



September 15, 2021

TransBC Freightways Ltd.  
Raja Road Rail Services Ltd.  
TrasBC Freight Ltd.  
400 Ewen Ave.  
New Westminster, BC V3M 5B5

**TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd.  
(CTC Decision No. 08/2021) – Decision Notice**

**A. Overview**

Several decision underline this one. They are as follows:

- TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. (CTC Decision No. 04/2021) (the “Original Decision”)
- TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. (CTC Decision No. 06/2021) (the “First Supplemental Decision”); and
- TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. (CTC Decision No. 08/2021) (the “Second Supplemental Decision”) where I found that the Companies violated section 23 of the *Container Trucking Act* (the “Act”) by not paying two drivers for training time. The Companies were ordered to pay an administrative penalty of \$1,500.00.

Consistent with section 34(2) of the *Act*, TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. (together “the Companies”) were given 7 days to provide a written response setting out why the proposed penalty should not be imposed.

The Companies provided a written response within the time specified in the notice.

**B. The Companies’ Response**

The Companies ask that no penalty be imposed.

The Companies respond to the Second Supplemental Decision by citing the Smart Choice Transportation Ltd. (CTC Decision No. 21/2016) (the “Smart Choice Decision”) factors to be considered when assessing an appropriate administrative penalty and arguing that the Smart Choice factors “militate in favour of no administrative penalty.”

Comparable Cases

The Companies cite other decisions where, they submit, the circumstances were similar to theirs, and note that, in those cases, the Commissioner declined to impose an administrative penalty. The Companies state that, as in other decisions attracting no administrative penalty, they co-operated fully

with the audit process, complied with the directions of the auditor, promptly paid amounts found to be owing, and did not engage in meritless disputes or fraudulent, deceptive, dishonest or bad faith behaviour.

The Companies also cite extra efforts they made in response to the audit and cite previous decisions of the Commissioner where administrative penalties of \$1,500.00 were ordered, noting the differences in their case.

#### The Companies' Past Conduct

The Companies state that the penalty levied in Raja Road Rail Services Ltd. and TransBC Freightways Ltd. (CTC Decision No. 27/2017) was in relation to a different compliance issue (payment of incorrect rates), and that the Companies' failure to increase the hourly rates in that instance was an "honest" mistake that was not repeated. The Companies argue that their past conduct on what they characterize as an "unrelated" noncompliance issue ought not to weigh against them now.

#### Training

It was determined that the Companies owed two drivers a combined total of \$7,961.72 in unpaid training hours for the months of February and March 2019.<sup>1</sup> In their most recent submissions, the Companies state that they do not authorize training for new employees, did not know about the unauthorized training, and that neither of the drivers at issue made any claim for unpaid training directly to them (one driver made his claim through an Employment Standards complaint). The Companies have reservations about the accuracy of the drivers' paper records used by the auditor to determine the amount owing but have paid the money as ordered to "demonstrate their good faith" and because they "understand that they are responsible for the actions of their staff."

The Companies note their subsequent efforts to advise drivers of the Companies' training policy and their efforts to address any other potential unpaid training claims. It is the Companies' position that the circumstances outlined in their response with respect to training mitigate the seriousness of the infraction and therefore penalization for failure to pay for training in this case is not appropriate.

#### Record Request

The Companies accept that they failed to provide all the records requested by the auditor but note that their failure to provide all the records was because of a "misunderstanding" about what documents were required and was not an attempt to frustrate the audit. The Companies cite their efforts to grant the auditor full access to their records and the challenges which arose in conducting a digital audit and submit that a failure on their part to comprehend what the auditor required or expected should not result in a penalty.

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<sup>1</sup> Second Supplemental Decision, paragraph 10.

### C. Consideration of the Companies' Response

The penalty amount was determined based upon a consideration of relevant penalty factors. Many of the considerations involved in determining a penalty have been set out in OBCCTC decisions including Olympia Transportation Ltd. (CTC Decision No. 02/2016) and Smart Choice Transportation Ltd. (CTC Decision No. 21/2016). In this case, I consider the seriousness of the Companies' conduct, the harm suffered by the drivers as a result of the Companies' non-compliance, the Companies' past conduct, and penalties imposed in similar circumstances to be the most relevant considerations.

#### Comparable cases

The Companies were penalized for failure to pay for training.<sup>2</sup> The *Act* is remedial legislation intended to ensure that licensees pay their drivers the minimum rates established by the Commissioner and non-payment for training is, as the Companies concede, serious. The *Act* allows for financial penalties up to \$500,000.00. The relatively small size of the penalty proposed in this case reflected the fact that the financial harm suffered by the drivers was relatively small, the Companies were not significantly enriched because of their actions and the Companies did not have the benefit of a clarifying bulletin to inform their decision-making when the violation occurred. This is consistent with other decisions where licensees who failed to pay relatively small amounts owing for training were penalized relatively small amounts for the violations that occurred before the publication of the training bulletin.<sup>3</sup>

The Companies cite two decisions where no penalty was issued for a failure to pay for training, arguing that the circumstances in those cases were similar. Each case is different, however, and an appropriate penalty is assessed based on the individual circumstances of the case. Comparison to previous cases, where circumstances are invariably different, is only one consideration in the determination of an appropriately sized penalty. In the cases cited by the Companies, the licensees' cooperation with the auditor was not in dispute, the voluntary steps taken by the licensees to bring themselves into compliance occurred *during* the audit, not *after* decisions were issued, and neither licensee had been found to have contravened the legislation before.

The Companies also note that administrative fines of a similar magnitude as the fine proposed here were imposed in circumstances where other licensees:

- failed to keep proper records for their drivers;
- failed to correct their payment practices following a decision and/or bulletin of the Commissioner;
- shortchanged drivers by paying monthly salaries rather the regulated rates for all container trucking services performed; and
- had initially "refused to pay the adjustments calculated to be owing and has thus far refused to...take any steps necessary to bring itself into compliance with the *Act*."

The Companies argue that the circumstances of their audit were not comparable to those noted above where a similar fine was imposed. I disagree. The basic violations cited in those cases and the circumstances of this audit are comparable. In this audit, the Companies' electronic records were found

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<sup>2</sup> Second Supplemental Decision, paragraph 13.

<sup>3</sup> A-Can Transport Ltd. and MDW Express Transport Ltd. (CTC Decision No. 07/2019), paragraphs 34 & 35.

to be deficient; the Companies did not respond to the “training bulletin” by either clarifying their training policy with staff or paying for training and did not comply with the auditor’s request to calculate money owing and bring themselves into compliance. While the Companies did not shortchange their drivers by paying them monthly, as was the case in H. Rattan Trucking Ltd. (CTC Decision No. 12/2018), the Companies, like H. Rattan Trucking Ltd., violated the rate paying requirements of the *Act* when they did not pay for training.

### The Companies’ Past Conduct

In Raja Road Rail Services Ltd. and TransBC Freightways Ltd. (CTC Decision No. 27/2017), the two companies were penalized \$500.00 collectively for failure to pay five drivers the regulated rates. Despite the companies co-operating during the audit and conceding their non-compliance, an administrative fine was deemed appropriate because they did not fulfill their obligation as a CTS licence holder to pay compliant rates.<sup>4</sup> In this case, the Companies’ past conduct was considered when assessing the penalty and a “small escalation in penalty quantum” was proposed because of the finding of non-compliance in the previous audit.<sup>5</sup> The Companies argue that the nature of the noncompliance in the two audits was different and that because the first noncompliance was not repeated an escalating penalty should not be imposed.

The failure to pay the correct hourly rate and a failure to pay for training are both violations of section 23 of the *Act* which makes clear that licensees cannot offer or pay any less than the section 22 rates when seeking to employ or retain a trucker. The Companies were assessed an escalating penalty because this is their second failure to comply with the *Act*. I do not agree that there is “no rational connection” between the two violations, or that they are “wholly unrelated.” Even if I did accept the violations are “wholly unrelated” (which I do not), the Companies have not cited any authority for the submission that a statutory decision-maker may only impose escalating penalties in circumstances where identical violations have occurred.

In their most recent submissions, the Companies submit that the circumstances of the violations mitigate the seriousness of their conduct. I agree with this submission to some degree, which is why the escalating penalty assessed here for a repeated violation of the *Act* is still relatively small. However, any violation of rate payment requirements of the *Act*, no matter how small, has a negative impact on the integrity of the industry and is magnified by the industry’s history of labour unrest and persistent rate undercutting.

### Training

The Companies argue that they should not be penalized for their failure to pay for training given that they have made payment for training as ordered and in consideration of their efforts following the audit to clarify their training policy with their drivers.

The Companies summarize what they call “mitigating circumstances” respecting the training issue. In doing so they once again provide revised explanations and arguments in defense of their actions.<sup>6</sup>

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<sup>4</sup> Raja Road Rail Services Ltd. and TransBC Freightways Ltd. (CTC Decision No. 27/2017), paragraph, 18.

<sup>5</sup> Second Supplemental Decision, paragraph 13.

<sup>6</sup> This conduct was noted in CTC Decision No. 06/2021 which was the first Supplemental Decision of this audit.

During the audit, the Companies advised the auditor that “they do, in fact, train drivers and that their drivers are paid for training.”<sup>7</sup> The Companies now argue that they do not authorize training for new employees, that their established employees did not understand the Companies’ policy respecting training, and that their employees voluntarily provided training to new drivers without authorization. However, the Companies do not explain how it is that their drivers would take it upon themselves to train others voluntarily. Nor did the Companies say that their established employees were voluntarily training new drivers without authority to do so during the audit process or in response to the audit report.

I have found that the Companies’ failure to pay for training warrants a penalty and this most recent reframing of the circumstances which led to their failure to pay for training does not convince me otherwise. The Companies concede, and I agree, that “they are responsible for the actions of their staff if indeed unauthorized training was offered.”

The Companies are not being penalized for making their arguments or “resisting conclusions” as they suggest in their submission. The Companies are being penalized for their failure to pay for training. I have found the Companies failed to pay for training after consideration of all the facts, including the Companies’ conflicting statements on the matter, driver statements and supporting documentation, and the Port Pass and terminal security data gathered by the auditor.

#### Record Request

The Companies state that it would be unfair to penalize them for having earlier failed to comprehend that auditor’s requests and argue that their failure to provide records requested by the auditor was the result of a misunderstanding of what documents were required.

I have reviewed all the correspondence between the auditor and the Companies, and I do not find that the auditor was confused about the Companies’ explanations or that the auditor was unclear about what she was asking (repeatedly) or what was expected. Furthermore, the Companies provided answers to the auditor’s questions and advanced arguments in response to the auditor which does not suggest that they failed to comprehend what was being asked or discussed.

In any event, the Companies’ arguments respecting what they call the “records issue” are unnecessary because the Companies are not being penalized for the issue. In the Second Supplemental Decision, I stated that “the size of the fine does not reflect the importance that I place on licensees providing all requested records and responding to audit questions and requests in an honest, timely and fulsome manner.”<sup>8</sup> Although I remain of the opinion that the Companies contributed to the challenges arising during this audit, this does not factor into the size of the penalty. This is because I also remain of the opinion that the seizure of records and the lengthy audit process the Companies were required to undergo sufficiently emphasizes the importance of complying with an auditor’s requests.

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<sup>7</sup> Original Decision, paragraph 119.

<sup>8</sup> Second Supplemental Decision, paragraph 14.

#### D. Conclusion

Having carefully considered the Companies' submissions, and for the reasons outlined above and in my Second Supplemental Decision, I will not refrain from imposing the proposed monetary penalty. In the result, I hereby order the Companies to pay an administrative fine in the amount of \$1,500.00. 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 \$1,500.00 payable to the Minister of Finance.

Finally, I note that TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight 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 15<sup>th</sup> day of September, 2021.



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Michael Crawford, Commissioner