



April 5, 2024

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

AMK Carrier Inc. (CTC Decision No. 3/2024) – Decision Notice

Background

1. The Office of the BC Container Trucking Commissioner (“OBCCTC”) initiated an audit of AMK Carrier Inc. (“AMK”) and issued an audit report on November 27, 2023 (“Audit Report”) that concluded that AMK had over the nine months sampled between May 2019 and May 2023 (the “Audit Period”):
 - a) improperly deducted \$250.00 to recover damage to an AMK vehicle from a company driver in May 2019 in violation of s. 2 of Schedule 1 Appendix E – Payment of Compensation.
 - b) 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) underpaid 10 IOs a total of \$1,132.22 because an incorrect zone rate was applied to certain trip rates.
 - d) failed to identify the trip rate and the PMR on each wage statement in contravention of the Rate Order.
2. On December 11, 2023, AMK was provided a copy of the Audit Report and invited to provide a submission by January 10, 2024. AMK did not respond.
3. In AMK Carrier Inc. (CTC Decision No. 3/2024) (“Commissioner’s Decision”), I determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 14-18. I proposed to impose an administrative fine against AMK in the amount of \$15,000.00. Consistent with s. 34(2) of the *Container Trucking Act* (“Act”) I advised AMK that I would consider its written response to the proposed penalty if it was received within 7 days of the Commissioner’s Decision issued on January 31, 2024.

Licensee’s Response

4. AMK states that it provided a response to the Audit Report within the specified timeline and provided a copy of that response (“Audit Report Submission”). In both the Audit Report Submission and its response to the Commissioner’s Decision, AMK acknowledges that it misclassified a facility and with the Audit Report Submission AMK provided copies of the cheques paid to each driver in the amounts identified as owing in the Audit Report. In the Audit Report Submission, AMK also advised that it introduced a system that required drivers to tap in and out to record their hours of work and “now we can monitor every day’s total working hours electronically.” In the response to the Commissioner’s Decision, AMK states that it has had this tap

in and tap out system since 2017 but acknowledges one company driver continued to only record his hours manually in May 2023. In the Audit Report Submission, AMK maintained that it was entitled to deduct the repairs from a driver's wages in May 2019 after the driver agreed. AMK provided copies of the invoice from a repair company in the amount of \$1,012.48 with a notation that \$506.24 was to be deducted from the driver's wages. AMK provided an invoice it had earlier provided to the driver showing deductions of \$250.00 for May 16-31, 2019, and \$256.24 for June 1-14, 2019. In its response to the Commissioner's Decision, AMK suggests the improper deductions were inadvertent.

5. AMK believes that the proposed penalty is excessive considering the errors identified in the Audit Report were, in its submission, inadvertent, minor, and immediately corrected when brought to its attention. I am encouraged to consider that an oversight in AMK's payroll system resulted in a driver being improperly deducted an unauthorized amount and an "electronic issue" with AMK's dispatch system resulted in an improper zone assignment that led to the underpayment of IOs. AMK argues that the "clerical" issues resulted in nominal underpayments and were not intentional or malicious.
6. AMK acknowledges it has a prior history of non-compliance but emphasizes its proactive efforts to correct the improper rate zones paid to IOs and to replace handwritten time sheets with an electronic payroll system, and its cooperation during the audit. It says that this is all evidence that it has taken positive steps to ensure compliance with its 2022 CTS licence.

Consideration of Licensee's Response

7. At para. 18 of the Commissioner's Decision, I accounted for the nominal amount AMK owed to the drivers over the Audit Period and the lack of any improper motivation underlying the payroll errors, noting that these factors weighed against an escalating penalty. However, the actual amount owing is still outstanding, and the fact remains that AMK was in breach of the *Act*, the *Container Trucking Regulation*, and its CTS licence and its previous penalties for similar breaches did not have the desired effect of generating future compliance. Administrative penalties are meant in part to ensure that licensees take the necessary steps to ensure that the systems it puts in place and relies on are appropriately kept up and monitored.
8. While I do not find this an appropriate case to escalate the penalty for the reasons set out above and in the Commissioner's Decision, I do not agree that AMK took all of the steps necessary to bring itself into compliance. AMK maintained in its Audit Report Submission that it was entitled to deduct a business cost from a driver's pay despite a strict prohibition set out in s. 2 of Schedule 1 Appendix E – Payment of Compensation of its CTS licence. However, in its response to the proposed penalty, AMK now asserts that the same deduction was the result of a payroll "oversight" and should be treated as such for the purposes of assessing the penalty. Based on the above, I am not prepared to accept that AMK made the deduction in error. In the Commissioner's Decision, I ordered 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 the Commissioner's Decision (including incorrect zones, incorrect deductions) and provide proof of payment of any outstanding amounts owed. AMK will have the opportunity to consider and address the \$256.24 when it does so.

9. AMK was also found not to have an electronic record keeping system for May 2023 as required by s. 6.10 of its CTS licence. I am not prepared to accept AMK's mere assertion that it was compliant with s. 6.10 during the Audit Period with the exception of one driver given that the auditor's findings otherwise, AMK's inconsistent responses on when it first implemented an electronic payroll system and AMK's failure to provide supporting documentation. Since May 2023 has long passed, AMK cannot now introduce a system that electronically generates and maintains the hours and trips each driver performed more than 10 months ago. In other words, while AMK may have brought itself into compliance on a going forward basis, it did not and cannot bring itself into compliance retroactively.
10. Based on the above, I hereby order AMK to pay an administrative fine in the amount of \$15,000.00. Section 35(2) of the *Act* requires that these fines be paid within 30 days of the issuance of this Decision Notice. Payment should be made by delivering to the OBCCTC a cheque in the amount of \$15,000.00 payable to the Minister of Finance.
11. Finally, I note that AMK may request a reconsideration by filing a Notice of Reconsideration with the Commissioner not more than 30 days after AMK's receipt of this Decision Notice. A Notice of Reconsideration must:
 - a. be 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. be 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 5th day of April 2024.



Glen MacInnes
Commissioner