

September 11, 2017

Canaan Shipping Co. Ltd.
11371 Twigg Place
Richmond, BC V6V 3C9

Deputy Commissioner's Decision Canaan Shipping Co. Ltd. (CTC Decision No. 19/2017)

Introduction

1. Canaan Shipping Co. Ltd. ("Canaan") 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 April of 2017 the Commissioner directed an auditor to audit Canaan'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 June 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 Canaan paid its I/O's and indirectly employed operators the minimum rates required under the *Regulation*. Canaan also paid its company drivers the minimum rates required under the *Regulation*. However, Canaan failed to pay its I/O's the correct fuel surcharge during the June 2014 audit period (the correct fuel surcharge was paid during the October 2016 audit period). The auditor concluded that during the June 2014 audit period Canaan owed I/O's fuel surcharge adjustment payments totaling \$1,685.92.

Expanded Audit Period

5. Having discovered that Canaan was paying incorrect fuel surcharge compensation during the June 2014 audit period, the auditor expanded the scope of the audit to cover the entire period from April 3, 2014 to July 17, 2017 (the "Expanded Audit Period"). The Expanded Audit Period was later amended to April 3, 2014 to December 31, 2015 for the following reason described by the auditor in their audit report:

As of January 1, 2015, the prescribed fuel surcharge rate dropped to 12% which was lower than the amount paid by Canaan at that date. I reviewed Canaan's supporting documents and confirmed they paid the fuel surcharge rate they claimed. Because as of January 1, 2015 Canaan paid a fuel surcharge that exceeded the prescribed fuel surcharge rate, they were informed they did not have to provide any calculations after January 1, 2015. After January 1, 2015 and up to the date of this audit, Canaan consistently paid their independent operators in excess of the Regulation.

6. Under the direction of the auditor, Canaan reviewed its records and calculated the total amounts of fuel surcharge compensation its I/O's should have received during the Expanded Audit Period applying the correct fuel surcharge calculation required under the *Regulation*. Comparing this amount to what was actually paid, it was determined that Canaan owed its I/O's adjustment amounts totaling \$7,746,22 (inclusive of the amounts found to be owing during the Initial Audit Period). The auditor reviewed Canaan's calculations, spot audited the results, and was satisfied that the calculations accurately record the adjustment amounts owing to Canaan's I/O's.
7. The auditor further reports that Canaan has accepted that it failed to pay the correct fuel surcharge during the Expanded Audit Period and that it has now paid out the adjustment amounts calculated to be owing. Canaan provided copies of records confirming that the adjustment payments were in fact made as represented.
8. The audit report concludes by stating that Canaan has now brought itself into compliance with the *Act* for the period April 3, 2014 to July 17, 2017.
9. The auditor reports that Canaan 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 Canaan's company drivers, indirectly employed operators and I/O's;
 - b. the audit process disclosed that between April 3, 2014 and December 31, 2015 Canaan failed to pay its I/O's the correct fuel surcharge required under the *Act* and *Regulation* and that adjustments totaling \$7,746.22 were owed to 3 I/O's;

- c. Canaan has accepted the audit results and has paid the amounts determined to be owing;
 - d. Canaan was co-operative and helpful during the audit process; and
 - e. Canaan is now substantially compliant with the legislation.
12. As Canaan has paid the amounts owing to its I/O's 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.
 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 April 3, 2014 and December 31, 2015 Canaan failed to comply with the minimum fuel surcharge required under the *Act* and *Regulation*. The audit findings indicate that over this period Canaan owed 3 I/O's adjustments totaling \$7,746.22.
 16. As recorded above, Canaan was cooperative during the audit and immediately conceded its non-compliant behaviors and its failure to pay the required fuel surcharge. In addition, not only is Canaan now paying the correct fuel surcharge, 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, Canaan is responsible to know its obligations under the *Act* and to pay its drivers compliant rates, including the correct fuel surcharge. This audit makes clear that Canaan 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 I have decided that a small administrative penalty of \$1,500.00 is appropriate in this case. The size of this fine is intended to strike a balance between Canaan's past non-compliant behaviors while recognizing Canaan's cooperation during the audit process, its historic and current payments of the legislated rates, its immediate and unequivocal acceptance of its non-compliant behaviors and its efforts to bring itself into substantial compliance. For these reasons it is my view that the imposition of a larger fine in this case is unnecessary to deter future non-compliance.

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 Canaan in the amount of \$1,500.00;
- b. Should it wish to do so, Canaan has 7 days from receipt of this notice to provide the Deputy Commissioner with a written response setting out why the proposed penalty should not be imposed;
- c. If Canaan provides a written response in accordance with the above I will consider its response, and I will provide notice to Canaan 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 Canaan and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 11th day of September, 2017.



Michael Crawford, Deputy Commissioner