

August 10, 2020

Orca Canadian Transport Ltd.
12331 77A Avenue,
Surrey, BC V3W 2W9

Orca Canadian Transport Ltd. (CTC Decision No. 09/2020) – Decision Notice

A. Overview

1. In Orca Canadian Transport Ltd. (CTC Decision No. 09/2020) (the “Decision”) I found that Orca Canadian Transport Ltd. (“Orca”) failed to pay its drivers for all hours of container trucking services performed. The audit findings indicated that between July 1, 2018 and September 30, 2019, Orca owed eight drivers adjustments totaling \$2790.43. Orca was also found to be in violation of its record keeping requirements under the Container Trucking Services Licence for failure to retain records detailing all container trucking services performed by its drivers. An administrative penalty of \$10,000.00 was proposed.
2. Consistent with s. 34(2) of the *Act*, Orca was given 7 days to provide a written response setting out why the proposed penalty should not be imposed. Orca provided a written argument in response to the proposed penalty within the specified timeframe. I have considered Orca’s submission and provide the following Decision Notice.

B. Orca’s Response

3. Orca asks that the proposed penalty be reduced. Orca’s arguments are as follows:
 1. Orca cites four issues canvassed in the audit which arose out of driver complaints:
 - a. Independent Operators (I/Os) are not paid for wait time;
 - b. I/Os are not paid for travel time between the Orca and Raymont yards;
 - c. I/Os are not paid in accordance with section 24 of the *Container Trucking Regulation*;
and
 - d. I/Os are not paid for fuel surcharge.Orca notes that the Commissioner determined each issue to be unfounded and therefore Orca should not be penalized on the basis of the complaints made by its drivers.
 2. Orca concedes that its record keeping practices are a “weakness” but argues that its non-compliance in this respect is not intentional and is not intended to “cheat” its drivers or the system. Orca notes that it pays its I/Os for hours recorded on the I/O timesheets because the timesheets best reflect the hours of container trucking services performed by its I/Os.
 3. Orca clarified its admission that it confronted drivers about the complaint, noting that its discussion with its drivers was focused on ensuring that its I/Os had been paid for all hours performing container trucking services. Orca reiterates that it treats its drivers well and that the Commissioner should not penalize licensees for “unreasonable” complaints.

4. Orca concludes with the following:

We have been paying our driver correct rates, and this audit could have been avoided had Orca done proper record keeping. Again, it was not our intention to keep poor records, which caused discrepancies against our I/Os. It was merely some I/Os who were very familiar with the old practices thus found it difficult to switch over to the way that had been suggested to Orca after the last audit. As mentioned previously, Orca accepts full blame for not correcting this issue sooner. That being said, we believe that a fine of \$10,000 is unjust. We strongly request the commissioner to reconsider.

C. Consideration of Orca's Response

4. Orca's response to the audit report and the Decision both cite driver complaints canvassed during the audit. Orca stresses that it was found to be in compliance with respect to each complaint it cites. In the Decision (paragraphs 41 & 42) I recognized Orca's compliance with respect to all but one of the complaints lodged.
5. In the Decision, I recorded that Orca's failure to pay its drivers for all hours of container trucking services performed stemmed from its poor record keeping practices and noted that its record keeping practices resulted in driver confusion which could have been avoided had Orca kept and maintained proper records and provided compensation information to its drivers on their pay slips (Decision paragraph 38).
6. I therefore do not accept Orca's argument that it has been penalized on the basis of unreasonable complaints made by its drivers. Orca was not penalized because the Commissioner received complaints from its drivers. Orca was found compliant with respect to all but one of the complaints. Orca was penalized for failure to pay its drivers for all hours of container trucking services performed and poor record keeping.
7. Orca stresses the importance of driver timesheets and notes that it pays its I/Os for hours recorded on their timesheets. I agree with Orca. In the Decision, it was noted that the money Orca was found to be owing to its drivers was based on the auditor's calculation of amounts paid and hours logged on driver time sheets, not driver logs, which the auditor discounted as unreliable (Decision paragraph 14).
8. Orca concedes that its record keeping practices are a "weakness" but contends that its non-compliance is unintentional and as such its record keeping practices are not for the purpose of "cheating" its drivers. However, the Decision does not consider whether or not Orca's actions were intentional and the proposed penalty, as it relates to Orca's record keeping practices, is a reflection of the fact that Orca was found to be in violation of the record keeping requirements of the Act, which Orca concedes.
9. In the Decision, I noted that the purpose of the penalty imposed on Hutchison Cargo Terminal Inc. in 2018 was in part general deterrence (Decision paragraph 43). This means that Hutchison Cargo Terminal Inc.'s penalty, like the OBCCTC bulletin on record keeping, was intended, in part, to send a message to all licence holders about the importance of proper record keeping and

the potential consequences of violating their record keeping requirements.

10. Clearly, Orca did not heed the message in Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018). Of greater concern is the fact that Orca did not adequately change its record keeping practices following its own previous audit, for which it was also penalized for record keeping violations.
11. For these reasons, I considered the proposed penalty to be reasonable. It is not large, reflecting the amount of money found to be owing, but it is twice as much as Orca's last penalty, in recognition of Orca's repeated failure to abide by its record keeping requirements and its continued approach to OBCCTC audits.

D. Conclusion

12. Having carefully considered Orca's submission, and for the reasons outlined above and in my Decision, I will not refrain from imposing a monetary penalty.
13. In the result, I hereby order Orca Canadian Transport Ltd. to pay an administrative fine in the amount of \$10,000.00. 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 \$10,000.00 payable to the Minister of Finance.
14. Finally, I note that Orca Canadian Transport 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.
15. 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 10th day of August, 2020.



Michael Crawford, Commissioner