



August 1, 2018

Supersonic Transport Ltd.
8277 129 Street
Surrey, B.C. V3W 0A6

Commissioner's Decision Supersonic Transport Ltd. (CTC Decision No. 21/2018)

Introduction

1. Supersonic Transport Ltd. ("Supersonic") is a licence holder within the meaning of the *Container Trucking Act* (the "Act"). Under sections 22 and 23 of the Act, minimum rates that licensees must pay to truckers who provide container trucking services are established by regulation, and a licensee must comply with those statutorily established rates. In particular, section 23(2) states:

A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

2. Under section 31 of the Act, the Commissioner may initiate an audit or investigation to ensure compliance with the "Act, the regulations and a licence..." whether or not a complaint has been received by the Commissioner.
3. In July of 2017, the Commissioner directed an auditor to audit Supersonic's records to determine if its company drivers were being paid the minimum rates required under the *Container Trucking Regulation* (the "Regulation"). The auditor was directed to audit the periods November 1-30, 2014 and March 1-31, 2017 (together the "Initial Audit Period").

Initial Audit Period

4. The auditor requested, obtained and reviewed relevant records and determined that during the Initial Audit Period, Supersonic did not pay its company drivers the minimum hourly rates required under the Regulation. Specifically, the auditor found that the hourly rate paid by Supersonic was less than \$26.28. Supersonic claimed that only 5% of its work falls within the definition of container trucking services; however, its record keeping is such that Supersonic could not prove this assertion. Rather, Supersonic was found to be in violation of section 25 of the Act and Appendix D to Schedule 1 of its Container Trucking Services Licence because Supersonic was unable to demonstrate that any of its drivers had less than 2340 hours of experience and was unable to specifically identify the number of hours its drivers conducted container trucking services in each pay period. Therefore, the auditor required that all hours worked by all Supersonic company drivers be adjusted to a minimum rate of \$26.28 per hour.

5. The auditor also found that during the Initial Audit Period Supersonic was in contravention of section 24(1) of the *Regulation* which requires that a company driver be paid at least semi-monthly and no later than eight (8) days after the end of a pay period. Specifically, in November 2014, Supersonic paid its company drivers more than 8 days after the end of its pay period and in the case of one driver, did not pay semi-monthly. In March 2017, the auditor found that Supersonic failed to pay wages to its company drivers at least semi-monthly and no later than 8 days after the end of the pay period.

Expanded Audit Period

6. Having established that Supersonic paid its company drivers incorrect hourly rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the periods from April 3, 2014 to April 30, 2018 (the "Expanded Audit Period").
7. Supersonic failed to supply the auditor with its calculations for the Expanded Audit Period on time and, once received, the auditor notes that Supersonic did not provide calculations, rather it supplied incomplete pay records for its drivers during the Expanded Audit Period. The auditor reviewed these pay records and requested further pay records which were also supplied after the auditor's deadline.
8. Once the auditor received Supersonic's pay records for the Expanded Audit Period, the auditor reviewed the pay records and determined that Supersonic owed five company drivers \$47,275.73 during the Expanded Audit Period.
9. Supersonic was provided with a copy of the calculations and following verbal and written correspondence between Supersonic, the auditor and the Office of the BC Container Trucking Commissioner, Supersonic agreed to review its records in an effort to identify the number of hours its drivers conducted container trucking services during the Expanded Audit Period. The auditor reports that Supersonic provided her with records intended to demonstrate the amount of long-haul moves undertaken by its drivers but the records were insufficient in detail to determine the number of hours that would need to be adjusted in order to meet the minimum rate requirements in the *Regulation*.
10. The auditor concludes the audit report by noting that Supersonic was slow in providing requested information and failed to follow the auditor's instructions regarding its self-audit.
11. I accept the findings of the auditor.

Decision

12. As described above, the circumstances of this case are that:

- a. The Commissioner ordered an audit of Supersonic's company drivers;
- b. During the Initial and Expanded Audit Periods, Supersonic failed to pay its company drivers the correct minimum rates required under the *Regulation*;
- c. Adjustments totaling \$47,275.73 are owed to five company drivers;
- d. Supersonic did not keep proper driver records pursuant to section 25 of the *Act* and Appendix D to Schedule 1 of its Container Trucking Services Licence;
- e. Supersonic contravened section 24(1) of the *Regulation* which requires that a company driver be paid at least semi-monthly and no later than eight (8) days after the end of a pay period;
- f. Supersonic had not paid the amounts determined to be owing;
- g. Supersonic regularly missed deadlines during the audit; and
- h. Supersonic remains non-compliant with the legislation.

13. As Supersonic has not paid the amounts owing to its drivers under the legislation, I make the following Order pursuant to section 9 of the *Act*.

I hereby order Supersonic to:

- a. pay forthwith, and in any event no later than August 8, 2018, the five company drivers owed \$47,275.73 for container trucking services performed between April 3, 2014 and April 30, 2018; and
- b. provide evidence to the auditor by no later than August 9, 2018 that each driver owed money under this order has been paid.

14. Failure to comply with this order will be viewed as serious non-compliance with the *Act*. Should Supersonic not comply with the above order, the Commissioner may impose a penalty on the licensee.

15. 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. Under section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000.

16. The seriousness of the available penalties indicates the gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and independent operators in compliance with the rates established by the legislation (*Act* and *Regulation*). Licensees must comply with the legislation, as well as the terms and conditions of their licences, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.

17. The *Act* does not, however, require penalties to be imposed for non-compliance in all cases. Rather, the Commissioner is granted discretion to impose penalties in appropriate cases. In this case, it has been determined that between April 3, 2014 and April 30, 2018, Supersonic failed to pay its company drivers the correct minimum rates required under the *Regulation*; violated section 24(1) of the *Regulation*; and did not keep proper driver records pursuant to section 25 of the *Act* and Appendix D to Schedule 1 of its Container Trucking Services Licence. I note, however, that Supersonic's failure to differentiate between container trucking services and non-container trucking services in its records is the reason for the size of the amount found to be owing to its company drivers. Supersonic is a small licensee with only three truck tags. The payment of \$47,275.73 under this decision will be of significant impact to Supersonic and should be sufficient to demonstrate to Supersonic the importance of compliance with the *Act* and *Regulation*.
18. In these circumstances, while I record the fact of Supersonic's non-compliance with the *Act* and *Regulation* by way of this decision, I decline to exercise my discretion to impose a penalty on Supersonic in this case.
19. This decision will be delivered to the Company and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 1st day of August, 2018.



Michael Crawford, Commissioner