



February 18, 2020

Simard Westlink Inc.
16062 Portside Road
Richmond, BC V6W 1M1

Simard Westlink Inc. (CTC Decision No. 01/2020) – Decision Notice

A. Overview

In Simard Westlink Inc. (CTC Decision No. 01/2020) I found that between April 3, 2014 and August 31, 2018 Simard Westlink Inc. (“Simard”) failed to comply with the minimum remuneration requirements under the *Container Trucking Act* (the “Act”) for independent operators (“I/O”). The audit findings indicated that over this period, Simard failed to pay its I/Os correct trip rates and engaged in trip splitting, resulting in adjustments totaling \$33,596.02 owing to ten I/Os. Further, Simard did not pay its company drivers for all CTS work performed. Simard was ordered to pay an administrative penalty of \$2,000.00.

Consistent with s. 34(2) of the *Act*, Simard was given 7 days to provide a written response setting out why the proposed penalty should not be imposed. Simard provided a written argument in response to the proposed penalty within the specified timeframe. I have considered Simard’s submission and provide the following Decision Notice.

B. Simard’s Response

Simard asks that the proposed penalty be set aside. Simard’s arguments are as follows:

1. Simard’s historical conduct when engaging the Commissioner’s office has always been proper and expeditious.
2. The Commissioner’s comments regarding multi-tiered rate payment systems should not apply to Simard because Simard’s payment of two different rates is not an exercise in deception and is not done as a means of avoiding the payment of a proper rate.
3. Simard had a reasonable expectation that it should be able to rely on the first auditor’s findings with respect to Simard’s compliance.
4. The quantum of money found to be owing to Simard’s I/Os by the first auditor was not significant and should not be considered as a major discrepancy or intentionally untoward conduct. Rather it was an innocent error that has been remedied and therefore no penalty should be assessed.
5. The quantum of money found to be owing to Simard’s I/Os and company drivers by the second auditor was not a sum indicative of negligence or deceit and therefore no penalty should be assessed.

6. Simard should not be penalized for innocent calculating errors which were corrected by Simard and were of minor amounts.
7. Simard should not be penalized for its payroll practices provided that the company is paying compliant rates.
8. Simard should not be penalized for relying on the first auditor's view that it was compliant.

Simard concludes by stating that:

The Company does not want its record compromised no matter the amount of the fine. The fine leaves the impression of intentional wrongdoing or negligence. This is not the Simard conduct nor was it ever alleged.

C. Consideration of Simard's Response

Paragraph 61 of the Decision states:

Simard is penalized for its trip splitting and not for its misclassification of CTS vs. non-CTS work. I recognize Simard's cooperation and historic findings of compliance and while I note that Simard was not quick to rectify its payroll issues nor was it expeditious in answering and responding to auditor queries, I understand the challenges in auditing a national company with a head office outside of Vancouver. The size of this fine is consistent with previous penalties of the Commissioner levied for trip splitting and other minor non-compliance.

A \$2,000.00 penalty was proposed in this case for trip splitting. Simard's arguments summarized in points 1-3 and 6-8 above are therefore irrelevant.

With respect to Simard's arguments in points 4 and 5 above, the quantum of the proposed penalty is consistent with penalties levied in other cases such as Can-American Enterprises Ltd. (CTC Decision No. 01/2018), cited in paragraph 35 of the Decision. Penalties for trip splitting have been levied, in particular, where it has been found that the practice of trip splitting occurred after the Office of the BC Container Trucking Commissioner's March 21, 2016 Bulletin, as was the case here. This too was cited in the Decision (see paragraphs 34 & 35).

The Decision found that Simard was trip splitting and does not make any suppositions in regard to Simard's intentions. Decisions are public and, once issued, are part of a licensee's record of conduct and compliance with the *Act*, *Container Trucking Regulation* and Container Trucking Services Licence regardless of any penalty levied.

D. Conclusion

Having carefully considered Simard's submission, and for the reasons outlined above and in my Decision, I will not refrain from imposing a monetary penalty. In the result, I hereby order Simard Westlink Inc. to pay an administrative fine in the amount of \$2,000.00. 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 \$2,000.00 payable to the Minister of Finance.

Finally, I note that Simard Westlink 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 18th day of February, 2020.



Michael Crawford, Commissioner