



October 2, 2017

Sunlover Holding Co. Ltd.
Box 88592, RPO Newton
Surrey, BC V3W 0X1

Via email
Original to follow via mail

Sunlover Holdings Co. Ltd (CTC Decision No.22/2017) - Decision Notice

A. Overview

In *Sunlover Holdings Co. Ltd.* (CTC Decision No. 22/2017) (the “Original Decision”), I found the licensee, Sunlover Holdings Co. Ltd., (“Sunlover”) had failed to bring itself into compliance with the legislation following an order issued by the previous Commissioner and had also failed to pay its Company Drivers and I/O’s in accordance with the legislation, which included missed payrolls and the withholding of wait time payments owed to its I/O’s.

Sunlover was ordered to pay all outstanding amounts owed to drivers by October 10th, 2017 and October 25th, 2017 respectively. In the Original Decision, I determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 23 – 29. In that regard, I proposed to impose an administrative fine against Sunlover in the amount of \$40,000.00. Consistent with s. 34(2) of the Act I advised Sunlover that I would consider its written response to the proposed penalty if it was received within 7 days.

Sunlover has provided a written response within the required time, stating that it disputes the proposed penalty and providing arguments in support of its position.

B. Sunlover’s Response

Sunlover’s response outlines several instances over the past year where Sunlover was unable to collect on money owed to it by its customers. In each of the three examples provided, Sunlover refers to the money owed to the company by its customers as “drivers money”. In its response, Sunlover notes that it has now received financing to run its business and commits to paying all the money owed to its drivers. Sunlover further contends that it did issue cheques to its drivers for monies found to be owing under the Commissioner’s previous Decision (CTC Decision No. 10/2017):

“Retro pay we paid to drivers. I send proof of registered post to Auditor but these cheques never came to our bank. They were never deposited. Best thing we can do is to make certified cheques on Monday and send it to them again.”

Sunlover seeks to have the penalty waived on the grounds that payment of a \$40,000.00 penalty will impact the company to the extent that its principal, Mr. Gurpreet Shoker, “will not be able to run it” and that it is my responsibility to assist in “keeping the business alive” by rescinding the proposed administrative penalty.

C. Consideration of Sunlover's Response

Having considered Sunlover's response I am not persuaded to refrain from imposing an administrative penalty for the following reasons:

As stated repeatedly in earlier decisions of the Commissioner including an earlier Decision Notice issued to Sunlover, the *Act* is beneficial legislation and that licensees **must** comply with the legislation (emphasis added). Further, Section 23 of the *Container Trucking Regulation* outlines the time period in which payment of remuneration, wait time remuneration and fuel surcharge must be made by a licensee to its drivers.

Drivers are entitled to expect that they will be paid all monies owed to them within legislated time frames. Sunlover does not deny that it failed to pay monies owed to its drivers. Rather it argues that it should not be subject to an administrative fine because it failed to account for challenges that arose with its accounts receivable. By characterizing money owed to the company as "drivers money" Sunlover suggests that drivers will/should only be paid when the company is paid. I do not accept this argument.

As noted above, the legislation outlines specific remuneration timelines which must be followed in relation to a licensee's drivers. The genesis of this section is the following recommendation in the Ready/Bell report, which identified that failure to pay drivers in a timely manner was a concern that contributed to the 2014 work stoppage at the Port of Vancouver:

We recommend the following:

- v. That it will be considered a breach of the TLS license for any trucking companies to withhold payment to drivers for more than 3 week's pay and ideally, we would recommend holdback of 2 week's pay.

The fact that Ready/Bell made this recommendation and that it was reflected in the drafting of the *Container Trucking Regulation* and CTS Licence, indicates the importance placed on timely payment to drivers. Many businesses are structured in such a way that payroll can be met in the absence of receiving account payments. In this case, Sunlover had a responsibility as a business owner and as a licensee to ensure this would occur.

Securing the timely payment of drivers, while an important element of the legislation, is not its principle aim. The legislation establishes the minimum rates of remuneration to be paid to drivers of licensees. In CTC Decision No. 10/2017, Sunlover was found to be in violation of the legislation and ordered to pay all monies owing to its drivers as well as an administrative penalty. This audit and the resulting Original Decision was undertaken and issued, in part, because Sunlover was found to have not followed previous orders of the Commissioner.

Rather than paying all money owed to drivers under CTC Decision No 10/2017, Sunlover issued cheques to those drivers then, after a period of time, closed the bank account from which the cheques had been issued. As a result, 22 drivers were unable to cash their cheques and receive the money owed to them under the Decision. Sunlover does not recognize this in its submission contesting the proposed penalty, rather it argues only that cheques were issued to drivers and infers that the onus was on the drivers to cash the cheques. Sunlover does not provide any explanation as to why its account was closed before the cheques were cashed or even why drivers were not advised to cash their cheques before the account was

closed. As of the date of Sunlover's submission (September 29th, 2017), \$10,322.75 remained owing to Company drivers.

In summary, I reject the arguments advanced by Sunlover in its response submission and remain convinced for the reasons articulated in the Original Decision that an administrative fine is appropriate here. However, I am concerned by Sunlover's inference that the payment of a \$40,000.00 administrative fine may lead to Sunlover's insolvency, thereby impacting the employment (and income) of its drivers. Therefore, I am proposing to reduce the administrative penalty.

D. Conclusion

Having carefully considered Sunlover's response submissions, and for the reasons outlined above and in my Original Decision, I do not accept Sunlover's submission that I should refrain from imposing a penalty. I have, however, decided to propose a reduced penalty of \$20,000.00 in an attempt to safeguard the employment of Sunlover drivers.

In the result I hereby order Sunlover to pay an administrative fine in the amount of \$20,000.00. 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 \$20,000.00 payable to the Minister of Finance.

Finally, I note that Sunlover may request a reconsideration of the Commissioner's Decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after Sunlover'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



Michael Crawford
Deputy Commissioner