

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -

IN THE MATTER OF THE MOTOR VEHICLE TRANSPORT ACT

- and -

IN THE MATTER OF Motor Carrier License No. P00595 and Extra-Provincial Operating License No. XP01078 issued to **STOCK TRANSPORTATION LTD.**

BEFORE: Dawna J. Ring, Q.C., Member

APPLICANT: **STOCK TRANSPORTATION LIMITED**
Michael P. Scott, LL.B

BOARD COUNSEL S. Bruce Outhouse, Q.C.

DECISION DATE: **January 15, 2018**

DECISION: **Charter Services are terminated January 28, 2018, with restrictions and interim conditions. Contract Services due to terminate January 31, 2018 with interim conditions. Board retains jurisdiction to conclude this remedy.**

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I INTRODUCTION

[1] This is the Board's Decision regarding the termination dates and interim terms and conditions, if any, for the Charter and Contract Services of Stock Transportation Limited (Stock).

[2] The Board rendered its Decision of the Show Cause proceedings regarding Stock (M07432) on November 14, 2017 (2017 NSUARB 175 (CanLII)) (SC Decision). The Board found Stock had operated contrary to its Motor Carrier License No. P00595 (MC License 595), Extra-Provincial Operating License No. XP01078 (XP License), *Motor Carrier Act*, R.S.N.S. 1989, c. 292 (MC Act), *Motor Vehicle Transport Act*, R.S.C. 1985, c. 29 (3rd Supp.) (MVT Act), and various *Regulations* and Schedules thereunder.

[3] The resulting Show Cause Order, dated November 20, 2017, stated:

3. All charter services under Schedule F of the Licenses are cancelled. The effective date of cancellation and any interim terms or conditions shall be determined after a hearing to be scheduled by the Board for that purpose.
4. All contract services under Schedule F of the Licenses are cancelled. The effective date of cancellation and any interim terms or conditions shall be determined after a hearing to be scheduled by the Board for that purpose.

[4] The Board retained jurisdiction to hear from counsel before deciding the termination dates and any interim terms for Stock's contract and charter services.

[5] Within the SC Decision, the Board provided its thoughts of January 15, 2018, as the date for the cancellation of the Charter Services and listed a few potential interim conditions until the services terminated (para. 673). The Board proposed the same interim conditions would apply to Contract Services (para. 674).

[6] In its Submissions and documents filed with the Board on November 30, 2017, Stock presented its comments in relation to these two services. Confidentiality was

requested in relation to three of the relevant documents and the Board rendered its decision today, granting this Motion in part.

[7] In the SC Decision, the Board had originally set a process for an oral hearing after hearing from Stock and Board counsel. Board counsel, by letter dated January 12, 2018, and copied to Mr. Scott, opined that Stock's Submissions were sufficient for the Board to fix the termination dates and any interim conditions. Furthermore, he would not be filing any comments with respect to these. Stock did not object. The Board notes Stock's Submissions mainly addressed the termination dates. Consequently, the Board does not find it necessary to hold an oral hearing.

II ISSUES

[8] For the Contract and Charter Services:

1. What date should each service be terminated?
2. What, if any, interim conditions should apply to the services?

III BOARD FINDINGS

1. XP License No. XP01078

[9] Stock confirmed in its Submissions that at the time of November 30, 2017, it was not currently operating any extra-provincial charter or contract services. As a result, the Board finds this License shall be cancelled immediately.

2. MC License 595

(A) Charter Services

(1) Termination Date

[10] In the SC Decision, the Board advised Stock it was considering cancelling these services as of January 15, 2018. This was two months after the date of the issuance of the SC Decision which would give customers time to make arrangements with other licensed carriers in the Province.

[11] In its Submissions, Stock provided its list of charters booked with the Company as of that date (p. 25). These were for services from November 27, 2017, to September 11, 2018. They included 19 charters after November 30, 2017, with two requesting three vehicles each. There were three charters after December 9, 2017, which are to take place on January 26, 27, and 28 of 2018. Their next charter was not until May 10, 2018.

[12] Stock requested the ability to complete all charters up to September 11, 2018. The Board finds this delays the cancellation of its Charter Services by 10 months, instead of the two months anticipated by the Board. Stock argued the reason for this is to provide no interruptions for those who have already secured advance bookings with Stock and also argued it was a more practical method than fixing a specific date. Furthermore, Stock stated any new charters would be diverted to alternate providers. The Board agrees with this last statement.

[13] For the reasons set out below, the Board will permit Stock to complete the three bookings for January 2018.

[14] The Board rejects Stock's arguments. The Board finds there will be no interruption in service. The public will have a further four months or more to make

alternate arrangements with one of the other many carriers providing charter services in the Province.

[15] Stock's charter services were to be terminated. The Board has already provided two months by which alternate arrangements could have been made. The gravity of Stock's conduct was the reason the Board provided the remedy it did. A delay of 10 months for the implementation of that remedy is contrary to the SC Decision.

(2) Interim Conditions

[16] In the SC Decision, the Board informed Stock that it was considering the following interim conditions:

- Stock would only operate single day charters where the driver is on duty for 16 hours or less and driving 12 hours or less;
- For all vehicle movements, Stock will generate and maintain all documents and records including supporting documents for drivers' hours;
- Until January 15, 2018, Stock drivers executing the shorter charters have completed a safety educational program as noted below; and
- Stock may need to subcontract with a licensed motor carrier for the operation of longer charters.

[17] Stock noted the Board referenced these, said it was unclear, but stated:

... Nevertheless, Stock welcomes a discussion with or direction from the Board and is open to any proposed measures that might better ensure that customers receive the highest quality service available.

[Pre-Hearing Brief, p. 26]

[18] As the three remaining charters are within the Province of Nova Scotia, the *Commercial Vehicle Drivers' Hours of Service Regulations* under the *Motor Vehicle Act*, R.S.N.S. 1989, c. 293 as amended (*Regulations*), apply. The Board finds Stock is only permitted to operate these three charters provided the full trip will not require the drivers to be on-duty beyond 14 hours or to drive more than 13 hours. It does not appear any of

these movements exceed those requirements. If they do, then an alternate carrier must be found to conduct the charter(s).

[19] The Board directs Stock to generate and maintain all documents and records required under the *Regulations*, inclusive of those charters within a radius of 160 kilometers (s. 31(2)).

[20] The Board proposed safety education which will be reviewed in more detail for the school bus services (M08468).

[21] On February 1, 2018, the following restriction shall be added to MC License 595:

1. Stock is prohibited from operating charter services.

(B) Contract Services

(1) Termination Dates

[22] Stock's contract to provide transportation services for the Department of National Defence (DND), expired on November 5, 2017. In its Submissions, Stock noted it is no longer providing this service. Furthermore, it was Stock's understanding DND had access to other providers and may have already made alternate arrangements to prevent any service gaps. Stock offered, as an alternative and an interim measure, that the Board grant Stock authority to permit it to resume and provide services for six month, if such services are required by DND.

[23] The gravity of Stock's breaches led the Board to terminate these services. This remedy is to be implemented as early as possible and, therefore, the Board rejects Stock's interim measure to resume services, if required. The Board orders that as Stock

has not provided this service after the termination date of the contract, it is to be removed from Stock's License immediately.

[24] Stock describes its contract services with Nova Scotia Health Authority (NSHA) as a shuttle service between the Victoria General Hospital and the Halifax Infirmary Sites of the Queen Elizabeth II Health Sciences Centre. It operates 24 hours on weekdays, running every 15 minutes, to transport patients, NSHA employees, doctors, documents and specimens between the sites.

[25] The contract ended on June 30, 2017.

[26] In its Submissions, Stock stated that as a result of its review of the Policies and Procedures for the Show Cause matter, it discovered this service was terminated on June 30, 2017, and Stock continued to provide services to NSHA after that date.

[27] Stock stated it attempted, by both email and phone, to have NSHA extend the contract. Copies of the email exchanges began one month before the termination date, on May 29, 2017, and extended through to August 16, 2017 (Tab 28). In the first email Stock's employee stated as follows:

Do you know if the new tender contract has come out yet or when it may be out or who I should ask? Our current contract is up the end of June I believe.

[Submissions, Tab 28, p. 3]

[28] Telephone communications continued after that date on August 31, September 8, October 19 and November 16, 2017.

[29] It was not until November 29, 2017, almost two weeks after the Board issued its SC Decision, that Stock received an Amendment Agreement from NSHA which extended the contract to January 31, 2018, under the same terms and conditions. A copy of it was filed with the Board (Tab 29).

[30] In its Submissions, Stock suggested the following:

1. To avoid any unnecessary interruption of service, Stock be permitted to continue to operate the service for up to one year to provide NSHA ample time to prepare a new contract;
2. NSHA should be permitted to renew a contract with Stock; and
3. Whatever carrier provides the contract services, Stock be permitted to continue service in the interim, if the Board permits.

[31] In the SC Decision, the Board determined that due to the gravity and significance of Stock's breaches and conduct, Stock shall not be permitted to operate contract services. The Board specifically limited Stock to school bus services, subject to a hearing regarding whether any terms and conditions should apply. The Board is not revisiting its SC Decision. As with the Charter Services, the Board intends to implement this remedy as soon as possible.

[32] The Board, therefore, rejects a certificate of authorization for one year for NSHA to prepare a new contract.

[33] When the contract extension ends on January 31, 2018, NSHA will have had two and a half months since the Board's SC Decision to find another carrier to provide the service.

[34] Stock's License will have a similar restriction placed on the MC License prohibiting it from doing any services other than school bus services, specifically prohibiting contract services and charter services. However, due to the NSHA delays to date, the Board will not decide the date the prohibition will be placed on the License until February 1, 2018, and retains jurisdiction to complete the remedy for this service.

(2) Interim Conditions

[35] As this shuttle service is a 24-hour service, drivers' hours are important for safety and quality of these services. Consequently, the first two interim conditions noted above for the contract services equally applies.

[36] The education program also remains a live issue until February 1, 2018.

IV CONCLUSION

[37] After issuing its SC Decision on November 14, 2017, and Order on November 20, 2017, the Board retained jurisdiction to determine the date when the charter and contract services would be terminated and what, if any, interim terms or conditions should be placed on the Licenses.

[38] As Stock was not operating any contract services and had no charters pending, the XP License is cancelled immediately. This means none of Stock's vehicles are permitted to do any extra-provincial transportation services and thus are not permitted to cross the border from Nova Scotia with passengers.

[39] For the MC License 595, the following applies:

Charter Services:

1. Stock is prohibited from conducting any charter services after January 31, 2018;
2. On February 1, 2018, the following restriction shall be added to the License:

Stock is prohibited from operating charter services.

3. The following interim conditions shall be added to the License immediately:

- (1) Stock may only operate charters where the full trip will not cause the drivers to be on-duty beyond 14 hours or drive more than 13 hours; and

- (2) Stock will generate and maintain all documents and records for drivers' hours as required by the *Commercial Vehicle Drivers' Hours of Service Regulations*, inclusive of services conducted within a radius of 160 kilometers (s. 31(2)).

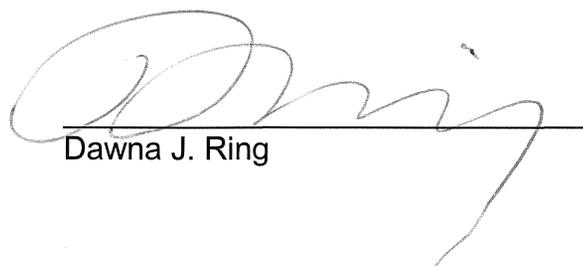
Contract Services:

1. Stock is only permitted to operate contract services with NSHA, which currently expires on January 31, 2018.
2. The following interim conditions shall be added to the License:
 - (1) Stock shall carefully monitor its NSHA contract operations to ensure the drivers are not on-duty beyond 14 hours and do not drive more than 13 hours; and
 - (2) Stock will generate and maintain all documents and records for drivers' hours as required by the *Commercial Vehicle Drivers' Hours of Service Regulations*, inclusive of services conducted within a radius of 160 kilometers (s. 31(2)).

[40] The Board will wait until February 1, 2018, to determine the date when the contract restriction will be added to the License and, if necessary, determine the educational program requirement. The Board retains jurisdiction to conclude this remedy.

[41] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 15th day of January, 2018.


Dawna J. Ring