



March 8th, 2017

Butterworth's Industries Inc.
103 – 19289 Langley Bypass
Surrey, BC V3S 6K1

Via Email: Sandi@butterworthstransport.com
Original to follow via mail

Attention: Sandi Butterworth

Re: Butterworth's Industries Inc. (CTC Decision No. 04/2017) - Decision Notice

A. Overview

In Butterworth's Industries Inc. (CTC Decision No. 04/2017 (the "Original Decision"), I found the licensee, Butterworth's Industries Ltd. ("Butterworth's") violated the *Container Trucking Act* ("the Act"), the *Container Trucking Regulation* (the "Regulation"), and its Licence. I determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 24-40 of the Original Decision. In that regard, I proposed to impose an administrative fine against Butterworth's in the amount of \$9,000.00. Consistent with s. 34(2) of the Act I advised Butterworth's that I would consider its written response to the proposed penalty if it was received within 7 days.

Butterworth's has provided a written response within the required time disputing the proposed penalty and providing arguments in support of its position.

B. Butterworth's Response

Butterworth's written response to the proposed penalty advances 4 general points:

1. Butterworth's paid rates which were agreed to by its drivers and accordingly was not enriched in any way by paying the rates required under the legislation.
2. Butterworth's financial circumstances;
3. Butterworth's records complied with that required under the Employment Standards Act;
4. Butterworth's was cooperative during the audit process.

In its written response Butterworth's invites me to refrain from imposing the proposed penalty.

C. Consideration of Butterworth's Response

Having considered all of the factors and the submissions advanced by Butterworth's, and for the following reasons, I am not persuaded to reduce or refrain from imposing the proposed administrative penalty.

1. Butterworth's paid rates which were agreed to by its drivers and accordingly was not enriched in any way by paying the rates required under the legislation.

As I have stated in many past decisions the Act is beneficial legislation and serves a remedial purpose.

My comments recorded in TMS Transportation Management Services Ltd., (CTC Decision No. 08/2016 at paragraph 7) reflect this often repeated view:

It is well recognized that the *Act* is beneficial legislation and was intended to address the problems identified in the Ready Bell Report. One of the central purposes of the *Act* is to ensure that container truck drivers are consistently and fairly compensated for their work and paid in a timely way. The legislated rate structure is designed to improve working conditions for drivers so as to bring to an end the previous cycle of labour disruptions by container trucking drivers at the Port noted in the above excerpt from the Ready Bell Report.

The rate protections created by the *Act* are minimum requirements and cannot be waived or contracted out of. See TMS Transportation Management Services Ltd., (CTC Decision No. 08/2016 at paragraph 8).

Butterworth's has both a statutory obligation and an obligation under its licence to comply with these rates. The onus to become and remain compliant rests squarely with licensees. (See Olympia Transportation Ltd. (CTC Decision No. 2/2016).

In late 2015 and early 2016 the former Acting Commissioner issued a series of communications to licensees, including Butterworth's, informing the Container Trucking Services community that she expected all licensees to be in full compliance with the legislated rates by no later than January 22nd, 2016 and warning that the imposition of a penalty pursuant to s. 34 of the *Act* will be highly likely for any company found in non-compliance with the retroactive provisions of the legislation.

In my view Butterworth's has no valid excuse for failing to meet its obligations to pay compliant rates.

Additionally, and as I pointed out at paragraph 39 of the in the original decision:

"Butterworth's non-compliant conduct harmed its drivers and enriched itself by delaying payment of in excess of \$29,000.00 properly due and owing to its drivers. Had a driver not filed a complaint, this non-compliant behavior may have gone undiscovered and unremedied."

For these reasons I reject Butterworth's first argument.

2. Butterworth's financial circumstances;

Butterworth's asserts that I should take its financial circumstances into account in assessing the appropriate penalty and that the auditor was well aware of the circumstances.

As I made clear in the Decision Notice issued with respect to MDW Express Transport Ltd. (CTC Decision No. 01/2017), "the fact that a company may face financial challenges does not excuse it from the legal requirements to comply with applicable legislation such as the *Act*."

I am not persuaded to reduce the proposed penalty because of Butterworth's financial circumstances, which, to be clear, I was aware of at the time of the issuance of my original decision.

3. Butterworth's records complied with that required under the Employment Standards Act;

Butterworth's argues that I should consider reducing the proposed penalty because:

"Our driver statements are detailed and fully accepted and approved by Employment Standards. The drivers know how much they are paid and how many hours for every day."

This argument misses the point. The failure which constituted a serious violation of Butterworth's licence, and which was considered in assessing an appropriate penalty, was not a failure to record the total hours worked by each driver, or a failure to record how much they were paid. It was a failure to keep a proper record of container trucking services hours worked. As I stated at paragraph 10 of the Original Decision, this failure constituted a clear and serious violation of Butterworth's licence and in particular paragraph 3 of Appendix D to Schedule 1 therein. As I also noted in the Original Decision, this failure posed a serious challenge for the auditor, directly interfered with the audit process and forced the auditor to adopt a percentage of revenue approach in order to estimate the hours spent by Butterworth's drivers performing container trucking services.

In the Original Decision, I reinforced the importance of keeping complete, accurate and up-to-date records, and made clear that a failure to meet this obligation is regarded as a serious licence violation. This view is reflected in many earlier decisions including the HAP Enterprises Ltd. (CTC Decision No. 17/2016) cited at paragraph 35 of the Original Decision. There is nothing contained in Butterworth's written response which would cause me to change my view on this matter of importance.

In summary, Butterworth's argument regarding its record keeping does not persuade me to change my view of what constitutes an appropriate penalty here.

4. Butterworth's was cooperative during the audit process.

I do not dispute that Butterworth's was helpful during the audit and responded to emails and phone calls. I note however that Butterworth's did not pay the calculated amounts owing until after being ordered to do so. Both of these factors were taken into account in assessing the original proposed penalty. The written response provided by Butterworth's does not provide anything new.

D. Conclusion

Having carefully considered Butterworth's Response submissions, and taking into account all of the referenced factors and circumstances, I do not accept Butterworth's submission that the imposition of a penalty of \$9,000.00 is unfairly high. I remain convinced that a \$9,000.00 fine is appropriate here.

In the result I hereby order Butterworth's to pay an administrative fine in the amount of \$9,000.00. 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 ("OBCCTC") a cheque in the amount of \$9,000 payable to the Minister of Finance.

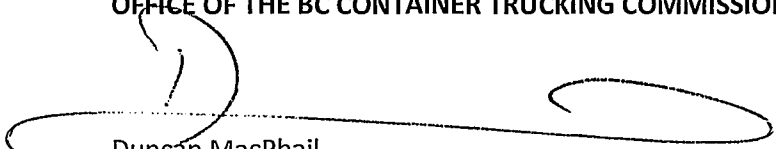
Finally, I note that Butterworth's may request a reconsideration of the Commissioner's Decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after Butterworth's receipt of this Decision Notice. A Notice of Reconsideration must be:

- 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.

Yours truly,

OFFICE OF THE BC CONTAINER TRUCKING COMMISSIONER



Duncan MacPhail
Commissioner