



May 24, 2019

Hutchison Cargo Terminal Inc.
195-4851 Miller Road
Richmond, BC V7B 1K7

Hutchison Cargo Terminal Inc. (CTC Decision No. 04/2018) – Decision Notice

A. Overview

In Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018) – Decision Notice (the “Decision Notice”) I found that previous management at Hutchison Cargo Terminal Inc. (“Hutchison”) did not comply with the Container Trucking Services Licence, *Container Trucking Act* (the “Act”) and *Container Trucking Regulation* and dismissed Hutchison’s argument that the licensee is not responsible for its historic non-compliance. Hutchison was ordered to pay an administrative penalty of \$20,000.00 (the “Original Penalty”). In Hutchison Cargo Terminal Inc. (CTC Decision No. 04/2019) (the “Supplemental Decision”), I determined that Hutchison did not owe the Complainant \$28,931.15 for the period between January 1, 2016 and August 31, 2018 and did not violate section 28 of the *Act*.

The findings of Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018) were reaffirmed in the Supplemental Decision and it was proposed that Hutchison’s Original Penalty be increased to \$30,000.00 because Hutchison failed to pay the administrative fine ordered in the Decision Notice within the required time period. Consistent with s. 34(2) of the *Act*, Hutchison was given 7 days to provide a written response setting out why the proposed penalty should not be imposed.

Hutchison provided a written argument in response to the proposed penalty within the specified timeframe. I have considered Hutchison’s submission and provide the following Decision Notice.

B. Hutchison’s Response

Hutchison asks that the Original Penalty and the proposed increase be set aside or reduced. Hutchison continues to argue that its non-compliance was the result of action undertaken by the previous president of Hutchison and that, since his departure, Hutchison continues to take steps to ensure compliance including the associated staff training required to maintain compliance.

Hutchison also states that its failure to pay the original penalty within the 30 day period was not intentional but rather was the result of “a lack of understanding” regarding the process for making the payment. Hutchison claims it was “waiting for a formal invoice or further instructions on how to proceed with the payment.” Hutchison also argues that the Original Penalty amount should not be increased because the proposed penalty increase is inconsistent with the findings of the Supplemental Decision which attracted a \$20,000.00 penalty.

C. Consideration of Hutchison's Response

In the Decision Notice I stated that:

A company is its own person. A licensed company must comply with the terms and conditions of the Licence, Act and *Container Trucking Regulation* (the "*Regulation*") and may be penalized if it does not. This is regardless of who owned or managed the company under licence during the period under audit. The penalty is directed at the company.

Hutchison's audit demonstrates that previous management at Hutchison did not comply with the Licence, Act and *Regulation* and, therefore, Hutchison has been found to be non-compliant. I do not accept Hutchison's argument that the licensee is not responsible for its historic non-compliance.

My position has not changed. Hutchison is a company and a licence holder, regardless of who is managing and working at the company and therefore I do not accept Hutchison's argument that the Original Penalty should be set aside or reduced because its current management was not involved with the violations which led to the Original Penalty and because of its efforts to ensure compliance following a change in management.

With regards to the \$10,000.00 penalty increase, it was proposed because Hutchison failed to pay the administrative fine ordered in the Decision Notice within the required time period. Consistent with all decision notices of the Office of the BC Container Trucking Commissioner ("*OBCCTC*"), Hutchison's Decision Notice identified the time period in which Hutchison had to make payment of the penalty and the method and manner which the payment should be made:

Section 35(2) of the Act requires that this fine be paid within 30 days of the issuance of this Notice. Payment should be made by delivering to the Office of the BC Container Trucking Commissioner a cheque in the amount of \$20,000.00 payable to the Minister of Finance.

The language of the Decision Notice is clear, and I do not accept that Hutchison was waiting for a formal invoice or further instructions on how to proceed with payment. In the Decision Notice, Hutchison was penalized for (among other things) missing "repeated auditor deadlines to supply records and conduct calculations" and when ordered to make payment of the penalty, Hutchison once again missed its deadline. Hutchison either did not read the Decision Notice in its entirety or elected to approach the Decision Notice deadline in a similar manner to previous OBCCTC deadlines. In either case, orders of the Commissioner and associated deadlines are not to be missed or ignored and doing so will result in penalization.

Finally, I note that the proposed penalty increase is not related to the findings of the Supplemental Decision but rather Hutchison's failure to comply with an order of the Commissioner.

D. Conclusion

Having carefully considered Hutchison's submission, and for the reasons outlined above and in my Decision Notice and Supplemental Decision, I will not refrain from imposing a monetary penalty. In the result, I hereby order Hutchison Cargo Terminal Inc. to pay an administrative fine in the amount of \$30,000.00. **Section 35(2) of the Act requires that this fine be paid within 30 days of the issuance of this Notice. Payment should be made by delivering to the Office of the BC Container Trucking Commissioner a cheque in the amount of \$30,000.00 payable to the Minister of Finance.**

Finally, I note that Hutchison Cargo Terminal Inc. may request a reconsideration of this decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after the company's receipt of this Decision Notice. A Notice of Reconsideration must be:

- a. made in writing;
- b. identify the decision for which a reconsideration is requested;
- c. state why the decision should be changed;
- d. state the outcome requested;
- e. include the name, an address for delivery, and telephone number of the applicant and, if the applicant is represented by counsel, include the full name, address for delivery and telephone number of the applicant's counsel; and
- f. signed by the applicant or the applicant's counsel.

Despite the filing of a Notice of Reconsideration, **the above order remains in effect until the reconsideration application is determined.** This order will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 24th day of May, 2019.



Michael Crawford, Commissioner