 2015 and November 30, 2019 and for Aheer’s use of a hybrid payment method.” Aheer was also penalized for failure to cooperate with the auditor and prolonging the audit and for its history of non-compliance. This is set out in paragraphs 71-75 of the Decision.
7. The Decision is also explicit that Aheer is not being penalized for not keeping records after four years (paragraph 73). I do not refer in the Decision to the I/O complaint or to Aheer’s refusal to pay the money owing to the I/O as reasons for the penalty amount. It is at least implicit in the Decision that Aheer is not being penalized for the money owing to the I/O. Here I make that explicit.

The penalty is disproportionate and onerous

8. Aheer cites sections of the audit report in support of its argument that it was cooperative with the auditor, complied with her instructions, and amended its practices as required. It is true that Aheer paid the majority of the money the auditor found owing and amended its practices, but it did so only after a prolonged period of time where it engaged in meritless disputes regarding off-sets and trip rate payment requirements to rail terminals that had been previously ruled on by decisions and dealt with in bulletins and that Aheer ought to have been aware of.¹
9. It is important that licensees change non-compliant practices in response to an audit but the onus to become and remain compliant rested with Aheer. Aheer should not have relied on the auditor to determine whether it was compliant and should not have waited until the audit before amending its practices. The penalty in this case partly reflects the fact that Aheer was non-compliant to begin with and did not amend its practices before the auditor’s findings of non-compliance.

¹ Sunlover Holdings Co. Ltd. (CTC Decision No. 10/2017) (para 23-24), Indian River Transport Ltd. (CTC Decision No. 2/2018) (para 7), Lower Mainland Fast Freight Inc. CTC Decision No. 07/2018 – Decision Notice, Lower Mainland Fast Freight Inc. (CTC Reconsideration Decision No. 15/2018) (para 16-19) and United Coastal Logistics (CTC Decision No. 25/2018) (para 19). Respecting rail terminal rates see OBCCTC Bulletin, *Container Trucking Regulation Rate: CN Vancouver Intermodal Terminal (17569-104th Ave Surrey BC)*, July 4, 2016.

10. Aheer cites the auditor's conclusion that its hybrid rate payment structure resulted in slightly higher wages for drivers and, as such, argues that it should not be penalized. However, Aheer overlooks the auditor's conclusion, noted in the Decision, which outlined possible circumstances where the hybrid rate payment structure could result in driver trip rate payments that would not exceed the required hourly remuneration.² Aheer also overlooks the fact that it was not entitled to pay I/Os a combination or hybrid of hourly and trip rates and the reasons for the hybrid prohibition in the Licence.
11. Aheer's submissions have not convinced me that the proposed penalty is unjustified or disproportionate. It is an escalating penalty amount based upon Aheer's non-compliance in this case (except for that related to the I/O) and other past non-compliance. In the Decision, the size of the penalty was discussed:

Regarding the size of the proposed fine, I have decided that an administrative penalty of \$60,000.00 is appropriate in this case. This is Aheer's first penalty for non-compliant rate payments but **not its first violation of the rate payment requirements. Aheer has demonstrated a history of non-compliance which includes non-compliant rate payments, unlawful pay deductions and mistreating a driver (the latter for which Aheer received its first administrative fine).**

12. Aheer was found non-compliant in 2015 and 2016 and was required to pay money owed to drivers because of its remuneration practices. In 2018, Aheer was penalized \$50,000.00 for violating section 28(a) of the *Act*. Aheer has been found non-compliant once again and it is clear that previous audits and the imposition of a penalty have been insufficient to deter Aheer from further non-compliance. For that reason, an escalating penalty was assessed.

The OBCCTC has failed to consider the financial impact and hardship of the penalty

13. Aheer argues that I have failed to consider the financial impact and hardship of the penalty and says that, if the penalty is imposed, the company's financial viability, and by extension its employees, will be impacted. Aheer cites the impact of COVID-19 on its business and asks that the penalty be reduced or waived on the basis of financial hardship.
14. Financial hardship is not generally considered when proposing penalties.³ On one occasion, I reduced the size of a proposed penalty to safeguard the employment of drivers, and I have allowed licensees to pay penalties in installments where they have provided evidence of their inability to pay the applicable penalty in one lump sum by the specified deadline. In each case, I considered evidence provided by the licensee as well as the licensee's compliance history, the severity of the non-compliance in question and the potential impact of the penalty on driver employment.
15. Aheer has provided no evidence to support its assertion that it unable to pay the administrative fine because of the economic impacts arising from COVID-19, or that payment of the fine will negatively impact its employees.

² Aheer Transportation Ltd. (CTC Decision No. 01/2021), paragraph 52.

³ Dayal Transport Systems Inc. (CTC Decision No. 08/2019) – Decision Notice, page 1.

16. Should Aheer file a Notice of Reconsideration, out of concern for the drivers employed by Aheer, I am willing to consider evidence to support Aheer's assertion that payment of the penalty will impact the financial viability of the company and, by extension, its employees.

D. Conclusion

17. Having carefully considered Aheer's submission, and for the reasons outlined above and in my Decision, I will not refrain from imposing a monetary penalty and I will not reduce the monetary penalty proposed in the Decision.

18. In the result, I hereby order Aheer Transportation Ltd. to pay an administrative fine in the amount of \$60,000.00. 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 \$60,000.00 payable to the Minister of Finance.

19. Finally, I note that Aheer Transportation Ltd. may request a reconsideration of the imposition of the administrative fine 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.

20. Despite the filing of a Notice of Reconsideration, the above order requiring Aheer Transportation Ltd. to pay an administrative penalty of \$60,000.00 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 20th day of April, 2021.



Michael Crawford, Commissioner