



September 7, 2017

West Coast Freight Ltd.
19675 98th Avenue
Langley, BC V1M 2X5

Deputy Commissioner's Decision West Coast Freight Ltd. (CTC Decision No. 18/2017)

Introduction

1. West Coast Freight Ltd. ("West Coast Freight") 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. The Office of the Commissioner received a complaint on May 26th, 2017 that West Coast Freight was not paying their directly employed operators ("company drivers") in accordance with the Act, specifically that company drivers were paid less than the minimum hourly rates of remuneration required by the legislation. In light of the complaints, the Commissioner directed that an audit be conducted to determine the Companies' compliance with the Act.
4. In June of 2017, the Commissioner directed an auditor to audit West Coast Freight's records to determine if its company drivers 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, 2017 and May 1-31, 2017.

Audit Period

5. West Coast Freight assumed control of a compliant licensee on March 8, 2017. As a result of the short period of time West Coast Freight held a licence, the Audit Period was expanded, covering March 8, 2017 to May 31, 2017 ("the Audit Period").
6. The auditor received from West Coast Freight a copy of the relevant records and determined that during the Audit Period, West Coast Freight did not pay its company drivers the minimum rates

required under the *Regulation*. Specifically, West Coast Freight miscalculated the benefits owed to its company drivers for the purpose of its hourly rate calculation. The auditor calculated that West Coast Freight owed drivers \$4,659.93 for the period March 8th, 2017 to May 31st, 2017. The auditor did, however, note that West Coast Freight had already attempted to calculate additional monies owing to its drivers as a result of the company's conversion from a trip to hourly rate for its employees and had made an adjustment payment prior to the commencement of the audit (the \$4,659.93 amount noted above includes a payment of \$2,143.70 already made by the company).

7. The auditor reports that West Coast Freight accepted that it miscalculated the amounts owing to its company drivers and that it has now paid out all the required adjustment amounts calculated to be owing. West Coast Freight 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. West Coast Freight has now brought itself into compliance with the *Act* for the period March 8th, 2017 to May 31st, 2017;
 - b. West Coast Freight has been paying its company drivers in accordance with the *Act* and *Regulation* since June 1, 2017.
9. The auditor reports that West Coast Freight 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 West Coast Freight's company drivers following a complaint received by the OBCCTC;
 - b. the audit process disclosed that between March 8th, 2017 and May 31st, West Coast Freight failed to pay its company drivers the minimum rate required under the *Act* and *Regulation* and that adjustments totaling \$4,659.93 was owed to company drivers;
 - c. West Coast Freight has accepted the audit results and has paid the amounts determined to be owing including making one payment prior to the commencement of the audit;
 - d. West Coast Freight was co-operative and helpful during the audit process.
 - e. since June 1st, 2017 West Coast Freight has been paying its company drivers hourly rates which meet the requirements of the *Act* and *Regulation*;
 - f. West Coast Freight is now substantially compliant with the legislation.
12. As West Coast Freight 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. 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. In this case, West Coast Freight cooperated fully with the auditor's investigation into the complaint, voluntarily took steps to calculate outstanding amounts owing to its company drivers before accepting the auditor's final calculations and brought itself into compliance. Since June 1, 2017, West Coast Freight has paid its drivers in accordance with the *Regulation*.
16. Considering all of the circumstances of this case, I conclude this is not an appropriate case to issue a penalty. I record the fact of West Coast Freight's non-compliance with the *Act* by way of this decision as well as West Coast Freight's appropriate actions to bring itself into compliance and I have declined to exercise my discretion to impose a penalty on West Coast Freight in this case.
17. This decision will be delivered to West Coast Freight and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 7th day of September, 2017.



Michael Crawford, Deputy Commissioner