



May 24, 2019

Canaan Shipping Co. Ltd.  
11371 Twigg Place  
Richmond, BC V6V 3C9

## **Commissioner's Decision**

### **Canaan Shipping Co. Ltd. (CTC Decision No. 05/2019)**

### **(Application for Reconsideration of CTC Decision No. 03/2019)**

#### **I. Introduction**

1. On May 10, 2019, the Office of the British Columbia Container Trucking Commissioner ("OBCCTC") received an application filed by Canaan Shipping Co. Ltd. ("Canaan") pursuant to sections 38 and 39 of the *Container Trucking Act* (the "Act"). The application seeks reconsideration of the administrative penalty proposed in Canaan Shipping Co. Ltd. (CTC Decision No. 03/2019) (the "Original Decision") and ordered in the Decision Notice. Canaan has also asked that the Commissioner reconsider the amount found to be owing in the Original Decision and that the Commissioner amend the order to pay set forth in the Decision Notice to allow monthly installment payments.
2. In the Original Decision, I determined that Canaan had failed to comply with the *Act*, Container Trucking Regulation (the "*Regulation*"), and Container Trucking Services Licence when it deducted 20% from its independent operator's ("I/O") pay. I also determined that Canaan failed to comply with the records requirements of the *Act* when it failed to provide records as requested by the Commissioner. An administrative penalty against Canaan in the amount of \$20,000.00 was proposed and Canaan was ordered to pay \$162,106.75 to three I/Os by no later than May 22, 2019.
3. Canaan seeks a reconsideration of the Original Decision and responds to the proposed administrative fine of \$20,000.00 by setting out why the amounts found to be owing in the Original Decision are incorrect and therefore the administrative penalty should be reduced or not imposed. Specifically, Canaan has provided calculations intended to demonstrate that the 20% deductions from I/O pay was only for parking, chassis rental and documentation facilitation. Canaan asserts that the "financing assistance" deductions identified by the OBCCTC auditor were in fact not deductions but rather the difference between what was owed to an I/O and what was deducted for parking, chassis rental and documentation facilitation each pay period.
4. Canaan also asks that the money owed to each I/O be paid out in 4 equal monthly installments due to the significant amount of money owing.

## II. Decision

5. At the direction of the OBCCTC, the auditor reviewed Canaan's supplemental calculations and spoke with the president of Canaan at length to clarify Canaan's position. Canaan argues that the OBCCTC auditor's calculations as to what is owed to the I/Os are incorrect because each I/O's net pay amount should be determined not only by the deductions taken from their gross pay but also the amounts Canaan attributed to each I/O for financing assistance. (Note: in some pay periods Canaan deducted money for financing assistance and in some pay periods Canaan attributed payments to I/Os for financing assistance based upon the 20% deduction limit).

6. The auditor does not agree with Canaan's calculations and has summarized her findings as follows:

The amounts deducted in each pay period for parking, chassis, and documentation are actual amounts (rounded by Canaan). The figures recorded in the financing column are both positive and negative amounts. The figures attributed to financing are arbitrary and directly relate to Canaan's attempt to maintain total deductions as close as possible to 20% of the operators' gross earnings. Those arbitrary amounts cannot be reconciled with any business records as no records of financing amounts paid to or on behalf of the independent operators were maintained. Canaan simply added or deducted an amount attributed to financing whenever the 20% deduction limit would accommodate this. According to Canaan's president, Canaan was not concerned about fully recovering the total amounts paid for financing assistance. The intent was to write off any outstanding balance owed to the company.

7. The amounts found to be owing to the I/Os in the Original Decision are based on the auditor's calculation of money the I/Os actually received pursuant to the *Act*. This calculation accounts for all the unallowable deductions which included the financing assistance amounts Canaan deducted from I/O pay. The auditor's calculations do not account for the financing assistance "attributions" that Canaan has identified in its calculations as these are considered to be payments required under the *Act*.

8. I accept the auditor's conclusions and method of calculation. Commissioners have ruled that a licence holder's remuneration obligations cannot be reduced by off-setting underpayments with overpayments.<sup>1</sup> Nor, in this case, can a licence holder's obligations be reduced by offsetting unallowable deductions with unsubstantiated financing assistance amounts. Therefore, the order to pay \$162,106.75 to three Canaan I/Os stands and the proposed penalty will not be amended or reversed.

9. Canaan has also requested that the money owed to each I/O be paid out in 4 equal monthly installments due to the amount of money owing. In Supersonic Transport Ltd. (CTC Decision No. 24/2018) – Decision Notice, the licence holder was permitted to make installment payments to its drivers and I ruled that:

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

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<sup>1</sup> See Sunlover Holdings Co. Ltd. (CTC Decision No. 10/2017) and Lower Mainland Fast Freight Inc. (CTC Decision No. 07/2018) – Decision Notice

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.

10. In general, Canaan's deductions undermined the purpose of the *Act* as they effectively and substantially reduced the amount of remuneration owed to its truckers over a long period of time. The deductions are also a violation of Appendix E to Schedule 1 of its Container Trucking Services Licence, which prohibits the deduction of Business Costs from a trucker's compensation. As I have previously ruled that installment payments will not be allowed in cases where such violations have occurred, I will not permit Canaan to make installment payments to its drivers in this case.

### III. Conclusion

11. In summary, the application for reconsideration of Canaan Shipping Co. Ltd. (CTC Decision No. 03/2019) and Decision Notice (CTC Decision No. 03/2019) is dismissed and the penalty proposed in the Original Decision is confirmed and the penalty is imposed. Section 35(2) of the *Act* requires that this fine be paid within 30 days of the issuance of the Decision Notice. Imposition of the penalty requires that Canaan pay the penalty by no later than May 31, 2019.

1. I also make the following Order pursuant to section 9 of the *Act*:

I hereby order Canaan to pay the following amounts for non-compliant deductions which occurred between April 3, 2014 and September 25, 2017 forthwith, and in any event no later than June 24, 2019:

- (a) Pun Wai Shek Trucking \$63,017.82;
- (b) Timble Trucking Ltd. \$33,046.04; and
- (c) S-Line Transport Ltd. \$66,042.89.

This order and reconsideration will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 24<sup>th</sup> day of May, 2019.



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Michael Crawford, Commissioner