



October 23, 2023

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

Supersonic Trucking Ltd. (CTC Decision No. 11/2023) – Decision Notice

Overview

1. On July 26, 2023, the Office of the BC Container Trucking Commissioner (“OBCCTC”) provided Supersonic Trucking Ltd. (“Supersonic”) with a copy of an audit report (“Audit Report”) following an investigation pursuant to s. 31 of the Container Trucking Act (“Act”). The OBCCTC invited Supersonic to provide a response by August 25, 2023. Supersonic responded to the Audit Report but due to an administrative oversight its response was not provided to me before I wrote Supersonic Trucking Ltd. (CTC Decision No. 11/2023) (“Commissioner’s Decision”).
2. In the Commissioner’s Decision, I determined Supersonic Trucking Ltd. (“Supersonic”) failed to provide the auditor with the daily hours worked by each driver during the audit period (in violation of Appendix D section B(4)(f)(iii) of its licence), failed to maintain electronic payroll records in January 2023 (in violation of section 6.10 of its licence) and failed to pay its Company Drivers at least semi-monthly and no later than 8 days after the end of a pay period (in violation of section 24(1) of the *Container Trucking Regulation* (“Regulation”). An administrative penalty of \$10,000.00 was proposed.
3. Consistent with s.34(2) of the Act, Supersonic was given seven (7) days to provide a written response setting out why the proposed penalty should not be imposed. Supersonic did so within the specified timeframe. I have considered Supersonic’s submission (“Submission”), along with its Audit Response (as set out below) and provide the following Decision Notice.

Supersonic’s Response

4. Supersonic clarifies that it did provide the OBCCTC with a response to the Audit Report and attaches a copy of its August 10, 2023, letter (“Audit Response”) to its Submission. The Audit Response and the Submission provide similar responses which I can address together here.
5. Supersonic argues that the penalty is excessive and would be a significant detriment to the company particularly in this economy. While Supersonic generally agrees with the findings of non-compliance, it urges me to consider the context in which the breaches occurred.
6. Regarding its failure to provide the daily hours worked by each driver, Supersonic suggests there may have been some miscommunication which led to the auditor not receiving the documentation requested. Supersonic asserts that it does have records of the hours worked by each driver. Supersonic explains that at one time it used trip sheets to track driver hours along with tracking

chassis and container movements; however, it changed its practice before the current audit and had the dispatchers exclusively track the hours. Supersonic speculates the employees that it appointed to work with the auditor misunderstood what was required and failed to provide the dispatcher's time sheets which record hours worked. It does not appear that Supersonic has actually included any documentation generated from its dispatchers even now, however. It does include an example of the equipment tracking documentation filled out by the driver that it states identifies how it records the hours worked by its drivers ("Audit Report Attachment"). Although the Audit Report Attachment reports the total hours worked by the driver example over the pay period, it is unclear to me how the Audit Report Attachment purports to demonstrate the daily hours worked by the driver.

7. With regards to the failure to pay drivers in accordance with s. 24(2) of the *Regulation*, Supersonic states that a large majority of its work is interprovincial and international trucking and therefore it has been following its understanding of the federal payroll requirements of paying its drivers once per month. Furthermore, it argues that no drivers have complained about being paid monthly. Nevertheless, Supersonic advises that it has started to pay its drivers in accordance with *Regulation* once it received the Audit Report.
8. Supersonic acknowledges that it was non-compliant with the 2022 CTS licence requirement of maintaining an electronically generated payroll system in January 2023. Supersonic explains that it did not have the system in place because the company owner did not receive the OBCCTC information about the new requirement because he was out of the country without access to his email. Supersonic advises that it implemented an electronic time keeping system upon receiving the Audit Report and that this has been in place since August 4, 2023.
9. Supersonic argues that the administrative penalty should not be based on the previous findings in Supersonic Trucking Ltd. (CTC Decision 23/2018) because the monies owed to drivers in that case were the result of non-port related work. Supersonic states that it had received assurance from a Member of the Legislative Assembly that a variable rate was permissible depending on the type of work being performed.
10. Finally, Supersonic argues that I have failed to consider the financial impact and hardship that the proposed penalty will have on the company's financial viability.
11. In conclusion, Supersonic asks that the proposed administrative penalty be reduced or not imposed at all because the documents recording the daily hours of its drivers were not provided to the auditor due to a misunderstanding, the previous penalty was not related to port work, and the company took immediate steps upon receipt of the Audit Report to pay its drivers semimonthly and to implement an electronic timekeeping system. Finally, it argues that the proposed penalty will amount to a significant detriment to Supersonic.

Consideration of the Licensee's Response

12. Supersonic generally accepts responsibility for the breaches outlined in the Commissioner's Decision but notes that the explanations provided in its Audit Response were not considered prior the \$10,000.00 administrative penalty being proposed and those explanations should reduce or nullify the proposed administrative penalty.

13. While I appreciate that Supersonic understands it has been non-compliant, its Audit Response and Submission have not convinced me not to impose a penalty, with the exception of one area where I agree the proposed penalty should be reduced.
14. I am not prepared to accept Supersonic's speculation that a language barrier or misunderstanding in terminology resulted in the documents not being provided to the auditor. In paragraphs 7-11 of the Commissioner's Decision, I recited the auditor's letter sent to Supersonic on March 21, 2023, specifically requesting the daily hours worked by its drivers and I noted that the auditor did not receive the requested documents even after subsequently raising the issue with the company representative. I have now reviewed the Audit Report Attachment provided by Supersonic, and this document still does not identify the hours worked each day by the driver. The letter requesting the daily hours was clear and the auditor subsequently raised the issue directly with representatives of Supersonic and at neither time were the requested documents delivered. Nor have they been delivered now.
15. I am equally unconvinced that Supersonic's change to a semimonthly payroll system immediately following the Audit Report or the lack of employee complaints is sufficient to reduce the proposed penalty. I noted in para. 25 of the Commissioner's Decision that Supersonic was found to be in breach of s. 24(1) of the *Regulation* in Supersonic Trucking Ltd. (CTC Decision No. 24/2018) and that it ought to have been aware that it needed to take steps to bring itself into compliance after that point. I find that Supersonic's failure to take any remedial action after being told more than four years ago that its payroll system was non-compliant with the *Regulation* undercuts its arguments that I should reward its corrective action in 2023.
16. I do not agree with Supersonic that I should not base the administrative penalty in any part based on the previous finding set out Supersonic Trucking Ltd. (CTC Decision No. 24/2018) because the payments to those drivers were for what it calls "non-port work." It is clear in the 2018 Decision Notice that the then-Commissioner rejected Supersonic's argument that the money owed was due to non-port work and ordered outstanding wages for container trucking services to be paid. I am also not clear how Supersonic's recollection of a discussion with a Member of the Legislative Assembly is determinative. The 2018 Decision Notice determinations – including the findings that Supersonic failed to maintain proper payroll records and failed to pay drivers in accordance with s. 24(1) of the *Regulation*-- are particularly relevant previous past conduct when assessing the appropriate penalty in the matter before me. See Smart Choice Transportation Ltd. (OBCCTC Decision No. 21/2016).
17. While financial hardship is not generally considered when proposing penalties, I note that in Supersonic Trucking Ltd. (CTC Decision No. 24/2018) the then-Commissioner permitted Supersonic to pay outstanding wages in installments. In the case before me, Supersonic has provided no evidence to support its assertion that it is unable to pay an administrative penalty due to financial hardship and each licensee is required to have a security that can be used to pay wages and penalties in any event. I note that Supersonic's security amount is much greater than the proposed penalty.
18. I do not accept Supersonic's explanation that it may have been unaware of the requirements for electronic timekeeping as part of the 2022 CTS licence because the owner was out of town. The licence changes – including the requirements for electronic timekeeping – were advertised and consulted on well in advance. Where I find some support for a reduction in the proposed penalty is around Supersonic's implementation of an electronic time keeping system on August 4, 2023. At the

time of proposing the administrative penalty against Supersonic in the Commissioner's Decision, I was not provided with any information that Supersonic had taken steps to implement an electronic timekeeping system. However, Supersonic has advised in its Audit Response and its Submissions that it is now using an electronic system.

19. In Forfar Enterprises Ltd. (CTC Decision No. 10/2023), I acknowledged the relatively short period of time that had passed before the company implemented the system and this was a mitigating factor. I accept that Supersonic has implemented an electronic timekeeping system – albeit nine months after it was required – and this action has mitigated the offence and warrants a reduction in the proposed penalty.

Conclusion

20. Having carefully considered Supersonic's Audit Response and Submission, and for the reasons outlined above and in the Commissioner's Decision, I will not refrain from imposing a monetary penalty, but I will reduce the monetary penalty proposed in the Commissioner's Decision to 6,000.00.
21. In the result, I hereby order Supersonic to pay an administrative penalty of \$6,000.00. Section 35(2) of the *Act* requires this fine be paid within 30 days of the issuance of the 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 \$6,000.00 payable to the Minister of Finance.
22. Finally, I note that Supersonic 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.
23. Despite the filing of a Notice of Reconsideration, the above order requiring Supersonic to pay an administrative penalty of \$6,000.00 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 23rd day of October 2023.

A handwritten signature in blue ink, reading "Glen MacInnes". The signature is written in a cursive style with a large initial "G" and a long horizontal stroke.

Glen MacInnes
Commissioner