



February 1, 2024

AMK Carrier Inc.
12431 Horseshoe Way
Richmond, BC V7A 4X6

Commissioner's Decision **AMK Carrier Inc. (CTC Decision No. 03/2024)**

Introduction

1. AMK Carrier Inc. ("AMK") 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"), which became 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 a complaint has been received by the Commissioner.
5. As part of the random audits initiated by the Commissioner, an auditor was directed to audit AMK's records to determine if its directly employed operators (also known as company drivers) and independent operators ("IOs") were being paid the required minimum rates.
6. AMK has been issued two previous administrative penalties. In [AMK Carrier Inc.](#) (CTC Decision No. 14/2018), AMK was found to be in violation of the *Act* and the *Container Trucking Regulation* (the "*Regulation*"). AMK had underpaid its independent operators in fuel surcharge payments and owed \$4,879.16 to its company drivers over a one-year period and \$80,693.89 to eight IOs between September 1, 2015 and February 28, 2018. An administrative penalty of \$10,000 was imposed. In [AMK Carrier Inc.](#) (CTC Decision Notice No. 03/2020), AMK was found to be in violation of the *Act*, *Regulation* and its CTS Licence after it underpaid its drivers the sum of \$4,036.63 over a period of approximately 9 months and improperly deducted \$16,036.17 from IOs over a period of approximately 7 months. AMK was also found to have failed to pay some of the amount outstanding as a result of its earlier audit and to have provided incomplete and falsified pay records to the OBCCTC. An administrative penalty of \$40,000 was imposed.

Audit Report

7. On June 21, 2023, the auditor advised AMK that an audit had been initiated for the period of May 2019 to May 2023 (“Audit Scope”). The auditor randomly selected and requested driver records for pay periods in May and October of 2019, March and October of 2020, June and December of 2021, April and October 2022 and May 2023 (the “Audit Period”).
8. AMK provided the requested driver pay statements by the deadline. AMK did not provide electronically generated records of container trucking services hours and trips for May 2023.
9. The auditor reviewed the payroll records for the company drivers and found no discrepancies between the drivers’ wage statements and the regulated rates with the exception of one driver who had an unexplained deduction of \$250.00 from his wages in May 2019. AMK advised that the deduction was to compensate AMK for damage to its vehicle caused by the driver and that the deduction was mutually agreed.
10. AMK failed to provide electronically generated records for the hours and trips performed by its company drivers in May 2023. The auditor notes that the company drivers were still manually writing their hours on timesheets.
11. The auditor reviewed the payroll records for the IOs and found that an incorrect rate zone was applied to certain trip rates which resulted in an underpayment of \$1,132.22 to 10 IOs during the audit period. AMK agreed with the auditor on this. Furthermore, the auditor noted that AMK combined the Position Movement Rate (“PMR”) and the trip rate in violation of the Rate Order.
12. On November 27, 2023, the auditor submitted an audit report (“Audit Report”) based on her review of the Audit Period which concluded the following:
 - a) AMK improperly deducted \$250.00 to recover damage to an AMK vehicle from a company driver in May 2019 in violation of Schedule 1 Appendix E – Payment of Compensation.
 - b) AMK failed to maintain and provide electronically generated payroll records in May 2023 for company drivers in breach of section 6.10 of the 2022 CTS Licence.
 - c) AMK underpaid 10 IOs a total of \$1,132.22 because an incorrect zone rate was applied to certain trip rates.
 - d) AMK failed to identify the trip rate and the PMR on each wage statement in contravention of the Rate Order.
13. A copy of the Audit Report was provided to AMK on December 12, 2023, and AMK was invited to provide a response no later than January 10, 2024. AMK did not provide a submission by the deadline.

Decision

14. I have reviewed the Audit Report and I accept the uncontroverted findings that during the Audit Period AMK: failed to pay 10 IOs the regulated rates in the sum of \$1,132.22; improperly deducted \$250.00 for a business expense in violation of Schedule 1 Appendix E – Payment of Compensation; failed to maintain electronic payroll records for company drivers in May 2023 in accordance with s. 6.10 of the 2022 CTS Licence; and failed to identify the PMR and trip rate on each of the IO's wage statements in contravention of the Rate Order.
15. 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.
16. AMK has been found to owe relatively small amounts to its drivers over the Audit Period and has been found noncompliant with several record-keeping requirements. Proper record keeping is important in part because it assists the OBCCTC in ensuring that a licensee is compliant, and this was canvassed extensively in AMK Carrier Inc. (CTC Decision No. 03/2020). While not addressed specifically in that decision, I also note the importance of identifying the payment of the PMR on each wage statement; this is also to allow the OBCCTC to ensure that the driver was paid in accordance with established rates, as it the requirement to maintain electronic records. In addition, while the requirement to maintain electronically generated records of drivers' hours and trips has only been in effect for over a year, it was well canvassed and discussed with the industry prior to its implementation on December 1, 2022. In other words, industry was given time to implement the electronic record keeping requirement before it came into effect.
17. 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.
18. Here, I have decided that an administrative penalty of \$15,000.00 is appropriate. In assessing an appropriate penalty, I am mindful that AMK was previously penalized for deficiencies in payroll record keeping, improper payroll deductions, and failures to pay the regulated rates. In this case, I do not find that AMK manipulated the payroll records and the sums owed to drivers are nominal, so I don't find

this is an appropriate case to escalate the fine. However, I find that previous administrative penalties have not achieved the desired effect of generating compliance given that similar, although lesser, misconduct has continued to occur. Additionally, AMK did not implement electronically generated recording keeping for container trucking service hours and trips by December 2022 thus compounding the challenge of ensuring compliance with the established rates.

19. 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 AMK to pay the 10 IOs identified in the Audit Report the sum of \$1,132.22 that is owing for the Audit Period.
 - b. I order AMK to pay the company driver identified in the Audit Report \$250.00 for the improperly deducted business expense.
 - c. I order AMK to review its payroll records for the Audit Scope and to correct the errors that were identified during the Audit Period within 90 days of this decision (including incorrect zones, incorrect deductions) and pay proof of payment of any outstanding amounts owed.
 - d. I order AMK to comply with section 6.10 of its 2022 CTS License within 45 days of the date of this decision.
 - e. I order AMK to clearly identify the PMR rate in accordance with the Rate Order; and
 - f. I propose to impose an administrative fine against AMK in the amount of \$15,000.00.
20. Should it wish to do so, AMK 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.
21. If AMK provides a written response in accordance with the above, I will consider its response and I will provide notice to AMK of my decision to either:
- Refrain from imposing any or all of the penalty; or
 - Impose any or all of the proposed penalty.

This decision will be delivered to AMK and will be published on the OBCCTC's website after AMK's response period has closed (www.obcctc.ca).

Dated at Vancouver, B.C., this 1st day of February 2024.



Glen MacInnes
Commissioner