



March 30, 2020

Gur-ish Trucking Ltd.
12837 – 76 Avenue
Surrey, BC V3W 2V3

Gur-ish Trucking Ltd. (CTC Decision No. 04/2020) – Decision Notice

A. Overview

In Gur-ish Trucking Ltd. (CTC Decision No. 04/2020) (the “Decision”) I found that Gur-ish Trucking Ltd. (“Gur-ish”) purposefully miscalculated its drivers’ collective hours of service resulting in rate underpayments. I also found that Gur-ish failed to produce records, deliberately provided fabricated company records that were not consistent with driver pay records, failed to adequately explain these discrepancies to the OBCCTC auditor and was generally uncooperative. Gur-ish was found to be owing \$1,179.44 in unpaid training to one driver, \$464.05 in deductions to one driver and \$16,355.60 resulting from incorrect hourly rate payments to five drivers. Gur-ish was ordered to pay an administrative penalty of \$30,000.00.

Consistent with section 34(2) of the *Act*, Gur-ish was given 7 days to provide a written response setting out why the proposed penalty should not be imposed.

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

B. Gur-ish’s Response

Gur-ish’s response is repeated below in its entirety:

Dear Michael Crawford,

I Accept and Apologies that my Company has not met the level of compliance the [Office of the BC Container Trucking Commissioner] OBCCTC requires my company to be in. However, the amount of \$16,355.30 is substantial and detrimental for my company to pay within the next four days. As you are aware, the economy is not well and with the recent news of COVID-19; vessels are being delayed and containers are not moving. It is hard as it is for companies to make ends meet.

i am only requesting to all of you, this is first mistake our office but now every one aware for future. please wave this big fine for small company. really appreciate for your help.

In August of 2018 the OBCCTC audited Supersonic Transport and found the company to owe drivers \$47,275.73 in a supplemental decision posted in October 17, 2018 the OBCCTC allowed Supersonic Transport to pay each driver in increments for five months.

We are therefore requesting the OBCCTC to allow my company to pay my drivers the same way it was allowed for Supersonic Transport to do so. I personally believe this way to pay my drivers is fair and allows enough time for me to do so. I am hopeful the OBCCTC accepts my request.

Gur-ish proposes to pay the \$16,355.60 owing to five drivers in installments. Gur-ish also asks that the penalty be waived on the basis that the proposed penalty is large, particularly in relation to the size of the company, and that it was its first offence.

C. Consideration of Gur-ish's Response

On January 22, 2020, Gur-ish wrote to the OBCCTC, advising that it intended to pay the five drivers owed \$16,355.60 collectively one by one, beginning with a driver who was owed \$6,196.50. Gur-ish committed to paying all five drivers the total amount owing by March 15, 2020. On January 27, 2020, Gur-ish wrote to the OBCCTC and provided evidence demonstrating that it had paid the driver owed \$6,196.50. A further email was received on February 13, 2020 demonstrating that another driver had been paid \$3,123.40. Gur-ish was given until March 15, 2020 to pay the balance of the money owing (\$7,035.70 between three drivers).

Gur-ish provided its response to the Decision on March 12, 2020 stating that it cannot pay the total amount owing by March 15, 2020 because of the economic uncertainty resulting from the COVID-19 pandemic. However, Gur-ish does not owe \$16,355.60. It has already paid out \$9,319.90 and now owes \$7,035.70 to three drivers. Additionally, Gur-ish has not provided any evidence to support its claim that current global economic factors are such that it was unable to pay \$7,035.70 to three drivers between February 13 and March 15, 2020 or are such that it cannot pay at this time.

Paragraph 48 of the Decision addressed the size of the proposed penalty:

The size of this penalty is consistent with the size of penalties in similar decisions and strikes an appropriate balance between Gur-ish's actions and the relatively small amount of money found to be owing to its drivers. Gur-ish's drivers were not significantly harmed in this case but had the amount of money owing to the drivers been higher, the proposed penalty would also have been higher given the other violations cited.

I also noted in the Decision that penalties that are proportionate to the company size and the amount of business it performs may be appropriate. In this case, the size of the penalty is proportionate to the size of Gur-ish and its business. Gur-ish has not provided any evidence to suggest that the size of the proposed penalty is disproportionately large. Further, in [Dayal Transport Systems Inc.](#) (CTC Decision No. 08/2019) – Decision Notice I noted that financial hardship is not determinative when making decisions regarding proposed penalties.

While this is the first Gur-ish audit which has resulted in findings of non-compliance, I note paragraph 35 of the Decision which outlined the serious nature of the findings:

Had these relatively minor violations been the extent of Gur-ish's non-compliance, I would not have proposed a penalty in this case. However, the audit also revealed violations and behaviors of a more serious nature, specifically Gur-ish's method of calculating cumulative hours of driver service resulting in rate underpayments, its failure to produce records, its use of unsubstantiated records, its lack of cooperation with an OBCCTC auditor and its questioning of at least one driver who spoke to the OBCCTC.

Any findings that involve intentional non-compliance or deliberate misrepresentation in an attempt to avoid discovery of non-compliance will generally result in a penalty regardless of the licensee's previous compliance history.

D. Conclusion

As Gur-ish has not fully complied with the March 11, 2020 Decision order, by this Order, I am directing Gur-ish to pay the \$7,035.70 outstanding to three drivers **by no later than 4:30 p.m. on Friday April 10, 2020**. Failure to comply with this Order will be viewed as serious non-compliance with the *Act*, and available penalties under the *Act* include suspension or cancellation of Gur-ish's licence and the imposition of penalties up to \$500,000.00.

This Order will be published on the OBCCTC website as required by Section 11 of the *Act*.

Having carefully considered Gur-ish's submission, and for the reasons outlined above and in my Original Decision, I will not refrain from imposing a monetary penalty. In the result, I hereby order Gur-ish 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 date 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 Gur-ish Trucking Ltd. 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 30th day of March, 2020.



Michael Crawford, Commissioner