



September 12, 2018

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

Supersonic Transport Ltd. (CTC Decision No. 24/2018) – Decision Notice

A. Overview

In Supersonic Transport Ltd. (CTC Decision No. 21/2018) (the “Original Decision”), I found the licensee, Supersonic Transport Ltd. (“Supersonic”) had failed to comply with the minimum rates required under the *Container Trucking Regulation* (the “Regulation”) and had failed to keep proper records in violation of section 25 of the *Container Trucking Act* (the “Act”) and Appendix D to Schedule 1 of its Container Trucking Services Licence (the “Licence”). Supersonic was also found to have 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.

In the Original Decision, dated August 1, 2018, I determined that this was not an appropriate case to issue a penalty because the payment of \$47,275.73 would be of significant impact to Supersonic and should be sufficient to demonstrate to Supersonic the importance of compliance with the *Act* and *Regulation*. Supersonic was ordered to pay forthwith, and in any event no later than August 8, 2018, the five company drivers collectively owed \$47,275.73 for container trucking services performed between April 3, 2014 and April 30, 2018 and to provide evidence to the auditor by no later than August 9, 2018 that each driver owed money under the order had been paid.

Supersonic did not comply with this order. Rather, Supersonic continued to provide material to the Office of the BC Container Trucking Commissioner which was intended to demonstrate that it did not owe the sum found to be owing in the Original Decision. On August 30, 2018, I responded to Supersonic in Supersonic Transport Ltd. (CTC Decision No. 24/2018) (the “Supplemental Decision”). Supersonic’s arguments were addressed in the Supplemental Decision and, for the reasons set out in paragraphs 7-11 of the Supplemental Decision, I determined that Supersonic had failed to 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. Supersonic was ordered to comply with the order (a) and (b) of the Original Decision and either confirm payment or pay forthwith, and in any event no later than September 11, 2018, the five company drivers collectively owed \$47,275.73 for container trucking services performed between April 3, 2014 and April 30, 2018. Supersonic was also advised that if the order was not complied with by September 11, 2018, Supersonic’s Licence could be suspended and remain suspended until such time as Supersonic complied with the order in the Supplemental Decision. Consistent with s. 34(2) of the *Act* I advised Supersonic that I would consider its written response to the proposed penalty if it was received within 7 days.

Supersonic has not complied with the order in the Supplemental Decision. Rather, Supersonic has provided a written response outlining a proposed payment schedule.

B. Supersonic's Response

Supersonic's response is repeated, in part, below:

This letter is issued to inform you regarding some information and our aspects regarding mentioned audit as per the result of this Audit we have to pay \$47,275.73 to 5 drivers. For the first driver . . . we send you a letter written by . . . that he never went to Port during this Audit time so hope that one is cleared.

During past few months we tried to clear our all aspects that our all containers were long haul deliveries and we tried to send you all proofs.

But as to solve this matter we decide to follow all rules and laws and will make the payment for other four drivers but we need some time as per phone conversation because Supersonic Transport is not a very big company so its tough for us to clear all the funds together...

Supersonic proposes to pay some of the money found to be owing in installments over a period between October 2018 and March 2019. It is unclear whether Supersonic is simply asking for time to pay or whether it is also disputing the proposed penalty.

C. Consideration of Supersonic's Response

If Supersonic is disputing the imposition of the penalty, Supersonic has failed to recognize that the findings of the Original and Supplemental Decisions were based on Supersonic's violations of the remuneration, record-keeping and payroll requirements of the *Act* and *Regulation*. Supersonic has been advised that its representations to the Office of the BC Container Trucking Commissioner ("*OBCCTC*"), following the submission of the auditor's report and the Original and Supplemental Decisions, were not sufficient to reverse the findings of non-compliance. Nevertheless, Supersonic continues to provide material intended to demonstrate that one of its drivers is not owed money under the audit after the conclusion of the audit process.

Supersonic has now provided an unsolicited letter to the OBCCTC, signed by a driver, claiming that he does not perform container trucking services. I recognize that the OBCCTC auditors have, on previous occasions, asked licensees to provide signed statements from drivers indicating that a driver has received money found to be owing to them under a decision where that is indeed the case. This practice is under review following the findings in Sandhar Trucking Ltd. (CTC Decision No. 18/2018) because the OBCCTC has since become concerned that drivers may be coerced into signing documents in order for a licensee to avoid findings of non-compliance.

In this case, the letter provided by Supersonic differs in that it was not requested by the OBCCTC and, as noted above, the potential for any driver to be coerced into signing a letter intended to constitute a record for the purpose of an OBCCTC audit is too great. Therefore, driver letters provided by licensees to the OBCCTC on behalf of drivers will not generally be considered when making decisions under the *Act*. I do not accept the letter provided by Supersonic as demonstrating that one of its drivers did not

conduct container trucking services and I do not accept that Supersonic only owes four of the five drivers found to be owed money under the audit.

D. Conclusion

Having carefully considered Supersonic's submission, I will refrain from suspending Supersonic's licence at this time and I will allow Supersonic to make installment payments to its drivers. In limited circumstances where the finding of non-compliance has not been particularly egregious, I will consider installment payments of penalties and monies found to be owing to drivers. Such circumstances could include poor record keeping practices which have led to unintentional rate non-compliance as was the case in Supersonic's audit. They will not, however, include circumstances of flagrant rate violation or violations of section 28 of the Act or Appendix A and E to Schedule 1 of the Container Trucking Services Licence.

While I note that this is the second instance of non-compliance with an order of the Commissioner by Supersonic, I will permit Supersonic to pay \$47,275.73 to the five drivers found to be owed money in installments. In the result, I hereby order Supersonic to pay each driver found to be owed money under this audit 1/5th of the money owed to each driver each month for a period of five months beginning October 1, 2018 and concluding on February 1, 2019. I have structured the order in this way to ensure that each driver who is owed money receives a portion of the money owed each month. As an example, the driver owed \$14,860.83 should receive five monthly installments of \$2,972.17, beginning October 1, 2018 and ending February 1, 2019.

Supersonic is to provide evidence to the auditor by no later than seven days following the date of each payment that the driver owed money on a specified date, under this order, has been paid. Should Supersonic fail to remit the money owed in full as noted above, then I will reconsider suspending Supersonic's licence.

This Order will be published on the Commissioner's website.

OFFICE OF THE BC CONTAINER TRUCKING COMMISSIONER



Michael Crawford
Commissioner