



September 22, 2023

Supersonic Trucking Ltd.
Unit 202 – 12582 Avenue
Surrey, BC V3W 3E9

Commissioner's Decision Supersonic Trucking Ltd. (CTC Decision No. 11/2023)

Introduction

1. Supersonic Trucking Ltd. ("Supersonic") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. Under sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services are established by the Commissioner ("Rate Order"), and a licensee must comply with those rates. In particular, section 23(2) states:

A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

3. Under s. 6.10 of the Container Trucking Services Licence ("2022 CTS Licence"), effective December 1, 2022, licensees are required to ensure that payroll and wage statements for drivers are created and maintained electronically.
4. Under section 31 of the *Act*, the Commissioner may initiate an audit or investigation to ensure compliance with the "Act, the regulations and a licence" whether or not a complaint has been received by the Commissioner.
5. As part of the random audits initiated by the Commissioner, an auditor was to audit Supersonic records to determine if its directly employed operators ("Company Drivers") were being paid the required minimum rates.
6. This is Supersonic's second audit by the Office of the Container Trucking Commissioner ("OBCCTC"). In *Supersonic Trucking Ltd. (CTC Decision No. 24/2018)*, Supersonic was found to be in violation of the *Act*, the *Container Trucking Regulation* (the "*Regulation*") and its licence. The Commissioner found Supersonic owed \$47,275.73 to its five company drivers, failed to maintain proper payroll records in accordance with its CTS licence, and failed to pay its drivers at least semimonthly and no later than eight (8) days after the end of a pay period. The Commissioner exercised his discretion and did not impose an administrative penalty.

Audit Report

7. On March 21, 2023, using a random generator, the auditor requested driver records for the pay periods in May and June of 2019, March and October of 2020, April and August of 2021, May and October of 2022 and January 2023 (the "Audit Period"). Three relevant categories of records were required of Supersonic:
 - Pay statements showing total gross earnings in each pay period, additional payments or deductions from pay including, but not limited, to positioning movement rate, fuel surcharge, wait time payments, and net pay amounts;
 - All original daily trip sheets completed by the drivers;
 - Where paid on an hourly basis, records of remuneration for all hours worked, including:
 - Number of hours worked each day
 - Hourly rate of pay
 - Job applications for drivers receiving the reduced hourly rate
8. Supersonic initially provided only drivers' pay statements and cancelled cheques covering the Audit Period and failed to include any drivers' timesheets or other documentation to establish the drivers' daily start time, end time, and total hours worked.
9. Upon another request by the auditor for the drivers' timesheets, Supersonic delivered documents that recorded the date, consignee name, shipper name and trailer number but did not record daily start times, end times and total hours worked (the "Trip Sheets"). Supersonic advised that its drivers do not fill out timesheets and the dispatcher is responsible for recording all the drivers' hours. Supersonic explained that it used to have drivers fill out their own time sheets performed CTS and non-CTS work, however, they now require their dispatcher to record the times because they only perform CTS work.
10. The auditor contacted three (3) drivers to discuss how they record their time at Supersonic. Each driver confirmed they are required to fill out a daily time sheet with their hours on it and hand in to Supersonic at the end of the day. When contacted by the auditor to explain the contradiction about how the hours are recorded, Supersonic explained that the drivers were mistaken as the drivers only fill out the Trip Sheets. Supersonic maintains that the dispatcher records the hours worked by the drivers and this information is used to calculate the driver's pay. The auditor was not provided with any documentation by Supersonic to show how many hours each driver worked each day.
11. On review of the pay statements, the auditor could only determine that the Company Drivers were paid in accordance with the Rate Order for the total hours recorded on the pay statement. The auditor also noted from the pay statements that the drivers were paid once a month.
12. On December 1, 2022, a new requirement was added to the CTS Licence requiring licensees to maintain payroll records that are created and maintained electronically. The auditor was not provided electronically generated records for January 2023 of the Audit Period and confirmed that Supersonic had not implemented an electronically generated payroll system until on or around July 1, 2023.

13. On July 17, 2023, the auditor submitted an audit report (“Audit Report”) based on her review of the Audit Period to the Commissioner which concluded the following:
- a) Supersonic pay statements reflected the Company Drivers were paid in accordance with the Rate Order.
Supersonic failed to provide any documentation that recorded the daily hours worked by its drivers during the Audit Period preventing the auditor from verifying the drivers were paid for all hours worked in accordance with Appendix D section B(4) (f)(iii) of its CTS Licence; and
 - b) Supersonic failed to pay remuneration to its Company Drivers at least semi-monthly and no later than eight (8) days after the end of the pay period in accordance with section 24(1) of the *Regulation*.; and
 - c) Supersonic failed to maintain electronically generated payroll records between December 1, 2022, to on or around July 1, 2023, in breach of section 6.10 CTS License.
14. A copy of the Audit Report was provided to Supersonic on July 26, 2023, and Supersonic was invited to provide a response by August 25, 2023. Supersonic did not provide a response.

Decision

15. I accept the uncontroverted findings of the Audit Report and I find Supersonic was in violation of Appendix D section B(4) (f)(iii) of its CTS Licence when it failed to provide the auditor with payroll records identifying the daily hours worked by each driver during the Audit Period and failing to pay remuneration to its drivers in accordance with section 24(1) of the *Regulation* when it failed to pay its Company Drivers at least semi-monthly and no later than 8 days after the end of a pay period. I also find Supersonic failed to maintain electronic payroll records in accordance with s. 6.10 of the 2022 CTS Licence.
16. Based on the conflicting information by the drivers and Supersonic about how the daily hours of drivers are recorded, it is unclear to me if Supersonic has the record of daily hours worked but has chosen not to provide them to the OBCCTC or whether those records were destroyed or ever existed. I am equally puzzled by Supersonic’s incoherent explanation about how it tracks and documents the daily hours of its drivers. The fact remains Supersonic did not provide payroll records and I am unclear why they failed to do so. The result is the auditor is unable to properly assess whether Supersonic properly paid its drivers for the work performed due to Supersonic’s non-compliance with its obligation to maintain and produce payroll records.
17. Then Commissioner MacPhail stressed the importance of proper record keeping in HAP Enterprises Ltd. (CTC Decision No. 19, 2016) as follows:

The requirement to keep complete, accurate and up-to-date records is a fundamentally important obligation flowing from the legislation and the Container Trucking Services Licence (the “licence”). The maintenance of complete, accurate and up-to-date records by licensees is absolutely essential to the OBCCTC’s fulfillment of its rate compliance mandate and its ability to properly perform audits in a timely and fulsome way. Failure to keep proper records, including those required under both Paragraph 3 of Appendix D to Schedule 1, and under Schedule 2 of the licence, directly interferes with the audit process, will not be tolerated, and will be regarded

as a serious violation of licensees' obligations under the legislation and their licence.

18. Many audits over the last eight years have identified failures to keep records pursuant to the CTS Licence and penalties have been levied for these failures. The importance of maintaining proper records was reinforced early on in Olympia Transportation Ltd. (CTC Decision No. 02/2016), where the Commissioner found that the licensee had failed to maintain proper records, proposed a fine of \$4,000.00 and provided the following warning:

With the publication of this decision, licencees have express notice that a failure to maintain the required records will almost certainly result in a penalty. The moderate amount of the penalty in this case reflects the fact that this is the first instance in which a penalty has been proposed for this form of non-compliance. Licencees should assume that a significantly higher penalty may be proposed for any future findings of non-compliance by failure to maintain required records. All licencees should accordingly review their record-keeping practices and ensure their payroll and driver records are complete, up-to-date and accurate. (para. 30)

19. Since Commissioner MacPhail's warning, the administrative penalties of failing to keep proper record keeping have been more than \$4,000.00.¹
20. Furthermore, the introduction of electronic record-keeping requirements in the 2022 CTS Licence was intended to facilitate timely audits and increase industry compliance with the rate and record-keeping requirements by eliminating the use of paper-based/manual trip or hourly tracking and payroll systems, both of which are harder to manage, easier to manipulate and have more potential for error.²
21. I adopt the analysis of Commissioner McPhail in Olympia Transportation Ltd.: failure to maintain proper record keeping is a serious violation and likely to attract a penalty.
22. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's licence or imposing an administrative fine. Under section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000. In any other case, it can be up to \$10,000.
23. The seriousness of the available penalties indicates the potential gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and IOs in compliance with the established rates. Licensees must comply with the legislation, as well as the terms and conditions of their licences, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.

¹ See commissioner Decision Notices Butterworth's Industries Inc. (CTC Decision 06/2017); Orca Canadian Transport Ltd. (CTC Decision No. 09/2020); MDW Express Transport Ltd. (CTC Decision No. 01/2017); Orca Canadian Transport Ltd. (CTC Decision No. 09/2020);

² "CTS Licence Amendments: Consultation Report," Office of the BC Container Trucking Commissioner, August 2022, page 30

24. In keeping with the above-described purpose of the legislation the factors which will be considered when assessing the appropriate administrative penalty include the following as set out in Smart Choice Transportation Ltd. (OBCCTC Decision No. 21/2016):

- The seriousness of the respondent's conduct;
- The harm suffered by drivers as a result of the respondent's conduct;
- The damage done to the integrity of Container Trucking Industry;
- The extent to which the licensee was enriched;
- Factors that mitigate the respondent's conduct;
- The respondent's past conduct;
- The need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of having a CTS licence;
- The need to deter licensees from engaging in inappropriate conduct, and
- Orders made by the Commission in similar circumstances in the past.

25. This is Supersonic's second audit. Supersonic was found to be in violation of the *Act* in 2016 for failing to pay the regulated rates, maintain proper payroll records in accordance with its CTS Licence, and pay its drivers at least semimonthly and no later than eight (8) days after the end of a pay period. In this case, I have also found that Supersonic failed to maintain proper payroll records and failed to pay its drivers at least semimonthly and no later than eight (8) days after the end of a pay period. I cannot assess whether Supersonic has properly paid its drivers because of its record-keeping failures. I have concluded that this is an appropriate case to issue a penalty.

26. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$10,000.00 is appropriate. In assessing an appropriate penalty, I have considered especially Supersonic's similar past failures to properly maintain records, the inability of the Commissioner to properly assess whether Supersonic is in compliance with the Rate Order due to a lack of proper record keeping, and the similar delay in paying its Company Drivers in a timely manner. As set out above, I consider Supersonic's contraventions serious.

27. The relatively short period of time during which Supersonic failed to maintain electronically generated records is a mitigating factor.

28. The size of this penalty is consistent with similar escalation of penalties in similar cases.

29. In the result and in accordance with section 9 and 34(2) of the *Act*, I hereby order and give notice as follows:

- a. I order Supersonic to pay the Company Drivers in accordance with s. 24(1) of the *Regulation*.
- b. I propose to impose an administrative fine against Supersonic in the amount of \$10,000.00;

30. Should it wish to do so, Supersonic has 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
31. If Supersonic provides a written response in accordance with the above, I will consider its response and I will provide notice to Supersonic of my decision to either:
 - Refrain from imposing any or all of the penalty; or
 - Impose any or all of the proposed penalty.
32. This decision will be delivered to Supersonic and will be published on the Commissioner's website after Supersonic's response period has closed (www.obcctc.ca).

Dated at Vancouver, B.C., this 22nd day of September 2023.



Glen MacInnes
Commissioner