

November 27, 2017

Canstar Trucking Company Limited  
7098 – 150 A Street  
Surrey, BC V3S 2E2

**Deputy Commissioner’s Decision  
Canstar Trucking Co. Ltd., CTC Decision No. 29/2017  
(Application for Reconsideration of CTC Decision No. 26/2017 and  
Penalty Decision Notice No. 26/2017)**

**I. Nature of Application**

1. Canstar Trucking Co. Ltd. (“Canstar”) applies under Section 39 of the *Container Trucking Act* (the “Act”) for a reconsideration of CTC Decision No. 26/2017 (the “Original Decision”).

**II. Introduction**

2. On November 24<sup>th</sup>, 2017 Canstar filed an application for reconsideration with the Office of the British Columbia Container Trucking Commissioner (the “OBCCTC”). Canstar’s application for reconsideration is repeated below in its entirety:

“We are writing in response to the notice of the reconsideration of the penalty imposed on our company. We accept the decision based on the auditors report and complied with it. We are a small company with only 5 tags. We always complied with port regulations. This is first mistake made by our company. The penalty of \$1500 is a heavy amount for a small company like us. Please reduce the amount of penalty. We will really appreciate it.”

3. In the Original Decision I found:

“...that between May 14, 2015 to August 31, 2017 Canstar failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period Canstar owed 13 company drivers adjustments totaling \$4,150.79. The adjustment payments were required because Canstar had not paid a regulated hourly rate which accurately accounted for the hours of container trucking services performed by the company drivers.”

And proposed that a \$1,500.00 administrative fine be imposed.

4. 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). In particular, I assessed the appropriate administrative penalty based on the following facts which I considered to be relevant to the Smart Choice Transportation factors:
  - a. Canstar failed to pay some of its company drivers compliant hourly rates over approximately a two year period, which caused financial harm to those drivers; and
  - b. Canstar fully cooperated with the auditor during the investigation.
5. On October 30<sup>th</sup>, 2017, I issued a Decision Notice confirming the proposed penalty and ordering Canstar to pay an administrative penalty of \$1,500.00.
6. Although Canstar does not contest any of the findings of fact outlined in the Original Decision, or the grounds articulated for imposing an administrative penalty of \$1,500.00, it invites me to reconsider my decision to impose an administrative penalty. It argues that the proposed fine is too large for a company of its size.

### III. Decision

7. 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 18 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)

8. In the Original Decision, I concluded that an administrative penalty of \$1,500.00 was necessary to achieve the described purposes and was arrived at after carefully assessing and considering the Smart Choice factors. Having carefully considered Canstar's application for reconsideration, I am not persuaded to reconsider my original decision.
9. Canstar argues that the proposed fine is too large for a company of its size. In *Raja Road Rail Services Ltd. & Trans BC Freightways Ltd.* (CTC Decision No. 27/2017) – Decision Notice, I found that there were no penalty factors outlined in *Smart Choice Transportation Ltd.* (CTC Decision No. 21/2016) which compelled me to tie the size of a penalty to the amount of money found to be owing drivers. Similarly, I find here that there are no penalty factors which compel me to tie the size of a penalty to the size of a company. In this case, I consider a fine of \$1,500.00 to be a reasonable sum for the purpose of ensuring that Canstar receives an appropriate deterrent message.
10. Further, a request for a reconsideration of a Decision should, in all reasonableness, provide a considered argument or reasoning which the Commissioner can take into account.
11. For these reasons, I confirm my decision to impose a \$1,500.00 administrative penalty and hereby dismiss Canstar's application for reconsideration.
12. Finally, I take this opportunity to remind Canstar that the administrative penalty is due and payable within 30 days of the October 30<sup>th</sup>, 2017 issuance of the Decision Notice.

Dated at Vancouver, B.C., this 27<sup>th</sup> day of Novmeber, 2017.



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Michael Crawford, Deputy Commissioner