



May 30, 2017

White Hawk Transport Ltd.  
13082 74 Ave  
Surrey, BC V3W 2S2

## **White Hawk Transport Ltd., CTC Decision No. 12/2017 – (Application for Reconsideration of CTC Decision No. 11/2017 and Penalty Decision Notice No. 11/2017)**

### **I. Introduction**

1. On May 25<sup>th</sup>, 2017 White Hawk Transport Ltd. (“White Hawk”) filed an application for reconsideration with the Office of the British Columbia Container Trucking Commissioner (the “OBCCTC”). Although filed on May 25<sup>th</sup>, the application is dated May 19<sup>th</sup>, 2017. White Hawk’s application for reconsideration is repeated immediately below in its entirety:

“White Hawk Transport was well aware of the rules and regulation of British Columbia Container Trucking Commission, and acknowledges that he has not been in full compliance. However, request you to reconsider the decision because of the following reason-

- White Hawk is taking full responsibility that past incidents will not be repeated and is in full compliance from Nov 1, 2016.
- White Hawk paid the amount that were owed to drivers.
- White Hawk will not fail to cooperate and miss any deadlines in future.
- White is paying wage rate that has been fixed by OBCCTC.

White Hawk understand the importance of maintaining records and fully cooperate with the OBCCTC. White hawk will not fail to these obligations again and put themselves in a bad spot as this ruin the reputation of the company.”

2. In CTC Decision No. 11/2017 (the “Original Decision”) I found:

“White Hawk owed a total of \$16,469.79 to 12 drivers for the period November 1, 2014 to November 1, 2016, which it paid only after the audit was performed and the auditor calculated that it owed this amount to its drivers. White Hawk failed to cooperate in the audit process by missing several deadlines and by failing to adequately respond in a timely way to auditor email requests. Finally White Hawk failed to keep proper records until November 1, 2016.” (See Original Decision at paragraph 35).

and proposed that a \$6,200.00 administrative fine be imposed.

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3. In assessing the appropriate administrative penalty to be issued I considered and applied the factors outlined in *Smart Choice Transportation Ltd.* (CTC Decision No. 21/2016). More particularly I assessed the appropriate administrative penalty based on the following facts which I considered to be relevant to the *Smart Choice Transportation* factors:
- a. White Hawk's failure to pay compliant hourly rates over an extended period of time, which caused financial harm to its drivers.
  - b. Had a complaint not been filed with the Commissioner it is entirely possible that White Hawk's failure to pay compliant rates could have gone undiscovered, in which case White Hawk would have become significantly and unjustly enriched.
  - c. White Hawk violated its licence by failing to keep proper records. As stated in previous decisions I regard such a failure to be a serious violation of a licensee's obligations under the legislation and the terms of its licence.
  - d. White Hawk failed to fully cooperate with the auditor during the investigation. It missed numerous deadlines, and often failed to respond to the auditor's emails or to provide the information requested. This serious misconduct caused the audit to be prolonged and ultimately delayed the payment of monies owing to White Hawk's drivers.
  - e. Finally, in my view an administrative penalty is necessary here to deter White Hawk from engaging in this kind of inappropriate and non-compliant conduct and to send a clear message to Licensees in general that such conduct is unacceptable and will not be tolerated.

(See Original Decision at paragraph 32)

4. On May 16<sup>th</sup>, 2017 I issued a Decision Notice confirming the proposed penalty and ordering White Hawk to pay an administrative penalty of \$6,200.00.
5. Although White Hawk does not contest any of the findings of fact outlined in the Original Decision, or the grounds articulated for imposing an administrative penalty of \$6,200.00, it invites me to reconsider my decision to impose an administrative penalty. It argues, in essence, that because it has now brought itself into compliance, and because it promises not to repeat its non-compliant practices and behaviours in the future, an administrative penalty is not appropriate.

## II. Decision

6. The purpose of penalties under the *Container Trucking Act* and the factors which will be considered were outlined in *Smart Choice Transportation Ltd.* (CTC Decision No. 21/2016) and referenced at paragraph 31 of the Original Decision:

The administrative penalties made available under Section 34 of the *Act* and Section 28 of the *Regulation* are designed to encourage compliance with the *Act* and *Regulation*. Penalties are intended to have a general and specific deterrence purpose – that is, to protect drivers and to discourage non-compliance with the legislation.

To ensure that licensees receive the appropriate deterrent message, the amount of any financial penalty must be sufficiently large to meet the objective of deterring non-compliance. The large financial penalties available under the *Act* and *Regulation* demonstrate an intention to ensure that administrative fines are not seen by licensees as merely another cost of doing business or part of the licensing costs.

In keeping with the above described purpose of the legislation the factors which will be considered when assessing the appropriate administrative penalty include the following:

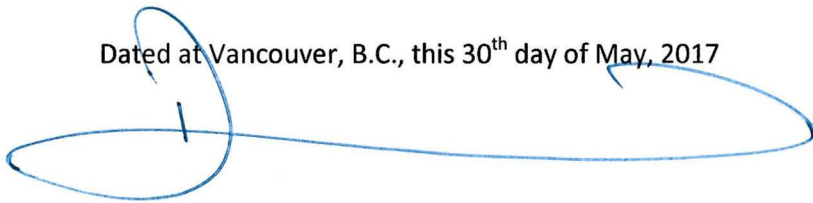
- The seriousness of the respondent's conduct;
- The harm suffered by drivers as a result of the respondent's conduct;
- The damage done to the integrity of Container Trucking Industry;
- The extent to which the Licensee was enriched;
- Factors that mitigate the respondent's conduct;
- The respondent's past conduct;
- The need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of having a Container Trucking Services Licence;
- The need to deter those Licensees from engaging in inappropriate conduct, and
- Orders made by the Commission in similar circumstances in the past.

This list is not intended to be exhaustive. (Paras. 25-27)

7. In the Original Decision I concluded that an administrative penalty of \$6200.00 is necessary here to achieve the above described purposes and is arrived at after carefully assessing and considering the *Smart Choice* factors.
8. Having carefully considered White Hawk's application for reconsideration I am not persuaded to reconsider my original decision. In my opinion, to accept White Hawk's arguments requires me to ignore many of the relevant *Smart Choice* factors including the following:
  - i. The seriousness of White Hawk's past misconduct and the harm suffered

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- by its drivers;
- ii. The seriousness of White Hawk's failure to fully cooperate with the auditor during the investigation;
  - iii. The seriousness of White Hawk's failure to keep proper records;
  - iv. The importance of demonstrating that there will be consequences for inappropriate conduct;
  - v. The need for deterrence.
9. In my view, the imposed administrative penalty serves a necessary general and specific deterrence purpose and is required to protect drivers and to discourage non-compliance with the legislation.
10. White Hawk's more recent efforts to bring itself into compliance and its assurances of future cooperation, and compliance do not permit White Hawk to avoid the seriousness and consequences of its past misconduct. Moreover, in my view, the imposition of an administrative penalty in this case serves as an appropriate and necessary deterrent.
11. For all of these reasons, I confirm my decision to impose a \$6,200.00 administrative penalty and hereby dismiss White Hawk's application for reconsideration.
12. Finally, I take this opportunity to remind White Hawk that the administrative penalty is due and payable within 30 days of the May 16<sup>th</sup>, 2017 issuance of the Decision Notice.

Dated at Vancouver, B.C., this 30<sup>th</sup> day of May, 2017



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Duncan MacPhail, Commissioner