



December 12, 2017

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

Commissioner's Supplemental Decision
Gantry Trucking Ltd. and TSD Holding Inc. (CTC Decision No. 14/2017)

Introduction

1. On July 6, 2017, in Gantry Trucking Ltd. and TSD Holding Inc. (CTC Decision No. 14/2017) (the "Decision") the Commissioner ordered Gantry Trucking Ltd. ("Gantry") and TSD Holding Inc. ("TSD") (together, "the Companies") to:
 - a. correct their deficient record keeping practices and bring themselves into compliance with paragraph 3, of Appendix D to Schedule 1, and paragraph (g) of Schedule 2 of their CTS Licenses, including by introducing, keeping and maintaining payroll records which properly report and track hours worked, rates of remuneration for drivers, trips completed each day by drivers on their behalf, total compensation before taxes and any other deductions are paid, and any deduction made from the drivers compensation and the reason for the deduction;
 - b. comply with the minimum rate requirements set out in the *Act* and *Regulation* and in particular, without limiting the generality of the foregoing, to pay their company drivers the minimum rates established by Section 13 of the *Regulation*;
 - c. comply with Section 24 (1) of the *Regulation*, which requires company drivers be paid semi-monthly and no later than 8 days after the end of a pay period;
 - d. pay forthwith, and in any event no later than August 4, 2017 the adjustment amounts totaling \$295,021.46 found by the auditor to be owing to their drivers (of which \$46,640.41 is owed to the 15 drivers Gantry says it employs or employed and \$248,381.05 is owed to the drivers TSD says it employs or employed);
 - e. to meet with an auditor by no later than August 11th, 2017 and demonstrate to the auditor's satisfaction that it has taken all necessary steps to bring itself into compliance with the *Act* and *Regulation*.

2. In a July 25, 2017 Decision Notice, the Commissioner ordered the Companies to pay a \$30,000.00 administrative fine within 30 days from the date of Notice (August 25, 2017) (the "Administrative Penalty").
3. On August 16, 2017, the Companies requested an extension for payment of the monies owing to drivers. Their request was granted and their deadline to pay was extended from August 4, 2017 to October 2, 2017.
4. On August 23, 2017, the Companies requested an extension for payment of the Administrative Penalty. This request was granted with the following requirements outlined in writing:

Further to our meeting of this afternoon, this will confirm that I have agreed to extend the deadline for payment of the \$30,000 administrative fine, proposed in CTC Decision No. 14/2017 and ordered in the related Decision Notice dated July 25th, 2017, to 12:00 PM (noon) on Friday, September 1st.

This will further confirm that I have also agreed to amend the conditions upon which I am prepared to refrain from taking enforcement proceeding (as set forth in my letter of August 17, 2017) to reflect the extended deadline for payment of the administrative fine. More specifically, I am now prepared to refrain from taking steps to enforce my order of July 6th, 2017 until **October 2, 2017** provided that the following conditions are met:

1. The Companies pay the outstanding \$30,000 administrative fine on or before **12:00 PM (noon) on September 1st, 2017.**
2. The Companies provide satisfactory proof that the monies owed under my July 6th order have been paid on or before October 2, 2017.

As previously stated a failure to meet the above conditions or a failure to comply with the terms of my July 6th order on or before October 2nd, 2017 will result in the OBCCTC taking all necessary steps to enforce the terms of my orders including, but not limited to potentially suspending Gantry's and TSD's licenses and/or realizing against the Compliance Bond.

5. The Companies paid the Administrative Penalty on September 1, 2017. However, it was not until the very day of the deadline of October 2, 2017, that the Office of the BC Container Trucking Commissioner ("OBCCTC") received a phone call from the Companies seeking confirmation about the process by which the Companies were to pay the monies found to be owing to its drivers under the Decision.
6. The OBCCTC responded on October 2, 2017 in writing requiring the Companies to immediately pay the balance of monies owing under the Decision and provide an OBCCTC auditor with Proof of Payment forms, copies of each cancelled cheque and an attached statement of pay in order to confirm compliance. In addition, the Companies were reminded that they were required to demonstrate to an OBCCTC auditor that they had made changes to their payroll system pursuant to the Decision.

7. The Companies were further advised in that letter that:

Failure to meet the above conditions or a failure to comply with the terms of the Commissioner's July 6th order immediately will likely result in the OBCCTC taking all necessary steps to enforce the terms of the orders including, but not limited to potentially suspending Gantry's and TSD's licences and/or realizing against the Compliance Bond.

8. The OBCCTC auditor was then directed to confirm that all monies owing under the Decision had been paid to the Companies' drivers and that the Companies had corrected their deficient record keeping practices and brought themselves into compliance with paragraph 3, of Appendix D to Schedule 1, and paragraph (g) of Schedule 2 of the Container Trucking Services Licence (the "Compliance Audit").
9. This Supplemental Decision addresses the auditor's findings with respect the Compliance Audit.

Confirmation of Payment

10. Under the original audit upon which the Decision was based, the Companies were found to be owing their company drivers \$371,708.06 in pay adjustments for the period April 3, 2014 to January 15, 2017. At the time of the Decision, \$295,021.46 remained outstanding.
11. In order to confirm that drivers had received the cheques issued on the dates noted above, and all payments had been made by the October 2, 2017 deadline set by the Commissioner, the Companies were directed to provide the OBCCTC auditor with completed Proof of Payment Forms as well as copies of each cancelled cheque and its attached statement of pay by October 19, 2017. If the Companies could not locate former drivers, they were instructed to provide copies of envelopes sent by registered mail stamped by the Post Office as "undeliverable". The auditor was also directed by the OBCCTC to call drivers to confirm payment.
12. The Companies did not fully comply with the auditor's request by October 19, 2017. Between October 19, 2017 and November 7, 2017, the auditor continued to ask the Companies for confirmation that drivers had received the cheques issued by the Companies. As the auditor was unable to secure the requested information, the Deputy Commissioner, on November 7, 2017, wrote to the Companies' insurance company advising the insurance company that the Licensees were uncooperative and that their Bonds could be called:

Due to the current inaction on the part of the Licensees with respect to the remuneration of Truckers, the OBCCTC is currently considering its options pursuant to the Bonds and section 5 of the Licenses and section 26 of the *Container Trucking Regulation*.

13. Immediately after this November 7, 2017, correspondence, the auditor wrote to the Companies:

I have reviewed the information you recently sent to confirm that some pay adjustment cheques have cleared your bank. There are, however, many cheques where payment has not been confirmed.

You sent me copies of adjustment cheques dated July 31, 2016, August 5, 2016, May 5, 2017, July 10, 2017, August 15, 2017, and October 2, 2017 that you claimed were paid to your company drivers. The attached spreadsheet identifies the cheques that have not been confirmed as actually paid to the drivers. I have repeatedly asked you to provide confirmation that these cheques were cashed but you have not done so.

You are asked to send me the following information for each outstanding cheque no later than 4:00 p.m. Thursday, November 9, 2017:

- copies of the cancelled cheques, or
- bank statements confirming each cheque was cashed, or
- payment acknowledgement forms signed by the driver upon receipt of his cheque, or
- evidence that you have made every reasonable attempt to contact the drivers to invite them to pick up their cheques from your office

14. The Companies responded immediately and pledged to go through bank statements and send the rest of the cancelled cheques. Over the next several days the Companies provided copies of cancelled cheques, bank statements, and/or payment acknowledgement forms signed by the drivers.
15. Ultimately, the auditor was able to conclude that of the total amount of monies found to be owing under the original audit (\$371,708.06), the Companies eventually confirmed payment of \$348,949.21 (94%) and notes that the unpaid balance of \$22,758.85 (6%) is likely due to the fact that many of the Companies' drivers terminated their employment some time ago and their whereabouts may legitimately be unknown. This is consistent with the experience of the OBCCTC, which has on several occasions attempted to contact past drivers of the Companies without success.
16. While the auditor was able to confirm that the Companies' drivers received the money owed to them under the Commissioner's order, the auditor also noted that the Companies' had not complied with the Commissioner's order.
17. The auditor found that the Companies issued adjustment cheques sporadically over the period July 2016 to October 2017 despite the auditor's requests to pay drivers money found to be owing during the audit. Further, once ordered to pay by the Commissioner, the Companies misrepresented an August 15, 2017 payment date whereby copies of ten cheques were submitted to the auditor indicating that the cheques had been issued to drivers. The audit later revealed, as evidenced by the payment acknowledgement forms signed by drivers in October 2017 and by tracking documents, that nine of these cheques were sent by courier or hand delivered on or after October 6, 2017.

18. Additionally, the auditor found thirty-one cheque copies with a date of October 2, 2017 indicating that the Companies had complied with the Commissioner's order. However, the auditor also found that the cheques dated October 2, 2017 were sent by courier on October 6, 2017 or had payment acknowledgement forms signed between October 7 and 19, 2017. In other words, the Companies delayed issuing cheques for the majority of monies owing until the last possible day, and then sent them out after the October 2, 2017 deadline had passed thereby not complying with the Commissioner's order to ensure that the Companies drivers had been paid on or before the deadline.

Payroll Practices

19. To determine whether the Companies had corrected their deficient record keeping practices, the auditor selected the pay period September 1 – 15, 2017 to conduct a sample audit. The Companies were asked to submit all pertinent payroll records for that pay period. These records were submitted by the deadline.
20. As part of the audit, the auditor reviewed Port of Vancouver GPS and Terminal Gate report records for September 2017 listing all the Companies' truck activities at Port of Vancouver terminals. This information listed the owner of the truck, the truck unit number, the GPS locator number, and the dates, times of entry, and times of exit at each Terminal.
21. The auditor cross-referenced the Port of Vancouver records with the payroll records provided by the Companies and was able to match truck movements with the dates, work hours, and truck unit numbers indicated on the Companies' trip sheets and truck logs. The auditor reports that 27 terminal trips could not be matched with the Companies' trip sheet/truck log information.
22. The Companies were advised of the auditor's findings and an explanation was sought and received. The Companies supplied additional records and provided the following explanation:

As per our records none of the drivers were short paid. However, there were two sheets which were not submitted to OBCCTC. Those are now included in the attachment. Even though their sheets weren't included in the previous submission but they were paid in accordance with TLS requirement.

Other missing records weren't in fact missing but weren't documented properly. We have attached those driver sheets again with comments clarifying trucks that were driven. Some drivers drove multiple trucks in one day but documented only one on their sheets. So we have put comments in their driver sheets showing actual trucks driven for respective loads.

23. Based upon the information collected through the multi-stage process set out above, the auditor concludes that:
- two drivers were likely short paid because their trucks were active at port terminals outside of the hours recorded on their trip sheets and truck logs;
 - the Companies initially failed to provide records for all drivers during the September 1 – 15, 2017 audit period;
 - records for three drivers were provided after the fact to support previously unaccounted for

- truck activity at port terminals;
- supplemental records provided indicate that one driver was paid later than 8 days after the end of a pay period in contravention of Section 24(1) of the *Container Trucking Act* ("the Act");
- supplemental records provided do not account for all truck activity; and
- in two instances, the records provided do not provide evidence to show who drove specific trucks on specific days the trucks were active.

Decision

24. I accept the findings of the auditor.
25. As described above, the auditor has concluded that the Companies:
- a. did not comply with the Commissioner's July 6th order and ensure that all their drivers found to be owing money under the Decision were paid on or before October 2, 2017;
 - b. misrepresented cheque distribution dates to the OBCCTC auditor;
 - c. only provided pay records or proof of payment to the auditor following action by the Deputy Commissioner;
 - d. did not comply with Section 24 (1) of the Regulation, which requires company drivers be paid semi-monthly and no later than 8 days after the end of a pay period; and
 - e. have not demonstrated to the auditor's satisfaction that the necessary steps have been taken to correct their deficient record keeping practices and bring themselves into compliance with their CTS Licences.
26. Under the *Act* generally, and Section 16(1)(b)(iii) in particular, the Companies are obligated to abide by the terms of any order issued under the *Act*. Further, it is a condition of the Companies' Container Trucking Services Licences that the Companies comply with all orders.
27. The Companies have failed to comply with the terms of the order made in the Decision and thus have failed to comply with the *Act* and the conditions of their Licence.
28. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's licence or imposing an administrative fine. In this case, I find it appropriate to impose a penalty on the Companies for their non-compliance.
29. As demonstrated above, the auditor has determined that the Companies have not complied with the Commissioner's order under the Decision.
30. The Companies failed to provide satisfactory proof that the monies owed under the Commissioner's July 6th order were paid on or before October 2, 2017; at times misrepresented their compliance and have not satisfied the auditor that they have corrected their record-keeping practices as outlined in paragraph 26 of this Decision.

31. Moreover, I find that the Companies continue to demonstrate a propensity for non-compliance and delay as it relates to orders of the Commissioner and the requirements of the *Act* and the Companies' Container Trucking Services Licence. The Companies' actions are occurring to the detriment of their company drivers and to the financial benefit of the Companies through the retention of money owed to its drivers.
32. Commissioner MacPhail, in the Decision, considered the relevant penalty quantum factors outlined in Smart Choice Transportation Ltd. (CTC Decision No. 21/2016) and determined that a \$30,000.00 penalty levied against the Companies was necessary to deter the Companies from continuing their non-compliant behaviours. There, Commissioner MacPhail stressed that accurate record-keeping is a fundamentally important obligation of licensees and expressly found that the Companies' record-keeping was incomplete, inconsistent, and often inaccurate. The Commissioner also found that the Companies' deficient record-keeping, along with their failure to provide information in a timely way, seriously impeded and prolonged the audit process.
33. This Supplemental Decision demonstrates that the previously assessed penalty against the Companies was not sufficient to deter them from their non-compliant practices. Therefore, in the result, and in accordance with Section 34(2) of the *Act*, I hereby give notice as follows:
- a. I propose to impose a \$60,000.00 administrative penalty against the Companies for which they are jointly and severally liable for the reasons set out by Commissioner MacPhail in the Decision;
 - b. Should they wish to do so, the Companies have 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
 - c. If the Companies provide a written response in accordance with the above I will consider their response and I will provide notice to the Companies of my decision to either:
 - i. Refrain from imposing any or all of the penalty; or
 - ii. Impose any or all of the proposed penalty.
34. This decision will be delivered to the Companies and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 12th day of December, 2017.



Michael Crawford, Commissioner