



March 10, 2020

AMK Carrier Inc.  
12431 Horseshoe Way  
Richmond, BC V7A 4X6

**AMK Carrier Inc. (CTC Decision No. 03/2020) – Decision Notice**

**A. Overview**

1. In AMK Carrier Inc. (CTC Decision No. 03/2020) (the “Decision”) I found that AMK Carrier Inc. (“AMK”) failed to comply with the minimum remuneration requirements under the *Container Trucking Act* (the “Act”). As a result of this failure, AMK owed \$25,182.26 to eight I/Os in unpaid fuel surcharge from a previous audit and owed a further \$4,036.63 to its independent operators (“I/O”) and company drivers for failure to pay the correct hourly and trip rates. AMK also falsified records and deducted \$16,368.17 from I/O pay in exchange for work. An administrative penalty of \$50,000.00 was proposed.
2. Consistent with s. 34(2) of the *Act*, AMK was given 7 days to provide a written response setting out why the proposed penalty should not be imposed. AMK provided a written argument in response to the proposed penalty within the specified timeframe. I have considered AMK’s submission and provide the following Decision Notice.

**B. AMK’s Response**

3. AMK asks that the proposed penalty be reduced. AMK’s arguments are as follows:
  1. AMK recognizes that it did not pay all the fuel surcharge payments that were found to be owing during a previous audit, but states this was an oversight and not by design. AMK reiterates that Mr. Xu, the company’s current CEO, was not aware of AMK’s failure to satisfy the requirements of its previous audit when a change in control application was submitted to the OBCCTC.
  2. AMK’s failure to pay I/Os a fuel surcharge in March 2018 should not have been considered when assessing a penalty in this case because the March 2018 period falls within the scope of the first audit and not the second.
  3. The \$3,506.13 owed to nine I/Os as a result of missing or incorrect trip rate payments represents a very small percentage of the total trips performed by AMK I/Os during the period. The missing payments were not purposeful or by design and the errors have been corrected.
  4. AMK staff, not management or ownership, were responsible for the falsification of records. Records were falsified in order to cover up a mistake which represents a small amount of money (\$3,506.00) found to be owing.

5. AMK of its own volition demonstrated efforts to rectify the improper deductions that had been occurring in 2015 and these efforts should have been considered in assessing the proposed penalty. Further, AMK only paid less for certain trips to create more work for drivers.
6. AMK retracts, for the record, its arguments outlined in the Decision relating to section 34(1) of the Act (that notice of proposed penalty was not issued within six months of my finding that AMK had contravened the Act).
7. AMK's two audits demonstrate that AMK has improved its compliance record. AMK restates the efforts it has undertaken to improve its practices and reiterates management's commitment to compliance.
8. AMK was cooperative during the audit process.

**C. Consideration of AMK's Response**

4. AMKs states that its failure to pay all money found to be owing during a previous audit was an oversight and not done by design. This may or may not be the case. A licensee is responsible for contraventions of the legislation regardless of whether a contravention is intentional, however.
5. Additionally, a licensee (here, AMK) cannot avoid responsibility by pointing to prior management or ownership. Paragraph 48 of the Decision addresses a licensee's responsibility with respect to compliance, regardless of whether ownership or management of a licensed company has changed:

A company is its own person. A licensed company must comply with the terms and conditions of the Licence, Act and 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.

6. I do not accept Mr. Xu's assertion that he did not know about the actions of AMK's previous owners. Mr. Xu has not adequately demonstrated how, as director of the company prior to the change in control, he knew nothing of the previous owners' actions. In any event, even if it were the case that Mr. Xu did not know about the prior non-compliance, it is AMK who is being penalized, not Mr. Xu.
7. AMK argues in point 2 that its failure to pay I/Os a fuel surcharge in March 2018 should not have been considered when assessing a penalty in this case because the March 2018 period falls within the scope of the first audit and not the second. AMK appears to be arguing that I am barred from imposing a penalty on a licensee for activities which occurred during a time period that was the subject of a previous audit. I am not persuaded by this argument.
8. March 2018 was not a time period under review during AMK's first audit. AMK's first audit period, with respect to its I/O fuel surcharge payment, covered the period of time between September 1, 2015 and February 28, 2018. March 2018 was reviewed after the September 1, 2015 - February 28, 2018 audit because the Office of the BC Container Trucking Commissioner ("OBCCTC") auditor was ensuring that AMK had rectified its payroll practices following the first audit. The March 2018 period is rightly considered as part of this audit and the auditor's findings with respect to the

March 2018 period are relevant when assessing a penalty in this case.

9. The \$3,506.13 owed to nine I/Os as a result of missing or incorrect trip rate payments represents money owing over a nine-month period which does represent a very small percentage of the total trips AMK's I/Os performed in that period. Yet the period in question is much shorter. The auditor report noted that "the majority of the incorrect rates occurred in June and July of 2018." When the amount of money found to be owing is viewed within the context of a two-month period it becomes relatively larger. Nevertheless, \$3,506.13 is not a large amount of money in general to be owing to nine drivers and I accept AMK's point on this matter. I also accept that these underpayments were likely unintentional as the amount of money found to be owing does not suggest that AMK engaged in a sustained pattern of deliberately inaccurate accounting resulting in rate underpayments for their own enrichment to the detriment of their I/Os.
10. In the Decision, I noted that the OBCCTC considers "the actions of licensees not the owners and employees of a company under licence when assessing penalties." I do not accept AMK's position that the responsibility for falsification of records should be placed on an employee rather than the licensee and while the amount of money found to be owing as a result of the falsification of records was small, it was the act not the resulting amount that was considered in assessing the proposed penalty.
11. AMK's action with respect to deductions from driver pay in exchange for more work was also considered in assessing the proposed penalty. AMK argues that I did not consider its efforts to rectify the non-compliance that had been occurring in 2015. AMK cites paragraph 35 of the Decision where it was confirmed that the improper deductions ended in June 2016 and argues that the deductions ended because it was rectifying the non-compliance. If, however, AMK stopped the deductions in June 2016 in recognition of its non-compliance, the auditor would have found evidence that AMK paid the drivers back the money it had deducted shortly following the June 2016 period. AMK did not pay the money back to its drivers until the deductions were identified by the auditor at a much later date.
12. Further, the reference to AMK's failure to rectify its non-compliant practices in paragraph 62 of the Decision was not made in relation to the findings of improper deductions but rather in relation to the finding that AMK did not pay all the money found to be owing to drivers after its first audit.
13. AMK also argues that it only paid less for certain trips to create more work for drivers and the proposed penalty should reflect its altruistic actions. I do not agree. Rate undercutting, well intentioned or not, destabilizes the industry to the drivers' detriment. The penalties available for non-compliance under the *Act* reflect the importance of ensuring that licensees pay their employees and independent operators in compliance with the established rates. It would be counterproductive to make distinctions between well intentioned and ill-intentioned non-compliance when considering penalties.
14. AMK states that it was cooperative during the audit process and has previously argued that its delay in providing records was not willful noncooperation. AMK has taken full responsibility for its non-compliance and has demonstrated that it has improved its compliance record.

15. I see no merit in arguing AMK's intent when it delayed the audit process. The fact remains that AMK's actions did result in audit delays and even unintentional delays can factor into a consideration of the appropriate penalty.
16. It is important that licensees accept responsibility for non-compliance and take action to rectify non-compliance and AMK has made some positive changes. However, AMK still contravened the *Act* and *Regulation* and companies cannot attribute non-compliance to the actions of past owners. Nor can they expect smaller penalties because action was taken after non-compliance was identified in an audit. The Commissioner is tasked with increasing compliance as well as enforcing the legislative scheme and licensees are encouraged to proactively correct non-compliant practices rather than wait for the practices to be identified in an audit.

#### **D. Conclusion**

17. Having carefully considered AMK's submission, and for the reasons outlined above and in my Decision, I will not refrain from imposing a monetary penalty. I will, however, reduce the size of the administrative fine by \$10,000 in recognition of the minimal harm or relatively small amount of money found to be owing drivers as a result of AMK's conduct.
18. In the result, I hereby order AMK Carrier Inc. to pay an administrative fine in the amount of \$40,000.00. 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 \$40,000.00 payable to the Minister of Finance.
19. Finally, I note that AMK Carrier 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.
20. 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 10<sup>th</sup> day of March, 2020.



---

Michael Crawford, Commissioner