



June 25, 2018

Safeway Trucking Ltd.
15299 68th Avenue
Surrey, BC V3S 2C1

Commissioner's Decision

Safeway Trucking Ltd., CTC Decision No. 19/2018

(Application for Reconsideration of CTC Decision No. 05/2018)

I. Nature of Application

1. Safeway Trucking Ltd. ("Safeway") applies under section 39 of the *Container Trucking Act* (the "Act") for a reconsideration of CTC Decision No. 05/2018 (the "Original Decision").

II. Introduction

2. On June 19th, 2018, Safeway filed an application for reconsideration with the Office of the British Columbia Container Trucking Commissioner (the "OBCCTC"). Safeway's application for reconsideration seeks a reduction in the ordered penalty. Its arguments in support of its position are consistent with the arguments previously made by Safeway in response to the Original Decision.
3. Safeway argues that its non-compliance is historic and does not reflect the policies of the current director and reminds the OBCCTC that since the start of the current director's tenure, Safeway has strived to ensure that the workings within the company, and the treatment of drivers and owner operators, is in accordance with the *Act* and *Regulation*.
4. Safeway argues that it was cooperative during the audit and made demonstrated efforts to comply with the auditor and OBCCTC requests. Safeway contends that the imposition of a \$10,000.00 penalty will be overly burdensome on the company.
5. Safeway agrees that an administrative fine is appropriate in this case.

III. Decision

6. In the Original Decision it was found that Safeway failed to pay its company drivers and independent operators ("I/Os") the correct minimum rates required under the *Act* and *Regulation* and was not making and keeping records of payment to indirectly employed operators in accordance with the . Safeway was ordered to:

- a. pay forthwith, and in any event no later than March 19, 2018, the four I/Os collectively owed \$11,998.29 for container trucking services performed between June 1, 2014 and June 30, 2016 in the event the confirmation ordered below is not provided;
- b. by no later than February 26, 2018, provide evidence satisfactory to the auditor that payment has been made to the I/Os represented by Safeway in its letter of January 23, 2018 as having been paid;
- c. pay forthwith, and in any event no later than March 19, 2018, the 20 company drivers collectively owed \$59,062.54 for container trucking services performed between June 1, 2014 and June 30, 2016;
- d. send cheques by registered mail to the last known address of all I/Os and company drivers found to owe by the auditor forthwith, and in any event no later than March 19, 2018;
- e. immediately conduct a self-audit, as directed by the auditor, of all company drivers during the period from July 1, 2016 to January 31, 2018;
- f. immediately correct its payment practices to ensure that Safeway is making and keeping records of payment to indirectly employed operators in accordance with the *Regulation*; and
- g. by no later than March 20, 2018, demonstrate to the auditor's satisfaction that it has taken all necessary steps to bring itself into compliance with the *Act* and *Regulation*.

7. A penalty was not proposed in the Original Decision, as it was determined that:

...as a result of an ownership dispute the current shareholder responsible for Safeway's operations was denied access to key financial and personnel records, including cancelled pay cheques, for the Initial Audit Period ; further, Safeway demonstrated that it undertook two voluntary self-audits in December 2015 and January 2016 and issued adjustment payments to some I/Os in recognition of the retroactive pay requirements introduced in the Regulation. The auditor confirms that since June 2016, Safeway has paid its I/Os compliant on and off-dock rates and that the complainant, whose complaint initiated Safeway's audit, has been paid all sums found to be owing.

8. Safeway was advised that failure to comply with the orders set out in the Original Decision would be viewed as serious non-compliance with the *Act* and if Safeway did not comply with the orders of the Original Decision, a penalty could be imposed.
9. Subsequently, in Safeway Trucking Ltd. (CTC Decision No.10/2018), it was found that Safeway did not comply with the terms of the order made in the Original Decision and had failed to comply with the *Act* and the conditions of its Licence. Further orders were made and a penalty of \$10,000.00 was proposed. Safeway had seven days to respond and did so on April 9, 10, 11 and 12 2018.
10. On April 23, 2018, I issued a Decision Notice upholding the proposed penalty and ordering Safeway to pay an administrative penalty of \$10,000.00. Had Safeway complied with the orders set out in the Original Decision, a penalty would not have been imposed.

11. Throughout the course of this audit Safeway has made clear that it does not have the financial wherewithal to bring itself into immediate compliance with the *Act* and Licence. It has complied (or not) with the requests of the auditor and the orders of the Commissioner in a manner which suggests an intention to delay the process to its benefit. Safeway's recent request for reconsideration is simply an extension of this tactic. Safeway has not offered additional information or new arguments in support of its reconsideration request. For these reasons, and for the reasons set out in Safeway Trucking Ltd. (CTC Decision No.10/2018) and Safeway Trucking Ltd. (CTC Decision No.10/2018) – Decision Notice, I confirm my decision to impose a \$10,000.00 administrative penalty and hereby dismiss Safeway Trucking Ltd.'s application for reconsideration.

Dated at Vancouver, B.C., this 25th day of June, 2018.



Michael Crawford, Commissioner