



October 17, 2018

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

## **Commissioner's Supplemental Decision #2 Supersonic Transport Ltd. (CTC Decision No. 26/2018)**

### **Introduction**

1. On September 12, 2018, in Supersonic Transport Ltd. (CTC Decision No. 24/2018 – Decision Notice) (the "Decision Notice") I ordered Supersonic Transport Ltd. ("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.

...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.

2. Supersonic was also advised that should it fail to remit the money owed in full, a suspension of its licence would be reconsidered.
3. Supersonic did not provide evidence to the auditor seven days following the due date of the first set of payments to its drivers. Rather, the auditor contacted Supersonic to confirm payment. Supersonic confirmed payment for four of the five drivers found to be owed money. The auditor queried why the fifth driver had not been paid. Supersonic has not answered the auditor's query.
4. The Office of the BC Container Trucking Commissioner ("OBCCTC") and the OBCCTC auditor are aware that the fifth driver who has not been paid is the driver Supersonic has argued is not owed money under the audit. Supersonic's argument has been that this driver never goes to port terminals and therefore does not have to be paid the regulated hourly rate.
5. Before I issued the Decision Notice, Supersonic provided an unsolicited letter to the OBCCTC, signed by the driver in question, stating that he never went to port terminals. In the Decision Notice I made clear that the OBCCTC will not generally consider unsolicited letters from drivers because the potential for coercion is too high.
6. On October 11, 2018, a representative from the OBCCTC contacted the driver Supersonic claims is not owed money under the audit to confirm that the driver does not go to port terminals and does not perform container trucking services. The conversation was held in Punjabi.

7. During the call, the driver confirmed that he never goes to a port terminal. He stated that he takes containers from Supersonic's yard to customer facilities and from customer facilities to Supersonic's yard. The driver also stated that he never drives outside of the Lower Mainland.
8. Supersonic provided records intended to demonstrate that its drivers do long-haul moves but, as set out in Supersonic Transport Ltd. (CTC Decision No. 24/2018) (the "Supplemental Decision"), Supersonic was told that the records it had been providing did not indicate which driver performed the long-haul moves. That is why the regulated rate was applied to all Supersonic drivers and Supersonic was found to have violated its record keeping requirements. Further, it has now been confirmed that the driver in question does not perform long-haul services.
9. The OBCCTC also reviewed the audit records provided by Supersonic to confirm that the containers moved in months where the driver in question was moving containers for Supersonic meet the definition of container in the *Container Trucking Regulation* (the "*Regulation*"). They do. This means that the fifth Supersonic driver performs off-dock work and, under the *Container Trucking Act* and *Regulation*, must be paid a regulated rate for the off-dock work.
10. This is the fourth decision related to the Supersonic audit and Supersonic has violated the orders of the Commissioner on three previous occasions.
11. 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 Licence that it complies with all orders.
12. Supersonic has failed to comply with the terms of the orders made in Supersonic Transport Ltd. (CTC Decision No. 21/2018) (the "Original Decision"), Supplemental Decision and Decision Notice and has failed to comply with the *Act* and the conditions of its Licence.
13. As Supersonic has not paid the amount owing to its driver under the legislation, or complied with my orders, I make the following order pursuant to section 9 of the *Act*.

I hereby order Supersonic to comply with the order of the Original Decision, Supplemental Decision and Decision Notice and either confirm payment or pay 1/4th of the \$7,178.35 owed to the driver in question each month for a period of four months beginning November 1, 2018 and concluding on February 1, 2019.

Supersonic should provide evidence to the auditor by no later than seven days following the date of each payment that this and the other drivers owed money on a specified date, under this order and previous orders, have been paid.

14. If the above order is not complied with by November 1, 2018, I propose the following penalty under section 34 of the Act:

that Supersonic's Container Trucking Services Licence No. 60065 be suspended effective November 1, 2018 and remain suspended until such time as Supersonic complies with the above order.

15. 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.

16. 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 14 above in the event that it has not complied with the order set out in paragraph 13 by November 1, 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.

17. This decision will be delivered to Supersonic Transport Ltd. and to H. Rattan, and published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 17<sup>th</sup> day of October, 2018.



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Michael Crawford, Commissioner