



February 7, 2024

MDW Express Transport Ltd.
3448 Thurston Place
Abbotsford, B.C. V2T 6Z3

MDW Express Transport Ltd. (CTC Decision No 02/2024)– Decision Notice

1. In MDW Express Transport Ltd. (CTC Decision No 02/2024) (“Original Decision”), I determined that MDW Express Transport Ltd. (“MDW”) failed to create and maintain electronically generated payroll records for May 2023 in breach of s. 6.10 of its 2022 CTS licence. MDW stated that they had abandoned a previous platform that generated electronically generate pay records shortly after it was launched in 2022 and had plans to use a new platform in January 2024. I ordered MDW to bring itself into compliance with s. 6.10 of its 2022 CTS licence no later than 45 days from the date of the Original Decision. I also proposed to impose an administrative fine against MDW in the amount of \$6,000.00 for the reasons set out in paras. 15-21 of the Original Decision. Consistent with s. 34(2) of the *Container Trucking Act*, I advised MDW that I would consider its written response to the proposed penalty if it was received within 7 days.

Licensee’s Response

2. MDW believes the penalty imposed by the Commissioner is disproportionate to the finding of a single breach of its CTS licence considering that other licensees received similarly sized penalties for more breaches. Specifically, MDW argues that the gravity of offence is informed by the number of breaches and since MDW only had one breach, it should not receive the same penalty as other licensees who have more breaches.
3. MDW relies on two decisions in its submissions that the proposed penalty should be lowered. MDW suggests that the licensee in Super Star Trucking Ltd. (CTC Decision No. 14/2023) (“Super Star Decision”) was found in violation of two sections of its CTS licence when it failed to maintain and produce electronically generated records and was fined \$6,000 even after being previously fined. Regarding Embassy Transportation Inc. (CTC Decision No. 04/2023) (“Embassy Decision”), MDW argues that the licensee was fined \$6,000 after it was determined to be in violation of multiple sections of its CTS licence including failing to pay drivers the regulated rate and fuel surcharge and improper record keeping, and Embassy also had a previous \$500.00 fine issued for underpaying the regulated fuel surcharge.
4. Finally, MDW argues that it met all the audit requests and requirements and there were no compounding violations hindering the enforcement effectiveness of the OBCCTC. Furthermore, MDW says it has been actively working to bring itself into compliance with s. 6.10 of its CTS licence.

Consideration of Licensee's Response

5. As set out in Safeway Trucking Ltd. and Coast Pacific Carrier Inc. (CTC Decision No. 14/2020), paragraph 21, "in any given penalty decision, certain factors can outweigh each other, and the size of a proposed penalty is decided through an assessment of all the relevant factors together and in light of the importance of the particular factors in each case." I agree with this statement as each case is different and comparison with other cases is only one consideration in the determination of an appropriate penalty. There are various factors considered in each case and each factor can vary in relevance and weight.
6. I do not agree that Super Star's two breaches related to improper payroll records translate into a lower penalty for MDW. The basic violation cited in the Super Star Decision is comparable – the licensee failed to have an electronically generated payroll scheme. I do not find the identification of one or two breaches of a CTS licence from the same conduct automatically increases or decreases an administrative penalty. In other words, the number of breaches does not necessarily equate with the gravity of the breach. I also note, and MDW acknowledges, the previous administrative fine against MDW and absence of a previous administrative penalty against Super Star.
7. I also find MDW's reliance on the Embassy Decision unpersuasive. As identified in that case, the payroll deficiency was limited to a one-month period and there were no previous administrative penalties related to poor record keeping. Furthermore, the wages owed were found to be significant but not excessive. While underpayment of wages can be a grave concern when discovered after a review of a licensee's record keeping, a licensee's failure to produce or maintain proper record keeping can -depending on the specific facts – possibly be a more serious concern since that the absence of proper records keeping can shield a licensee from scrutiny and repayment.
8. Finally, in terms of MDW's compliance with the audit process, I do not agree that I should define co-operation based on what it provided to the auditor during the audit process. The fact remains that MDW's record keeping was deficient and -- based on its submission in response to the Original Decision – it appears that it is still not in compliance with s. 6.10 of its CTS licence. The length of the breach – in this case at least 9 months -- hinders the ability of the auditors to meet the objectives set out in paragraph 16 of the Original Decision. Whatever its reasons, I do not find MDW's failure to have electronically generated payroll records to be evidence of co-operation.

Conclusion

9. Considering all the above, I find that to ensure that MDW maintains proper record keeping, a penalty of \$6,000.00 is warranted.
10. In the result, I hereby order MDW to pay an administrative fine in the amount of \$6,000.00. Section 35(2) of the *Container Trucking 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 ("OBCCTC") a cheque in the amount of \$6,000.00 payable to the Minister of Finance.

11. Finally, I note that MDW may request a reconsideration of the Commissioner's Decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after MDW'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 order 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 7th day of February 2024

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is fluid and cursive, with a large initial "G" and "M".

Glen MacInnes
Commissioner