



October 30, 2023

Forfar Enterprises Ltd.  
8-15055 20th Avenue  
Surrey, BC V4A 9Y2

## **Forfar Enterprises Ltd. (CTC Decision No. 10/2023) – Decision Notice**

### **Overview**

1. In Forfar Enterprises Ltd. (CTC Decision No. 10/2023) (“Commissioner’s Decision”) I found that Forfar Enterprises Ltd. (“Forfar”) failed to comply with the minimum rates required under the *Container Trucking Act* (“Act”) and the *Container Trucking Regulation* (“Regulation”) and failed to maintain electronic payroll records in January 2023 in contravention of section 6.10 of its CTS licence. An administrative penalty of \$3,000 was proposed.
2. Consistent with s.34(2) of the Act, Forfar was given seven (7) days to provide a written response setting out why the proposed penalty should not be imposed. Forfar provided a written argument in response to the proposed penalty within the specified timeframe. I have considered Forfar’s submission (“Response”) and provide the following Decision Notice.

### **Forfar’s Response**

3. Forfar acknowledges that it failed to pay the minimum rates to drivers and failed to implement an electronic timekeeping system as identified in the Commissioner’s Decision; however, it argues that the penalty is excessive and would be a significant detriment to the company.
4. Forfar expands on the reasons for the delay in fully implementing an electronic timekeeping system by explaining that some of its drivers have little to no experience using electronic logs and it had to overcome some initial resistance to change.
5. While agreeing that it failed to pay the minimum rate to six (6) of its drivers, Forfar says that I have failed to consider that the underpayment was accidental and a relatively small amount.
6. Finally, Forfar stresses that it has learned from the mistakes identified by the auditor and immediately took measures to become compliant with the legislative scheme and that I have failed to consider the financial impact and hardship such a proposed fine would have on a small company that is struggling to recover from the recent labour dispute at the Port of Vancouver.

### **Consideration of the Licensee’s Response**

7. I am not persuaded to refrain from imposing an administrative penalty and I do not accept Forfar’s response that because it brought itself into compliance after the audit it should not be penalized.

8. I note in Orca Canadian Transport Ltd. (CTC Decision No 13/2018), that then-Commissioner rejected the premise – like the one advanced by Forfar in this case -- that licensees who become compliant following an audit report should avoid an administrative penalty all together for the simple reason that such an approach would invite other licensees to be non-compliant until the subject of an audit. I adopt this approach and add that licensee cooperation and adjustments during and following an audit can be a mitigating factor that must be weighed in assessing a penalty, that cooperation and adjustments do not negate an administrative penalty. Penalties are necessary to dissuade non-compliant behaviour before a licensee comes under the scrutiny of an auditor or Commissioner.
9. As I stated in para. 18 of the Commissioner's Decision, Forfar is responsible for knowing its obligations under the *Act* and the CTS licence. While Forfar implies that penalties should only be issued when deliberate and egregious breaches occur, I do not agree. I made no finding that Forfar's actions were intentional, but even those breaches that are inadvertent (e.g., accidental) are subject to a penalty, especially if a similar breach has occurred before – as was found in this case.
10. Finally, financial hardship is not generally considered with making decisions regarding administrative penalties, but the impact of the breach and corrections made by the licensee are considered. I accept that Forfar was on the path to implementing an electronic timekeeping system before the audit and in para. 22 of the Commissioner's Decision, I noted the relatively small amount owed to the drivers and the short period of time Forfar failed to comply with s. 6.10 of the CTS licence. I am not persuaded that I failed to consider all the factors in the Response when proposing the penalty.

## Conclusion

11. Having carefully considered Forfar's Response, and for the reasons outlined above and in the Commissioner's Decision, I will not refrain from imposing a monetary penalty.
12. In the result, I hereby order Forfar to pay an administrative penalty of \$3,000.00. Section 35(2) of the *Act* requires this fine to be paid within 30 days of the issuance of this Decision Notice. Payment should be made by delivering to the Office of the BC Container Trucking Commissioner a cheque in the amount of \$3,000.00 payable to the Minister of Finance.
13. Finally, I note that Forfar may request a reconsideration of the imposition of the administrative fine 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.
14. Despite the filing of a Notice of Reconsideration, the above order requiring Forfar to pay an administrative penalty of \$3,000.00 remains in effect until the reconsideration application is

determined.

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

Dated at Vancouver, B.C., this 30<sup>th</sup> day of October 2023.

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is fluid and cursive, with the first name "Glen" and last name "MacInnes" clearly distinguishable.

Glen MacInnes  
Commissioner