



August 30, 2018

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

Commissioner's Supplemental Decision Supersonic Transport Ltd. (CTC Decision No. 24/2018)

Introduction

1. On August 1, 2018, in Supersonic Transport Ltd. (CTC Decision No. 21/2018) (the "Decision") I ordered Supersonic Transport Ltd. ("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.
2. An administrative fine was not proposed at that time; however, I advised Supersonic that:

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.
3. Supersonic did not provide evidence to the auditor by August 9, 2018 indicating that it had paid its drivers the money found to be owing. Rather, on August 10, 2018, the Office of the BC Container Trucking Commissioner ("OBCCTC") called Supersonic to confirm payment. During this phone call, Supersonic advised the OBCCTC that it had already provided the OBCCTC auditor with records indicating which Supersonic drivers performed non-container trucking services. Supersonic offered to resend these records. The OBCCTC requested that Supersonic send confirmation of payment found to be owing under the Decision.
4. On August 13, 2018, the OBCCTC called Supersonic again to seek evidence of payment and on August 14, 2018 Supersonic began requesting contact details for the Commissioner. Supersonic was advised where it could send correspondence and, on August 15, 2018, Supersonic sent a package of records intended to demonstrate which Supersonic drivers performed non-container trucking services. On the same day, the Commissioner spoke with Supersonic and advised Supersonic that it was required to pay the money found to be owing under the Decision but that the Commissioner would consider negotiating a payment plan between Supersonic and its drivers so as to not cause undue financial harm to the company.
5. This Supplemental Decision addresses Supersonic's response to the order made in the Decision.

Company's Response

6. On August 16, 2018, Supersonic replied with the following:

As we gave you so many emails as a proof that our all loads were long haul we open our record from previous years just to show you the proof of deliveries but you ignore that record and not gave any response regarding those emails and we also send you a letter and proofs two time that Harkamal Singh never went on Port only Ranjit Singh Mann did work on Port and his wage rate is good as per your requirement.

Consideration of Company's Response

7. Supersonic has argued that on two occasions it has sent evidence to the OBCCTC intended to demonstrate which drivers were conducting container trucking services during the audit period and which drivers were not. The first occasion was on June 4, 2018, at which time the auditor reviewed the records provided and in the audit report noted that:

...Supersonic sent to me via email many interchange records with respect to long-haul containers moved during the period 2014 to 2018. I do not understand what information I am expected to glean from these documents and they are completely unhelpful.

8. This was addressed in the Decision when it was noted that Supersonic provided the auditor "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*."
9. In response to the Decision, on August 15, 2018, Supersonic resent these records to the OBCCTC. The records were not solicited by the OBCCTC but were reviewed by myself prior to my conversation with Supersonic that day. During the conversation I advised Supersonic that the records they had been providing did not indicate which driver performed the long-haul moves demonstrated by the records.
10. Supersonic has stated that one of its drivers does not perform container trucking services but has also indicated, when asked by the auditor, that it does not keep daily trip sheets for its drivers and has, on several occasions, noted its inability to differentiate between container trucking services and non-container trucking services performed by specific drivers on specific days. In response, Supersonic was advised by the auditor that, for the purpose of the audit, the minimum hourly rate in the *Regulation* of \$26.28 would be applied to all hours worked by its drivers.
11. The auditor's findings and the subsequent Decision result, in part, from Supersonic's inability to keep and provide individual driver records that separate container trucking services performed from non-container trucking services and therefore, the amount found to be owing, reflects the auditor's application of \$26.28 to all hours worked by Supersonic drivers during the audit period.

Supplemental Decision

12. As described above, Supersonic continues to provide records which demonstrate that its drivers perform non-container trucking services but it cannot identify which drivers performed those services.
13. Further, Supersonic has not complied with the Commissioner's August 1, 2018 order to 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 provide evidence to the auditor by no later than August 9, 2018 that each driver owed money under this order has been paid.
14. Under the *Act* generally, and section 16(1)(b)(iii) in particular, Supersonic is obligated to abide by the terms of any order issued under the *Act*. Further, it is a condition of Supersonic's Container Trucking Services Licences that it complies with all orders.
15. Supersonic has failed to comply with the terms of the order made in the Decision and has failed to comply with the *Act* and the conditions of its Licence.
16. As Supersonic has not paid the amounts owing to its drivers under the legislation, or complied with my order, I make the following order pursuant to Section 9 of the *Act*.

I hereby order Supersonic to:

- a. comply with the order (a) and (b) of the 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.
17. If the order in paragraph 16 is not complied with by September 11, 2018, I propose the following penalty under Section 34 of the *Act*:

that Supersonic's Container Trucking Services Licence No. 60065 be suspended effective September 12, 2018 and remain suspended until such time as Supersonic complies with the above orders.
18. The proposed suspension of the Licence means that if the suspension takes place, H. Rattan Trucking Ltd ("Rattan") is also necessarily suspended, as both Supersonic and Rattan are joint licensees under Licence No. 60065.
19. In the result and in accordance with section 34(2) of the *Act*, I hereby give notice as follows:
 - a. I propose to suspend Supersonic Transport Ltd.'s licence as set out in paragraph 17 above in the event that it has not complied with the orders set out in paragraph 16 by September 11, 2018;
 - b. Should it wish to do so, Supersonic Transport Ltd. has 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; and
- c. If Supersonic Transport Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to Supersonic Transport Ltd. of my decision to either:
 - i. Refrain from imposing any or all of the penalties; or
 - ii. Impose any or all of the proposed penalties.

20. This decision will be delivered to Supersonic Transport Ltd. and to H. Rattan, and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 30th day of August, 2018.



Michael Crawford, Commissioner