



July 25, 2017

Gantry Trucking Ltd. and TSD Holding Inc.
7453 124 Street
Surrey, BC V3W 3X2

Gantry Trucking Ltd. and TSD Holding Inc. (CTC Decision No. 14/2017) – Decision Notice

A. Overview

In *Gantry Trucking Ltd. and TSD Holding Inc.* (CTC Decision No. 014/2017) (the “Original Decision”), I found that Gantry Trucking Ltd. (“Gantry”) and TSD Holding Inc. (“TSD”) (together, “the Companies”), had engaged in numerous violations of the *Container Trucking Act* (the “Act”), the *Container Trucking Regulation* (the “Regulation”), and their licences. I determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 45 to 61 of the Original Decision. In that regard, I proposed to impose an administrative fine against the Companies in the amount of \$30,000.00. Consistent with s. 34(2) of the *Act* I advised the Companies that I would consider their written response to the proposed penalty if it was received within 7 days.

The Companies have provided a written response within the required time disputing the proposed penalty and providing arguments in support of their position.

B. The Companies’ Response

The Companies’ written response to the proposed penalty is set out immediately below in its entirety:

“Dear Sir,
We have received and studied your email in detail.

1. We respect your final decision and agree to pay the indicated amounts to the drivers.
2. We will be sending copies of the cheques that we have drafted for the amounts owing for the years 2015, 2016 and 2017.
3. The cheques have been distributed to the drivers and once they are cashed, we will send copies of the canceled cheques also as confirmation of having complied with your decision.
4. We are already suffering losses in light of the strict regulation and the payment of the decision amount will further affect our financial position.
5. Our revenues are currently at their lowest as we are in our slow season and imposition of any penalty will further push us into financial hardships which will stall our business. We are willing to provide our financial statements for your reference upon request.
6. The regulation was new to us and we have brought our business into compliance.
7. In view of business continuity and our commitment to compliance in the future, we request your good self not to impose any penalty on us.

We thank you for your patience throughout the audit process and look forward to a healthy collaboration in the future.”

Consideration of the Companies’ Written Response

Having carefully considered the Companies’ Written Response, and for the following reasons, I am not persuaded to reduce or refrain from imposing the proposed administrative penalty.

1. The Companies’ financial circumstances

The Companies submit that I should take their financial circumstances into account in assessing the appropriate penalty.

In *Butterworth’s Industries Inc.*, (CTC Decision No. 04/2017) – Decision Notice, the licensee advanced a similar argument which I rejected for the following reasons:

“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.”

In my view these reasons apply equally here and accordingly I am not prepared to refrain from imposing the proposed penalty because of the Companies’ financial circumstances.

2. The Regulations were new to the Companies and they have now brought themselves into compliance.

The newness of the Regulations does not provide an excuse for non-compliance. In *Olympia Transportation Ltd.* (CTC No. 02/2017) I made the following clear:

“It must be emphasized that **the onus to become and remain compliant with the requirements of the Act rest entirely with the Licensee.** Licensees should not rely on Commission auditors to determine whether or not they are compliant, nor should they wait until a Commission audit process is undertaken before taking steps to ensure compliance.”¹

Additionally, I reject the Companies’ claim that they have “brought [their businesses] into compliance”. On

¹ See as well *Pro West Trucking Ltd.* (CTC Decision No. 06/2017) – Decision Notice, at page 3.

July 21st, 2017 I received a Supplemental Report from the Auditor reporting the following:

“The Companies have still not paid a total of \$209,060.23 owing to 41 drivers for the period April 3 to December 31, 2014.”

In the Original decision I ordered the Companies’ to “pay forthwith and in any event [by] no later than August 4, 2017” all adjustment amounts owing to their drivers. As evidenced by the auditor’s Supplemental Report, the Companies have not yet complied with this order.

Furthermore, the proposed administrative fine responds to the past misconduct of the Companies which, as I found in the Original Decision, included the following:

- Failing to maintain complete and accurate payroll records;
- Failing to provide all records requested by the auditor for audit purposes;
- Often failing to produce requested records until ordered to do so by the Commissioner or Deputy Commissioner.
- Failing to pay drivers the required legislated rates.
- Failing to pay the full adjustment amounts found to be owing to their drivers; and
- As of the date of the audit report, failing to make changes to their payroll systems to ensure compliance with the Container Trucking Legislation, to ensure that their drivers are paid the required minimum rates for all CTS work going forward from January 15, 2017.

The imposition of the administrative penalty responds to the Companies’ past misconduct as well as their continuing non-compliance, and sends a clear and unambiguous message that they are responsible for their past non-compliance and to bring themselves fully into compliance by no later than August 4, 2017. It also serves the more general deterrent purpose of protecting drivers by discouraging licensees from engaging in non-compliant behaviours.

In summary I am not persuaded to reduce the proposed penalty because of the newness of the Regulations, the Companies’ claim (which I have rejected) that they are now compliant, and their promise to remain (or become) compliant in the future.

C. Conclusion

Having carefully considered the Companies’ submissions, and taking into account all of the referenced factors and circumstances, I reject their position that I should refrain from imposing the proposed penalty of \$30,000.00. I remain convinced that a \$30,000.00 administrative penalty is appropriate here.

In the result I hereby order the Companies to pay an administrative fine in the amount of \$30,000.00. Further, for the reasons stated in the Original Decision I find that the Companies are jointly and severally liable for paying this penalty.

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 \$30,000.00 payable to the Minister of Finance.

Finally, I note that the Companies 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 Companies' 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