



August 1, 2017

Supreme Trucking Ltd.
16108 Blundell Road
Richmond, BC V6W 0A2

Via email: tanjit@supremetrucking.ca
Original to follow via mail

Attention: Mr. Tanjit Kalhar

Commissioner's Decision

Supreme Trucking Ltd. (CTC Decision No. 16/2017)

Introduction

1. Supreme Trucking Ltd. ("Supreme") 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.

Facts

3. In January of 2017 the Office of the BC Container Trucking Commissioner ("OBCCTC") received a complaint that a indirectly employed operator working for Supreme not been paid in accordance with the Act and the *Container Trucking Regulation*(the "Regulation"). As a result, the Commissioner directed an auditor to audit Supreme records to determine if its independent operators ("I/O's") and indirectly employed operators ("IEO's") were being paid the minimum rates required under the Act and the Regulation. The auditor was directed to audit the periods September 1-30, 2016 and October 1-31, 2016 ("the audit periods").
4. The auditor requested, obtained and reviewed relevant records and determined that during the audit periods, Supreme's I/O's were paid the regulated hourly rate of \$51.28 and Supreme correctly calculated and paid the required fuel surcharge to its I/O's.
5. A review of the trip sheets for September 2016 indicated that one I/O had engaged a IEO during the September 2016 audit period. The auditor sought proof of payment from Supreme for the IEO and was supplied with a copy of a "Settlement Agreement" in which the I/O and IEO resolved a complaint made under the *Employment Standards Act*. In the "Settlement Agreement" the I/O agreed to pay the IEO the "Settlement Amount" as full and final settlement of all matters under the

Employment Standards Act. Proof of payment was included in the "Settlement Agreement."

6. The audit report concludes by finding Supreme paid rates to its I/O's during the spot audit periods that were substantially compliant with the rates established and required under the Regulation. In addition, the report notes that a complaint regarding the rates paid by a Supreme I/O to an IEO has been resolved through a settlement agreed to by both parties under the Employment Standards Act.
7. I accept the findings of the auditor.

Decision

8. As described above, the circumstances of this case can be summarized as follows:
 - a. the Commissioner ordered an audit of Supreme I/O's for the sample periods September 2016 and October 2016;
 - b. In September 2016 all I/O's were paid the required rates;
 - c. In October 2016 all I/O's were paid the required rates ;
 - d. In September 2016 an IEO disputed rates paid to him by an I/O. This matter was settled by agreement under the *Employment Standards Act*; and
 - e. Supreme was helpful during the audit process, responded promptly to auditor queries and keeps good records.
9. As Supreme has paid the amounts owing to its I/O's for the audit periods, I find there is no need to issue an order pursuant to Section 9 of the *Act* requiring the company to pay its I/O's in compliance with the legislation.
10. I also note CTC Decision No. 04/2016 in which the Commissioner addresses the use of alternate dispute resolution methods as a means of resolving complaints made under the *Act* and the *Regulation*:

"Section 29(2) recognizes that the *Act* does not necessarily require that all complaints be resolved by the OBCCTC. Under the *Act* complainants or their representatives may pursue complaints using other processes and importantly, where they do the Commissioner has the authority to defer to these proceedings or any resulting decisions or awards. In my view the availability of alternative proceedings to resolve complaints serves a number of useful and beneficial purposes. Firstly, access to expedited arbitration or similar processes may result in complaints being resolved more expeditiously. Secondly, the limited resources of the OBCCTC are augmented by recognizing other legitimate approaches to the resolution of complaints. Finally, in some cases, access to arbitration, mediation or the courts may be viewed as a preferred and more well suited means to resolving complaints. Alternative dispute resolution methods such as arbitration and mediation provide an important extension of the means by which complaints under the *Act* and the *Regulation* may be resolved, and I encourage parties to consider using these alternative proceedings where appropriate. Awards and decisions which result are likely to receive deference at the OBCCTC provided that complainants are treated fairly and any outcomes which result are consistent with the principles expressed or implied in the *Act* and the

policies of the OBCCTC. In this case most of the compliance issues have been resolved. To the extent that issues remain outstanding I encourage the parties to use their agreed upon expedited arbitration process before bringing matters to the OBCCTC.”

11. In this case, an alternate dispute mechanism was utilized by a Supreme I/O and IEO to settle a remuneration matter and the issue was resolved by agreement following the complaint made to the OBCCTC by the IEO.
12. As consistent with Commissioner Decision No. 04/2016, I defer to the agreed settlement under the *Employment Standards Act* in this matter as the outcome is “consistent with the principles expressed or implied in the *Act* and the policies of the OBCCTC.”
13. I also record that the audit disclosed that Supreme keeps proper records and was helpful and responsive during the audit process.
14. In these circumstances, I find Supreme substantially compliant with the rates established and required under the *Regulation* and I decline to exercise my discretion to impose a penalty on Supreme in this case.
15. This decision will be delivered to Supreme and published on the Commissioner’s website (www.obcctc.ca).

Dated at Vancouver, B.C., this 1st day of August, 2017.



Michael Crawford, Deputy Commissioner