OFFICE OF THE
BRITISH COLUMBIA CONTAINER
TRUCKING COMMISSIONER

February 10, 2020

Gulzar Transport Inc.
Unit # 7 – 8760 River Road
Delta, BC V4B 1B5

Jet Speed Transport Inc.
Unit # 7 – 8760 River Road
Delta, BC V4B 1B5

Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 12/2019) – Decision Notice

A. Overview

In Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 12/2019) (the "Original Decision"), I determined that Gulzar Transport Inc. ("Gulzar") and Jet Speed Transport Inc. ("Jet Speed") (together, "the Companies") failed to comply with the *Container Trucking Act* (the "*Act*"), the *Container Trucking Regulation* (the "*Regulation*"), and the Container Trucking Services Licence (the "Licence"). Specifically, the Companies were found to have engaged in a deliberate deception in order to appear compliant based upon the payment of hourly rates to company drivers when, in fact, the Companies had misclassified drivers and were using a three-pay cheque system, combined with non-compliant record keeping practices, to pay non-compliant rates. The Companies failed to demonstrate to the auditor that they had corrected their payroll practices and were in violation of an Office of the BC Container Trucking Commissioner's ("OBCCTC") order to calculate money owing to company drivers.

The cancellation of the Companies' licences was proposed and, consistent with s. 34(2) of the *Act,* the Companies were given 7 days to provide a written response setting out why the proposed penalty should not be imposed. This deadline was later extended to 52 days following a request from the Companies' legal counsel.

The Companies have provided a written argument in response to the proposed penalty within the extended timeframe. I have considered the Companies' submission and provide the following Decision Notice.

B. The Companies' Response

The Companies argue that the proposed penalty should not be imposed. The Companies submit that the proposed licence cancellations:

1. Overlook the underlying purposes of the *Act*;
2. Amount to an unjustified departure from past decisions of the Commissioner;
3. Are unwarranted on the facts of the case; and
4. Would end the ability of the Companies to operate and would result in serious harm to third parties such as employees, suppliers and customers of the Companies.

C. Consideration of Companies' Response

1. The proposed licence cancellations overlook the underlying purposes of the *Act*

The Companies cite the OBCCTC and the Port of Vancouver's (the "Port") websites in reference to the underlying purposes of the *Act*. They note that the OBCCTC website states that the *Act* and *Regulation* were designed to establish rates for drayage companies servicing the Port, ensure compliance through audit and investigations and provide accountability within and accessibility for the drayage sector. The Port's website, they note, cites the creation of the regulatory regime (*Act*, *Regulation*, Licence and OBCCTC) as being required to enhance the stability of the drayage sector. It is argued that the cancellation of the Companies' licence would have consequences opposite to the intended goal of sector stability.

The Companies are correct when they argue that the intended goal of the regulatory regime is sector stability. More specifically, the underlying purpose of the regulatory regime is to provide rate stability within the sector. This has been summarized by our Court of Appeal as follows:

> In February 2014, container truck drivers who provided services to the Port of Vancouver withdrew their services over ongoing disputes concerning their rates of remuneration. This walkout represented the third time in 15 years that the drivers had withdrawn their services. These work stoppages were economically disruptive in the drayage industry (the transportation of containerized cargo by trucking companies to and from an ocean port). As a result, both the provincial and federal governments engaged in extensive negotiations with industry to resolve the 2014 walkout and restore stability to the sector.
>
> The result of these negotiations was the creation of a 15-point joint action plan (the "Joint Action Plan") in March 2014. The Joint Action Plan was designed to provide increased compensation for the truckers. On the basis of that plan, the truckers resumed work on March 27, 2014.
>
> A subsequent report in September 2014 recommended that a provincially regulated agency be established to, among other things, set remuneration and fuel surcharge rates for the drayage sector. In October 2014, the Government of British Columbia introduced legislation to establish a British Columbia Container Trucking Commissioner. Initial compensation rates for truckers would be set by regulation but could later be amended and fixed by the Commissioner.[1]

When introducing the *Act* in the B.C. Legislature, the then Minister of Transportation and Infrastructure stated that "we must do what we can to ensure that these shutdowns never happen again here in British Columbia."[2] That is why section 34 of the *Act* states that if the Commissioner is satisfied that a licensee has failed to comply with the *Act* or the terms and conditions of the licensee's licence, the Commissioner may either suspend or cancel the licensee's licence or impose an administrative fine of up to $500,000. The seriousness of the available penalties indicates the gravity of non-compliance with the

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[1] Aheer Transportation Ltd. v. Office of the British Columbia Container Trucking Commissioner, 2018 BCCA 210 (CanLII), paras 1-3.

[2] The Honourable Todd Stone, Hansard, second reading Bill 5 – Container Trucking Act, October 23, 2014, p. 5047.

Act and the importance government placed on sector stability when drafting the legislation.

Rate undercutting, which has been historically rampant in the Lower Mainland drayage sector, is the primary cause of sector instability. The regulatory regime reflects recommendations made by Vince Ready and Corinn Bell in an October 2014 Recommendation Report which begins by outlining the impact of rate instability within the sector:

> In 1999 independent owner-operators and company truck drivers moving containers to and from the ports refused to continue working. The work stoppage was a result of extremely low rates of compensation and the dysfunctional operating practices in the transportation system. Despite significant efforts to resolve the issues that led to the 1999 dispute, a second dispute arose in 2005. During the 2005 disruption, drivers stopped providing services due to low remuneration and an inability of the industry to respond to increased costs. Again, several initiatives were taken to address the 2005 dispute and to prevent future work stoppages. Both the 1999 and 2005 disputes occurred as a result of the same root causes. Because these fundamental issues were never properly addressed, the trucking industry is currently facing a third disruption. The main issues in the current 2014 dispute, which are similar to issues in the past disputes, are: terminal wait times, reservation policies, rate undercutting and inequality in rate of pay, lack of an industry-wide auditing system, and lack of proper enforcement of audit judgments.[3]

As noted by the Companies, the role of the Container Trucking Commissioner is to ensure compliance through audit and investigations and hold licensees responsible for the payment of compliant rates to drivers. The Companies violated their responsibility in this regard and have therefore been contributing to sector instability.

Further, sector stability is derived, in part, from confidence that licensees are following the rules and the Commissioner is enforcing them in order to protect fair competition within the industry. Rate undercutting is a practice that enriches licensees and their customers by reducing costs and increasing profit but also by attracting more business at the expense of a licensee's competitors. When licensees undercut driver rates of pay to offer reduced rates to customers and attract business, the sector is destabilized as other licensees either respond in kind or lose business because of these unfair and non-compliant business practices.

For these reasons, I do not accept the Companies' argument that a cancellation of their licenses would result in sector instability. Conversely, I am of the opinion that the cancellation of their licenses would fulfil the purpose of the *Act* by increasing sector stability through the promotion of fair competition and predictable costs.[4]

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[3] Recommendation Report – British Columbia Lower Mainland Ports, Vince Ready and Corinn Bell, October 16, 2014, p. 2.

[4] TMS Transportation Management Services Ltd. (CTC Decision No. 08/2016) Reconsideration Decision, para 8.

2. The proposed licence cancellations amount to an unjustified departure from past decisions of the Commissioner

The Companies argue that it was not clear in the Original Decision if I considered the "penalty quantum factors" outlined by Commissioner MacPhail in paragraphs 25-27 of Smart Choice Transportation Ltd. (CTC Decision No. 21/2016) when proposing the cancellation of the Companies' licences. They further argue that the proposed penalty is inappropriate because it is not consistent with the considerations set out in the Smart Choice decision.

The considerations articulated by Commissioner MacPhail were not cited verbatim in the Original Decision. Nevertheless, the majority of the factors considered in the Smart Choice decision were discussed in the Original Decision, including the negative impact of the Companies' conduct on its drivers, the impact of the Companies' conduct on the industry, and the manner in which the Companies benefitted from their conduct (rate undercutting).[5] The seriousness of the Companies' actions was specifically referenced in the conclusion of the Original Decision where it was summarized as deliberately deceptive and demonstrative of a pattern of obfuscation intended to undermine or weaken the impact of the OBCCTC audit (also relevant to the impact of the Companies' conduct on the integrity of the container trucking industry). The Original Decision also noted that the legislation and regulatory regime, including the available penalties under the *Act*, were introduced in order to prevent actions such as those of the Companies. In other words, the proposed licence cancellations are consistent with the need for deterrence and the need to demonstrate the consequences of inappropriate conduct to licensees.

The Companies also argue that the proposed cancellations in this case are not consistent with previous penalties issued by the Commissioner and suggest that it is an important principle of sentencing that the "punishment imposed on one offender in certain circumstances be consistent with the penalty imposed on another offender acting in the same manner." The Companies cite the progressive penalties imposed in Roadstar Transport Company Ltd. (CTC Decision No. 20/2018) arguing that the circumstances of this case are not more egregious than those outlined in the Roadstar decision and, in any event, the Companies ought to have been fined in the first instance before license cancellations were proposed.

I agree that penalties imposed by the Commissioner should be consistent where the circumstances of a case are the same. However, the circumstances of this case are not the same as those in the Roadstar decision and I do not agree that the actions of Roadstar Transport Company were more egregious than the Companies'. Roadstar altered copies of cancelled cheques during the course of an ongoing audit to make it appear as if it had paid money to drivers within the time period set out in section 24(2) of the *Regulation*. There is a distinction between not paying drivers on time and attempting to cover it up when audited, as was the case in Roadstar, and not paying drivers the correct rates over a period of many years and consistently and deliberately falsifying records, as was the case here.

[5] Original Decision, paragraphs 81 & 82.

Likewise, the circumstances in Gantry Trucking Ltd. & TSD Holdings Inc. (CTC Decision No. 14/2017), while egregious, do not compare to those in this case. In that decision, the companies did not:

- maintain complete and accurate payroll records, causing great difficulty and delay throughout the audit process;
- provide all records requested by the auditor;
- provide records requested by the auditor in a timely fashion (often only providing them when ordered to do so);
- pay their drivers as required or pay adjustment amounts found to be owing;
- provide satisfactory explanations for their failure to pay the amounts found to be owing (and in many cases ignored the auditor's requests to pay monies owing); and
- make changes to their payroll system as required.

Here, the Companies were found to have engaged in a deliberate deception in order to appear compliant. The Companies misclassified drivers and used a three-pay cheque system, combined with non-compliant record keeping practices, to pay non-compliant rates.

Additionally, the Companies failed to demonstrate to the auditor that they had corrected their payroll practices and the Companies were in violation of an OBCCTC order to calculate money owing to company drivers.

This is the first OBCCTC audit with findings of this nature and severity.

3. The proposed licence cancellations are unwarranted on the facts of the case

The Companies argue that what they characterize as their history of compliance and efforts to address the Commissioner's findings should have influenced the proposed penalty. The Companies cite compliance with other regulatory regimes and the OBCCTC's 2016 findings of compliance in support of their position and note that the matters investigated by the OBCCTC in 2016 differ from those here.

With respect to requirements of the Port and the National Safety Code, the Companies' performance statistics as reported under the Port's performance review program are not relevant. Nor is the Companies' standing under the National Safety Code as neither programs demonstrate compliance with the rate paying requirements of the *Act*.

The history of the Companies' compliance with the *Act* is one of incorrect rate payments and deliberate deception. In 2016, the Companies were found to have breached the minimum rate requirements for company drivers. In Jet Speed Transport Ltd. (CTC Decision No. 10/2016) and Gulzar Transport (CTC Decision No. 05/2016) it was determined that the Companies owed over $140,000.00 collectively to drivers. However, the Companies were not penalized because of their cooperation with the audit and their having brought themselves into compliance before the Acting Commissioner's January 22, 2016 compliance deadline.

In both of the audits informing the 2016 decisions, the Companies proactively calculated money owing. The Companies now cite these efforts, arguing that their historic cooperation should have been considered when assessing the proposed penalty in this case. In 2016, the Companies' cooperation was cited as a factor in determining that a penalty should not be imposed, but, at that time, there was no indication that the Companies were intentionally misclassifying drivers and withholding payroll

information from the OBCCTC auditor. In this case, the Companies were found to have deceived the OBCCTC when they did not supply all records requested, the proactive calculations performed by the Companies were found to have slowed the audit process, and the Companies' actions demonstrated "a pattern of obfuscation intended to undermine or weaken the impact of the OBCCTC's audit."[6] For this reason, the Companies' efforts were not considered cooperative and were very much a factor weighing against them when considering the proposed penalty.

The Companies continue to engage in proactive self-auditing (by which I mean calculation of amounts owing using methodology that has not been approved by the OBCCTC). In response to the Original Decision, the Companies hired an independent CPA to prepare a calculation of the amounts outstanding to drivers. The CPA used electronic spreadsheets prepared by the Companies (showing the calculation for each driver and the respective amounts owing) in lieu of actual time sheets for the years 2017-2019. The Companies' CPA also used the amount owed to each driver in 2017, divided by the number of hours worked by each driver in 2017, to determine the amount outstanding per hour in 2017. The 2017 amount outstanding per hour was then applied to the number of hours worked by the driver in each 2014, 2015 and 2016 because no timesheets were available for these periods.

The CPA's methodology was not approved by the OBCCTC auditor and the methodology used demonstrates the challenge in arriving at a definitive amount owing to drivers in this case due to the Companies' poor record keeping practices.

The OBCCTC's auditor has reviewed the calculations prepared by the Companies' CPA and determined that:

- In comparing the amounts used in the calculations of the Companies' CPA for 2017, 2018 and 2019 against previously obtained payroll records (timesheets and pay stubs) of eight drivers,
    - The Companies' CPA used the correct payroll information in the case of three (of the eight) drivers but did not include calculations for two of the eight drivers;
    - The CPA's calculation for the final three drivers in the sample cannot be confirmed as the records possessed by the auditor for these drivers do not show the number of hours worked each day despite the CPA's calculation of hours worked for these drivers;
- A yearly summary was provided for 2014-2016 but no other details were provided and therefore the accuracy of the calculations cannot be confirmed. It is unclear what amount, if any, the CPA applied to drivers that did not work in 2017 but worked in 2014-2016; and
- It is unlikely that the Companies adjusted their payroll practices effective May 1, 2019 as the Companies were still arguing with the OBCCTC over their payroll process/structure in May 2019. Further, the Companies have not supplied any documents demonstrating that they have adjusted their payroll practices.

The OBCCTC auditor concludes her review of the CPA's calculations by questioning how the Companies were able to determine hours worked by drivers, noting that the Companies had always argued for the use of driver log books rather than timesheets when calculating hours worked, suggesting that perhaps the CPA's calculations were based upon log books rather than timesheets although the Companies state that they are using timesheets.

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[6]Original Decision, paragraph 105.

The auditor is correct in raising this concern. Record keeping issues and violations were central to the audit and the findings in the Original Decision, and the Companies' submission, rather than addressing these issues, compounds them. In their submission, the Companies provided conflicting information. They state that the CPA's 2017, 2018, and 2019 calculations were based upon driver timesheets whereas the CPA's summary report states that a portion of the calculations were "based on the electronic spreadsheet prepared by [Mr. Stanam Singh Sidhu] showing the calculation for each driver between January 1, 2017 and May 31, 2019 and the respective amounts owing."

The Companies have not explained what records were used to determine the number of hours worked by company drivers and they have not used the auditor's methodology to perform the calculations as ordered. Instead, they have engaged in a self-directed audit calculation using unsupported information to calculate an amount of money owing which is substantially less than the amount arrived at in the Original Decision.

The Companies also engaged KPMG to conduct an additional, independent review of their November 2019 payroll to demonstrate the Companies' compliance. Specifically, KPMG was tasked by the Companies to:

1. Obtain a listing of the employee timesheets of the Gulzar Group for the month of November and inspect the timesheets for the Company where work was performed; and
2. Agree the hours per employee timesheets to the paystubs and not the range of the pay rate per the pay stub.[7]

Based upon the specified auditing procedures noted above, KPMG reports that the Companies paid the correct rates based upon the recorded hours worked for all drivers in November 2019 (excluding some minor payroll errors noted). This report does not, however, attest to the accuracy of the Companies' payroll, specifically the accuracy of the hours recorded on the timesheets. Nor does it confirm that the Companies have corrected their payroll practices. KMPG accepted that the times recorded on the timesheets provided to them by the Companies were accurate. KPMG was not tasked by the Companies with conducting a fulsome audit of all available records during the period of audit (November 2019). Logbooks were not agreed with timesheets; spot audits of driver records were not conducted to ensure driver accounting of container trucking services performed was consistent with the Companies' accounting of the same and confirmation that the use of multiple log books has stopped. No analysis of deductions was conducted. Drivers were not contacted to confirm that the Companies' use of a three-pay cheque system had ceased and no confirmation was made that the Companies have stopped paying company drivers by the trip rather than by the hour.

4. The proposed licence cancellations would end the ability of the Companies to operate and would result in serious harm to third parties such as employees, suppliers and customers of the Companies

The Companies conclude by stating that the cancellation of their licenses will have "devastating consequences for the Companies, the individuals they employ and the customers and suppliers who depend on their services." They argue that a licence cancellation would result in a "complete collapse"

[7] KPMG, Report on Specified Auditing Procedures, January 31, 2020.

of their businesses leaving employees jobless and customers struggling to find alternate transportation solutions. Thirty-one letters of reference have been provided by the Companies from Members of Parliament, charitable organizations and community service providers, customers, service providers (banks, truck, tire and trailer dealerships, fuel companies and insurance agencies) and one hundred and one letters from employees, including drivers.

I am aware of the severity of the proposed penalty and the potential impacts that licence cancellations may have on the owners of the Companies. In the Companies' submission, much detail is provided regarding the owners' history in the industry, the size of their related businesses and the Companies' financial and safety record. The submission notes that Mr. Satnam Singh Sidhu has been involved in the industry since 2000, first as driver and later as the owner of Gulzar. Mrs. Sunpreet Kaur Sidhu established Jet Speed Transport in 2006.

The Companies' financial and safety record has no bearing on the Companies' record of compliance with the *Act* but the Sidhus' history, knowledge and experience in the industry does. The Companies' non-compliance is even more egregious when their knowledge of and history in the industry is considered. In their collective 20 years of industry experience, the Sidhus would probably have experienced and would certainly have been aware of the historic challenges faced by the industry and the underlying reasons for them. The first of three work stoppages in the industry took place in 1999, the year before Mr. Sidhu began driving. Jet Speed Transport Inc. was established in 2006, a year after the 2005 work stoppage. The Companies participated in the Port's 2014/2015 Truck Licensing System reform process and subsequently applied for and received two Licences issued by the OBCCTC which, as part of the licensing process, required the Sidhus to sign statutory declarations attesting that they had not engaged in any activity prohibited by the *Act* or *Regulation*. In fact, the audit demonstrates that the Companies were engaged in noncompliant activity at the time of licensing in 2016 and 2018 (when the statutory declarations are required).

The Companies also argue that their investments and financial obligations would be significantly impacted should their licences be cancelled, noting that if the Companies are unable to generate revenue to pay their secured debts, the owners will be called upon personally to satisfy those outstanding obligations. The financial impact on the owners does not outweigh the considerations weighing in favour of the cancellation. Despite the Sidhus' investment in their businesses, their financial obligations and their industry experience during a period of time where issues in the industry led to the introduction of the *Act*, they engaged in non-compliant activity, falsified statutory declarations and risked a finding of non-compliance in order to enrich themselves.

I have reviewed the letters of support from Members of Parliament, charitable organizations and community service providers. While the Companies' standing in the community is laudable, character references also do not outweigh the considerations weighing in favour of the cancellation. The Commissioner is tasked with enforcing compliance and letters of support are only relevant if they address a licensee's history of compliance or the specific breaches of the *Act* identified in the decision. The letters of support from Members of Parliament, charitable organizations and community service providers provided in the Companies' submission do not.

The employee letters provided by the Companies, which included letters from drivers but also from other company employees such as office administrators, mechanics, dispatchers, coordinators and managers, were also considered. Each of the letters addresses themes with respect to the financial

impact of employment loss, family responsibilities and general satisfaction with the employer. Yet the common themes and nature of the language in the letters raises questions about the manner in which the letters were obtained. Further, at least one driver letter comes from an employee sponsored under the Government of Canada's Temporary Foreign Worker Program and other letters cite the Companies' assistance with immigration processes. Workers whose status in this country either depends on their employment with a particular company or is the result of a company's sponsorship efforts are beholden to their employers. Therefore, submissions from these employees carry less weight.

The letters did not address the licensees' history of compliance or the specific breaches of the *Act*. Rather, they articulate general satisfaction with employment and remuneration. The amount of money employees receive is a concept which is distinct from rate compliance. Put differently, a licensee is not necessarily compliant because their drivers believe that they make "good money" and the Commissioner's enforcement responsibility cannot be waived in cases where employees are complicit or say that they are generally satisfied.

The prospect that the licence cancellations will lead to the closure of the Companies and affiliated businesses is raised but not fully supported by the Companies' submission. The Companies' Container Trucking Services Licences, in conjunction with Access Agreements granted by the Port, allow the Companies to access Marine Terminals (as defined in the *Regulation*). This means the Companies have been authorized to drop off and pick up containers from these Marine Terminals. Container Trucking Services Licences are not required to perform services that do not require access to Marine Terminals, however, and are not required to perform related services (container storage, transload, long haul, etc.). Indeed, there are trucking companies in the Lower Mainland which do not possess a Container Trucking Services Licence but continue to operate and, where pick up or delivery to a Marine Terminal is required, sub-contract that service. Therefore, it is not a foregone conclusion that the cancellation of the Companies' access to Marine Terminals will necessarily lead to the Companies' closure and widespread job loss.

In the event the Companies were to cease operation, in past circumstances where a licence has been cancelled, the OBCCTC has assisted drivers to find new work with other licensees. The OBCCTC has discretion under the Licence and its Tag Management Policy to assign truck tags to licensees who can demonstrate a need for the tags. This may include circumstances where a licensee has increased its business and requires more assets (trucks) to meet its increased business needs. In this way, the OBCCTC is able to assist drivers to maintain employment in the industry at companies which are in compliance with the *Act* and have attracted the business once serviced by the sanctioned licensee(s).

With respect to the impact of the proposed penalty on the Companies' customers, like drivers, there will be potential for business to move and the remaining licensees, supported by OBCCTC policy, are well placed to support this demand.

D. Conclusion

The Companies, in making their arguments and responding to the auditor, have not truly acknowledged or responded to the findings of non-compliance. Licensees should not assume that an admission of non-compliance will automatically lead to less severe penalties. However, a recognition of wrong-doing and a willingness to make changes may be relevant. While the Companies in their submissions now admit that "mistakes were made in the past", they still "deny that they intentionally engaged in non-compliant

and improper recordkeeping" practices. At the same time, they have offered nothing to establish that their conduct has not been intentional.

My findings that the Companies intentionally misclassified drivers and used a three-pay cheque system to pay non-compliant rates are central to, and have the most bearing on, the audit results and the proposed penalty. To date, no other company found to have not paid compliant rates has also been found to have employed improper accounting and record keeping practices designed to falsely demonstrate compliance and deceive the OBCCTC.

As touched upon above, the effectiveness of OBCCTC audits increase when licensees cooperate with auditors and follow their direction in a timely manner. This is also considered when assessing penalties. In this case, the Companies did not follow the direction of the auditor or the order of the Commissioner. The audit timeline was therefore unduly extended, and drivers remain unpaid because of the Companies' failure to follow the auditor's direction and correctly calculate money owing.

Other reasons for the imposition of this penalty have been canvassed above in response to the Companies' submissions. The impact of a licence cancellation on employees (including drivers) is the factor that weighs most heavily against cancellation. The *Act* is beneficial legislation intended to improve working conditions for drivers and ensure that they are fairly and consistently compensated for their work.[8] Its remedial purpose dictates that driver welfare must be a foremost consideration when assessing penalties. Yet, in considering their welfare, the immediate, potentially negative impact of a licence cancellation on drivers working for a licensee should be weighed against the positive, wider impact that the removal of non-compliant companies from the sector will have on industry stability and the longer-term prospects of all drivers.

In the Original Decision, the impact of the proposed licence cancellation on drivers was considered. There, it was noted that I had:

> ...weighed the impact of a licence cancellation on drivers against the need to address longstanding and chronic non-compliant practices across the sector. I feel the importance of addressing non-compliance outweighs the impact of a licence cancellation on the particular drivers who will be required to find work at other licensees.[9]

Of equal importance is the need to ensure that drivers receive the compensation which is owed to them, regardless of whether or not a licence is cancelled. That is why each licence holder is required to provide security and it is the responsibility of the Commissioner to make best efforts, using available resources, to quantify damages when licensees have been found non-compliant. This was addressed in the Original Decision.[10]

In this case, the Companies' record keeping practices were such that the OBCCTC auditor was not able to determine with certainty the amount owed to each driver and was required to use a methodology based upon the available records to estimate amounts owing. The Companies, in response to the

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[8] TMS Transportation Management Services Ltd. (CTC Decision No. 08/2016) Reconsideration Decision, paragraph 7.
[9] Original Decision, paragraph 106.
[10] Original Decision, paragraph 84.

proposed cancellation of their licences, have now calculated driver hours in 2017 through 2019 and used the 2017 calculation to estimate specific amounts owing in 2014, 2015 and 2016 to sixty-seven drivers. This methodology was not approved by the OBCCTC, but it does result in a calculation of specific amounts owed to drivers. Given the OBCCTC's challenges in determining exact amounts owing to each driver using available records, I will base my order on the Companies' calculations so that that the drivers will each be, at a minimum, awarded some compensation. This is necessary because the Companies' failure to keep proper records has impacted my ability to make an accurate award.

Therefore, I order the Companies, pursuant to section 9 of the *Act* to immediately pay the total amount calculated by the Companies as owing to the sixty-seven drivers identified in the Companies' calculations for the period from 2014 to 2019 ($262,944.12) and provide proof to the auditor that payment of the money has been made to each driver by no later than March 10, 2020.

Previous decisions of the Commissioner have highlighted the importance placed on proper record keeping and have resulted in penalties for failure to meet the record keeping requirements of the Licence.[11] Here, modified, falsified and missing records have undermined the OBCCTC audit and impacted the Commissioner's ability to make an accurate award, both of which are determining factors in considering the penalty in this case.

In conclusion, having carefully considered the Companies' submission, and for the reasons outlined above and in my Original Decision, I will not refrain from imposing the proposed penalty. In the result, I hereby cancel Gulzar Transport Inc. and Jet Speed Transport Inc.'s Container Trucking Services Licences effective March 10, 2020.

Gulzar Transport Inc. and Jet Speed Transport Inc. may request a reconsideration of the Commissioner's 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.

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

Dated at Vancouver, B.C., this 10th day of February, 2020.

Michael Crawford, Commissioner

[11] See for example Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018) paragraph 22.