



December 24, 2024

Canada West Warehousing Ltd.
Unit 114 - 1750 Coast Meridian Rd
Port Coquitlam, BC V3C 6R8

Canada West Warehousing Ltd. (CTC Decision No. 17/2024) – Decision Notice

Overview

1. In [Canada West Warehousing Ltd.](#) (CTC Decision No. 17/2024) (“Commissioner’s Decision”) I found that Canada West Warehousing Ltd. (“CWW”) failed to have the proper tracking equipment in its tagged trucks in contravention of section 6.7 of its CTS License and improperly deducting \$175.00 from a trucker’s wages in contravention of section 24 of the *Container Trucking Act* (“Act”) and section 2 of Appendix E to Schedule 1 of the 2022 CTS License. An administrative penalty of \$6,000 was proposed.
2. Consistent with s.34(2) of the Act, CWW was given seven (7) days to provide a written response setting out why the proposed penalty should not be imposed. CWW provided a written argument in response to the proposed penalty within the specified timeframe. I have considered CWW’s submission (“Response”) and provide the following Decision Notice.

CWW’s Response

3. CWW disagrees that the \$175.00 deduction from the independent operator’s (“I/O”) wages was a financial set off or a business cost since the I/O failed to follow procedure and entered the terminal before his scheduled time triggering the flex fee charge. Furthermore, CWW states that the deduction was negotiated and agreed to between CWW and the I/O.
4. CWW does not dispute that it did not have proper tracking equipment during the Audit Period and at least until March 1, 2024, but states that due to its attempt to find the right platform, hiring the right person familiar with the system and complete the appropriate training for office staff and drivers, “the time it took to implement the system was longer than anticipated”.
5. CWW states that the proposed penalty is grossly unfair and should refrain from issuing an administrative penalty considering it did not improperly deduct the wages from the driver and while it took longer to implement its new software, it was eventually put in place and CWW is now compliant with section 6.7 of the CTS License.

Consideration of the Licensee’s Response

6. I am not persuaded to refrain from imposing an administrative penalty and I do not accept CWW’s response that it did not improperly deduct the \$175.00 from a driver’s wages in January 2022 or that it eventually brought itself into compliance with section 6.7 of the CTS Licence and it should not be penalized.

7. As I stated in para. 17 of the Commissioner's Decision, I accepted the undisputed finding of the auditor that the \$175.00 was a business cost incurred by CWW and then deducted from the I/O's wage statement. CWW's response does not seriously challenge those facts surrounding the deduction, albeit it says that it incurred this business cost because of the actions of the IO retained to carry out that container movement. Employees and IO's may make mistakes from time to time and if a third party holds the licensee responsible for those mistakes, then that is the licensee's cost of doing business with that third party. Even if I accepted CWW's position that the business cost was the result of the I/O's failure to follow a procedure at the terminal, the fact is that there is exemption under section 24 of the Act or the CTS License if the business cost was the result of a driver's error. Furthermore, it is trite law that the protections created by the Act are minimum requirements and cannot be waived or contracted out of.
8. I note in Orca Canadian Transport Ltd. (CTC Decision No. 13/2018), that then-Commissioner rejected the premise – like the one advanced by CWW in this case regarding its eventual compliance with section 6.7 of the CTS Licence - 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 efforts and adjustments during or following an audit can be a mitigating factor that must be weighed in assessing a penalty, those efforts 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 at para. 25 of the Commissioner's Decision, I accepted the CWW eventually came into compliance but weighed the fact that it did not have an electronic tracking system over a significant period of time.

Conclusion

10. Having carefully considered CWW's Response, and for the reasons outlined above and in the Commissioner's Decision, I will not refrain from imposing a monetary penalty.
11. In the result, I hereby order CWW to pay an administrative penalty of \$6,000.00. 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 \$6,000.00 payable to the Minister of Finance.
12. Finally, I note that CWW 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.

13. Despite the filing of a Notice of Reconsideration, the above order requiring CWW 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 24th day of December 2024.

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is fluid and cursive, with the first name "Glen" being larger and more prominent than the last name "MacInnes".

Glen MacInnes
Commissioner