June 06, 2025

Forfar Enterprises Ltd.
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Surrey, BC V4A 9Y2

Forfar Enterprises Ltd. (CTC Decision No. 13/2025) – Decision Notice

Introduction

1. In Forfar Enterprises Ltd. (CTC Decision No. 13/2025), ("Commissioner's Decision") I determined that Forfar Enterprises Ltd. ("Forfar") violated section 40 of the *Container Trucking Act* ("Act") when it failed to comply with an order issued on September 19, 2023 (the "Order") and section 25 of the *Act* when it failed to maintain required payroll records for October 2019 as instructed by the auditor on March 21, 2023.

2. In the Commissioner's Decision, an administrative fine in the amount of $5,000.00 was proposed for the reasons set out in paragraphs 25 and 26. Consistent with s. 34(2) of the *Act,* Forfar was given 7 days to provide a written response setting out why the proposed penalty should not be imposed.

3. Forfar provided a response within the timeline.

Forfar's Response

4. Forfar requests that the administrative penalty proposed be reduced or not be issued.

5. Forfar does not dispute that it failed to comply with the Order but states that it overlooked the requirement and that the auditor shares some of the responsibility because she failed to follow up or attempt to enforce the Order within the 30-day deadline.

6. Forfar maintains that its failure to produce the October 2019 payroll records was a result of its misunderstanding that the Order was resolved. It also restates that Forfar was not required to produce the documents because the document request was issued on August 21, 2024 and the October 2019 payroll records exceeded the four-year document maintenance requirement. It also says that were it not for an "act of God" (the November 2021 flooding) it would still have the October 2019 payroll records, and to hold it accountable for matters outside its control would be "cruel".

7. An administrative fine of $3,000.00 was assessed in Forfar Enterprises Ltd. (CTC Decision No. 10/2023) for failing to pay its drivers the regulated rates and failure to have an electronic system. Forfar argues that penalizing it again for the same review period would be excessive.

8. Forfar states that it should be given consideration because it was cooperative at all points during the compliance audit and when it learned that it had failed to comply with the Order it took immediate steps to pay its drivers.

Consideration of Forfar's Response

9. I do not accept that the auditor had any responsibility to either ensure that Forfar understood or even read the Order – much less check in with Forfar to ensure that it had complied with it. Section 40 of the *Act* states that the "person to whom an order under this Act applies must comply with the order." The Order was addressed to Forfar – not the auditor – and it was Forfar's sole responsibility to comply.

10. I am not persuaded by Forfar's argument that it misunderstood the Order and believed it had been resolved. It was incumbent on Forfar to understand that the Order involved reviewing payroll documents and it was required to keep the documents as set out in the March 21, 2023 letter. I set out my reasons why Forfar was required to keep the October 2019 payroll records in the Decision at paragraphs 16 to 17. Forfar provided some additional details about the flood including that it occurred in November 2021 and caused extensive damage, including to two record-keeping computers. In my view, the damage caused was not an act of God, but from a failure of the licensee to prepare for the contingency. Simply put, flooding and damaged computers occur, and it is up to the licensee to take appropriate measures to ensure that copies or backup files are in place.

11. In this case, Forfar is not in breach for failing to pay its drivers the minimum regulated rates, but because it failed to comply with an Order and failed to maintain required records. These breaches are the basis of the proposed administrative penalty.

12. Forfar's failure to read or notice the Order sufficiently is inconsistent with its argument that it was cooperative. Licensees are expected to comply with orders as set out in section 40 of the *Act* and Forfar's failure or neglect to closely read the Order caused delay and cost additional resources to ensure compliance.

Conclusion

13. Having carefully considered Forfar's submissions and for the reasons outlined above and in the Commissioner's Decision, I will not refrain from imposing or reducing the penalty proposed.

14. In the result, I hereby order Forfar to pay an administrative fine in the amount of $5,000. Section 35(2) of the *Container Trucking 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 $5,000 payable to the Minister of Finance.

15. Finally, I note that Forfar may request a reconsideration by filing a Notice of Reconsideration with the Commissioner not more than 30 days after Forfar'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.

16. Despite the filing of a Notice of Reconsideration, the above order remains in effect until the reconsideration application is determined.

17. This Decision Notice along with the Commissioner's Decision will be published on the OBCCTC's website.

Dated at Vancouver, B.C., this 6th day of June 2025.

Glen J MacInnes

Glen MacInnes
Commissioner