



April 20, 2017

LEI Cartage Ltd.
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Via email: chris@lei.com
Original to follow via mail

Attention: Mr. Chris Locher

Commissioner's Decision

LEI Cartage Ltd. (CTC Decision No. 08/2017)

Introduction

1. LEI Cartage Ltd. ("LEI") is a licensee within the meaning of the *Container Trucking Act* (the "Act"). Under Sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services are established by Regulation, and a licensee must comply with those statutorily established 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.

2. 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 or not a complaint has been received by the Commissioner.
3. In January of 2017 the Commissioner directed an auditor to audit LEI records to determine if its directly employed operators ("company drivers") were being paid the minimum rates required under the *Act* and the *Container Trucking Regulation* (the "required rates"). The auditor was directed to audit the periods April 1-30, 2014 and October 1-31, 2016 (together, the "Initial Audit Period").

Facts

4. The auditor requested, obtained and reviewed relevant records and determined that during the Initial Audit Period:
 - a. Not all company drivers were paid the required rates *during* the month of April 2014. Seven of the nine drivers employed by LEI in April 2014 were entitled to pay adjustment amounts totaling \$3,729.68.
 - b. All company drivers were paid the required rates during the month of October 2016.

5. During the audit process, LEI advised the auditor that in May of 2014, it conducted a self-audit after becoming aware of the proposed regulated minimum rates. As a result, LEI issued pay adjustments on May 30, 2014 of \$2,529.46, which included an April 28-30, 2014 pay adjustment of \$793.85 for the seven drivers who had been underpaid during the April 2014 month of the Initial Audit Period.
6. In December 2014, LEI conducted another self-audit after becoming aware that the required rates came into effect on April 3, 2014. The second self-audit resulted in another pay adjustment to the seven drivers totaling \$21,558.14, of which \$3,092.50 was for the period April 3 to 27, 2014.
7. In November 2015, LEI conducted a third self-audit after confirming that drivers who had accumulated 2340 hours of container trucking services on behalf of any licensee (rather than on behalf of LEI) were entitled to the minimum pay of \$26.28 per hour. This self-audit resulted in the identification of two drivers who were entitled to a pay increase from \$25.13 to \$26.28 per hour. These drivers were issued pay adjustments totaling \$3,923.57 on November 25, 2015 (money owed for the hourly wage discrepancy between April 2014 and November 2015).
8. The auditor has confirmed that, through self-audit, LEI paid nine company drivers a total of \$28,011.57, \$4,222.27 of which was for April 2014. LEI's adjustment payments the months of the Initial Audit Period were larger than the amount found to be owing by the auditor for April 2014, because LEI did not include the value of benefits in its calculations. Consequently, the auditor found no amount owed as a result of the audit.
9. The audit report concludes with the following summarized findings:
 - a. LEI made best efforts to bring itself into compliance with the *Act* for the retroactive period of April 3, 2014 to December 22, 2014, by issuing two adjustment payments to drivers as a result of self-audits during this period. LEI has been paying the required rates since May 18, 2014, except with respect to two drivers, who it discovered after the third self-audit in November 2015 should have been paid \$26.28 per hour instead of \$25.13
 - b. LEI has been paying its company drivers in accordance with the *Act* and *Regulation* since November 25, 2015, after making a third self-audit adjustment payment to two drivers.
10. In addition, the auditor reports that LEI keeps its records in good order, addressed all auditor requests in a timely manner, and was "courteous and co-operative throughout the audit process."
11. I accept the findings of the auditor and support the auditor's decision to not expand the Initial Audit Period.

Decision

12. As described above, the circumstances of this case can be summarized as follows:
- a. the Commissioner ordered an audit of LEI drivers for the sample periods April 2014 and October 2016;
 - b. In April 2014 not all company drivers were paid the required rates;
 - c. In October 2016 all company drivers were paid the required rates ;
 - d. LEI undertook three self-audits between May 2014 and November 2015 resulting in voluntary adjustment payments made to drivers totaling \$28,011.57, which was sufficient to bring LEI into compliance, including with respect to amounts owing for April 2014;
 - e. since November 25, 2015, LEI has been paying its company drivers hourly rates which meet the requirements of the Act and Regulation; and
 - f. LEI was helpful during the audit process, responded promptly to auditor queries and keeps good records.
13. As LEI has already paid the amounts owing to its drivers for the period prior to November 25, 2015, and corrected its non-compliant payment practices as of that date, I find there is no need to issue an order pursuant to Section 9 of the *Act* requiring the company to pay its company drivers in compliance with the legislation.
14. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's licence or imposing an administrative fine. Under Section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000.
15. The seriousness of the available penalties indicates the gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and independent operators in compliance with the rates established by the legislation (*Act* and *Regulation*). 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. The *Act* does not, however, require penalties to be imposed for non-compliance in all cases. Rather, the Commissioner is granted discretion to impose penalties in appropriate cases. There are many circumstances in which discretion to impose a penalty or penalties is likely to be exercised. These include, but are not limited to, where a licensee:
- does not cooperate fully with an audit or investigation;
 - does not comply with orders or directions given by the Commissioner (or a delegate of the Commissioner, including an auditor);
 - engages in meritless dispute of, or delays in paying, amounts found to be owing; and/or
 - engages in any form of fraudulent, deceptive, dishonest or bad faith behavior with respect to compliance with the requirements of the *Act*, the *Regulation* or a licence.

17. In this case the facts are that LEI undertook three voluntary self-audits between May 2014 and November 2015. Each self-audit was in response to LEI either becoming aware of the proposed regulated rates, reviewing the newly enacted legislation, or being made aware of the proper interpretation of the Regulation regarding hours of container trucking services performed. LEI made immediate adjustment payments to its drivers following its self-audits, which the auditor reports were in some cases higher than required under the legislation. The self-audits brought LEI into compliance for the periods April 2014 through November 2015. Additionally, the audit confirmed that LEI has paid compliant rates to its company drivers since November 25, 2105.
18. I record as well that through its voluntary steps, LEI brought itself into compliance before the January 22nd 2016 deadline imposed by the former Acting Commissioner.¹
19. In addition to taking prompt and pro-active steps to identify and resolve its non-compliant behaviour and to bring itself into compliance, the audit disclosed that LEI keeps proper records and was helpful and responsive during the audit process.
20. In these circumstances, while I record the fact of LEI's non-compliance with the *Act* by way of this decision, as well as LEI's actions to bring itself into compliance, I decline to exercise my discretion to impose a penalty on LEI in this case.
21. This decision will be delivered to LEI and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 20th day of April, 2017.



Michael Crawford, Deputy Commissioner

¹ For an explanation of the January 22nd 2016 deadline imposed by the former Acting Commissioner see Seaville Transportation Logistics Ltd. (CTC Decision No. 12/2016 at paragraphs 25-27).