



June 6, 2023

Ferndale Transport Ltd.  
2332 Whatcom Road  
PO Box #16071, Sumas Mountain  
Abbotsford, BC V3G 0C1

## **Ferndale Transport Ltd. (CTC Decision No 07/2023) – Decision Notice**

### **Overview**

1. On March 15, 2023, the Office of the BC Container Trucking Commissioner (“OBCCTC”) participated in an enforcement initiative and a truck operated by Ferndale Transport Ltd. (“Ferndale”) was observed performing container trucking services without a truck tag. On April 18, 2022, I invited Ferndale to provide a submission and requested payroll records to determine if Ferndale was compliant with the sections 22 and 23 of the *Container Trucking Act* (“Act”) and sections 6.15 and 6.16 of the Container Trucking Services licence (“CTS Licence”). Ferndale provided a submission (“Submission #1”) on May 23, 2023.
2. In Ferndale Transport Ltd. (CTC Decision No 07/2023) (the “Decision”), I determined that Ferndale had paid the driver the required minimum rates; however, I found Ferndale had violated sections 6.3, 6.15 and 6.16 of the CTS Licence and determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 21-27. I proposed to impose an administrative fine against Ferndale in the amount of \$1,500.00.
3. Consistent with s. 34(2) of the *Act*, I advised Ferndale that I would consider its written response to the proposed penalty if it was received within 7 days. Ferndale provided a written response via email dated May 23, 2023 (“Submission #2”).

### **Licensee Response**

4. Ferndale asks that I exercise my discretion and not impose the proposed penalty.
5. Ferndale emphasizes the sudden and atypical conditions which led to Ferndale using the services of a non-licensee who used an untagged truck to deliver a container should be considered by the Commissioner when imposing a fine.
6. While Submission #1 indicated that Ferndale used the services of a contractor with an untagged truck after Ferndale’s tagged truck experienced a mechanical failure, for the first time Ferndale now elaborates on the urgency to move the container and the situation it found itself in on March 15, 2023. Ferndale now explains that the container was a refrigerated unit with frozen food products and the time sensitive nature of the cargo made it impractical to call other licensees who may not have had the cargo insurance coverage required by its client and potentially expose Ferndale to liability for any loss. Furthermore, Ferndale restates its understanding that the rail yard where the breakdown occurred was urging Ferndale to quickly vacate the premises.

7. Ferndale also notes that the Commissioner did not find that the mechanic was paid less than the regulated rates.
8. Ferndale concludes that it had taken steps after previous fines to ensure it remains in compliance with the *Act, Regulation*, and its CTS License but it was placed in an impossible position after the breakdown of its tagged truck.

### Consideration of Licensee's Response

9. The factors outlined in Smart Choice Transport Ltd. (CTC Decision No. 21/2016) were applied and weighed when considering the proposed penalty. I acknowledged that Ferndale was placed in a difficult position following the mechanical failure of its tagged truck. I also acknowledged that no drivers were harmed due to underpayment of wages. However, tagged trucks ensure that the truck is known to the OBCCTC and has the required GPS system that enables the OBCCTC to monitor compliance and avoid too many trucks chasing too few containers. Tagged trucks are also a visible identifier to other drivers and licensees of this system. To permit untagged trucks – even for a short period of time – would reduce the OBCCTC's ability to enforce the *Act* and make it very difficult to distinguish between those licensees who experience a breakdown from the licensees who are adding untagged trucks to move more containers.
10. As I said in the Decision, mechanical breakdowns do occur, but I do not understand breakdowns to be atypical. This case was unfortunate in that the container involved perishable cargo and the breakdown occurred in a busy rail yard. However, Ferndale's submission appears to suggest that it had no contingency plan in place. I am still unclear what steps Ferndale has put in place to avoid using an untagged truck in the future following inevitable mechanical failures that may involve perishable cargo. This lack of a plan is particularly confusing considering Ferndale suggests it has learned from its past non-compliance and engaged legal services to assist with future compliance.

### Conclusion

11. Having carefully considered Ferndale's submission and for the reasons outlined above and in my Decision, I will impose a penalty of \$1,500.00
12. In the result, I hereby order Ferndale 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 Decision Notice. Payment should be made by delivering to OBCCTC a cheque in the amount of \$1,500.00 payable to the Minister of Finance.
13. Finally, I note that Ferndale may request a reconsideration of the Commissioner's Decision Notice by filing a Notice of Reconsideration with the Commissioner not more than 30 days after Ferndale'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,
- f. signed by the applicant or the applicant's counsel.

Despite the filing of a Notice of Reconsideration, the above orders remain in effect until the reconsideration application is determined.

This Decision Notice along with the Commissioner's Decision will be published on the OBCCTS website.

Dated at Vancouver, B.C. this 6th day of June, 2023

A handwritten signature in blue ink that reads "Glen MacInnes". The signature is written in a cursive, flowing style.

Glen MacInnes  
Commissioner