



August 30, 2017

Jete's Lumber Company Ltd.
1877 Upland Drive
Vancouver, BC V5P 2C5

Deputy Commissioner's Decision Jete's Lumber Company Ltd. (CTC Decision No. 17/2017)

Introduction

1. Jete's Lumber Company Ltd. ("Jete's") 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 Jete's records to determine if its directly employed operators ("company drivers"), indirectly employed operators and independent owner operators ("I/O's") were being paid the minimum rates required under the *Container Trucking Regulation* (the "Regulation"). The auditor was directed to audit the periods April 1-30, 2014 and October 1-31, 2016 (together the "Initial Audit Period").

Initial Audit Period

4. The auditor requested, obtained and reviewed relevant records and determined that during the Initial Audit Period Jete's paid its I/O's and indirectly employed operators the minimum rates required under the *Regulation*. Jete's did not, however, pay its company drivers the minimum rates required under the *Regulation*. The auditor concluded that during the initial audit period Jete's owed 12 company drivers adjustment payments totaling \$571.92. The amounts were owed because Jete's had paid those drivers \$25.13 per hour rather than \$26.28 per hour, but had not demonstrated to the auditor's satisfaction that those drivers had performed less than 2,340 hours of container trucking services in the industry.

Expanded Audit Period

5. Having discovered that Jete's was paying non-compliant rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the entire period from May 15th, 2015 to April 8th, 2017, (the "Expanded Audit Period").¹
6. Under the direction of the auditor, Jete's reviewed its records and calculated the total amounts of compensation its company drivers should have received during the Expanded Audit Period, applying the minimum rates and hours of service required under the Regulation. Comparing this amount to what was actually paid, it was determined that Jete's owed its 24 company drivers adjustment amounts totaling \$16,313,04 (inclusive of the amounts found to be owing during the Initial Audit Period). The auditor reviewed Jete's calculations, spot audited the results and was satisfied that the calculations accurately record the adjustment amounts owing to Jete's company drivers.
7. The auditor further reports that Jete's has accepted that it failed to pay compliant rates during the Expanded Audit Period and that it has now paid out the adjustment amounts calculated to be owing to its drivers. Jete's provided copies of records confirming that the adjustment payments were in fact made as represented.
8. The audit report concludes with the following summarized findings:
 - a. Jete's has now brought itself into compliance with the *Act* for the period May 14, 2015 to April 7, 2017;
 - b. Jete's has been paying its company drivers in accordance with the *Act* and *Regulation* since April 8, 2017; and
 - c. Jete's paid its I/O's in compliance with the legislation.
9. The auditor reports that Jete's was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.

Decision

10. I accept the findings of the auditor.
11. As described above, the circumstances of this case are that:
 - a. the Commissioner ordered an audit of Jete's company drivers, indirectly employed operators and I/O's;
 - b. the audit process disclosed that Jete's paid its I/O's in compliance with the legislation;
 - c. the audit process disclosed that between May 14, 2015 and April 7, 2017 Jete's failed to pay some of its company drivers the minimum rate required under the *Act* and *Regulation* and that adjustments totaling \$16,313.04 were owed to 24 company drivers;
 - d. Jete's has accepted the audit results and has paid the amounts determined to be owing;
 - e. Jete's was co-operative and helpful during the audit process.

¹ The auditor reports that beginning on April 8th, 2017 Jete's updated their payroll system and began to pay all of its drivers the regulated hourly rate of \$26.28 based on their hours of services as per Section 13 of the the *Regulation*.

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- f. since April 8th, 2017 Jete's has been paying its company drivers hourly rates which meet the requirements of the *Act* and *Regulation*;
 - g. Jete's is now substantially compliant with the legislation.
12. As Jete's has paid the amounts owing to its drivers 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.
 13. 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.
 14. 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.
 15. In this case it has been determined that between May 14th 2015 and April 7th, 2017 Jete's failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period Jete's owed 24 company drivers adjustments totaling \$16,313.04. The adjustment payments were required because Jete's had paid some company drivers the lower of the two prescribed rates (\$25.13 per hour rather than \$26.28 per hour) but had not satisfied the auditor the lower rate was applicable to those drivers, as indicated above.
 16. As recorded above, Jete's was cooperative during the audit and immediately conceded its non-compliant behaviors and its failure to pay the required minimum rates. Jete's is now paying compliant rates and it has paid out the adjustment amounts calculated by the auditor to be owing.
 17. Nevertheless, as a holder of a Container Trucking Services Licence, Jete's is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that Jete's ultimately failed to fulfill this obligation. For this reason, I have concluded that an administrative fine is appropriate here.
 18. Regarding the size of the proposed fine, I have applied the relevant penalty quantum factors articulated by Commissioner MacPhail in Smart Choice Transportation Ltd. (CTC Decision No. 21/2016) and, consistent with previous audit decisions of this nature, I have decided that a small administrative penalty of \$3,000.00 is appropriate in this case. The size of this fine is intended to strike a balance between Jete's past non-compliant behaviors while recognizing Jete's cooperation and efforts during the audit process, its immediate and unequivocal acceptance of its non-compliant behaviors and its immediate efforts to bring itself into substantial compliance, both in the past and going forward into the future. For these reasons it is my view that the imposition of a larger fine in this case is unnecessary.

19. In the result and in accordance with Section 34(2) of the *Act*, I hereby give notice as follows:

- a. I propose to impose an administrative fine against Jete's in the amount of \$3,000.00;
- b. Should it wish to do so, Jete's has 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
- c. If Jete's provides a written response in accordance with the above I will consider its response and I will provide notice to Jete's of my decision to either:
 - i. Refrain from imposing any or all of the penalty; or
 - ii. Impose any or all of the proposed penalty.

20. This decision will be delivered to Jete's and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 30th day of August, 2017.



Michael Crawford, Deputy Commissioner