



September 25, 2017

Sunlover Holding Co. Ltd.
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Surrey, BC V3W 0X1

Deputy Commissioner's Decision Sunlover Holding Co. Ltd. (CTC Decision No. 22/2017)

Introduction

1. Sunlover Holding Co. Ltd. ("Sunlover") 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 26 of the Act, any person may make a complaint to the British Columbia Container Trucking Commissioner (the "Commissioner") that a licensee has contravened a provision of the Act. Under Section 29, the Commissioner reviews such complaints and, under Section 31, may conduct an audit or investigation to ensure compliance with the Act, the *Container Trucking Regulation* (the "Regulation") or a licence. The Commissioner may initiate an audit or investigation under Section 31 whether or not a complaint has been received.

Facts

3. On May 4th, 2017, the Commissioner, in *Sunlover Holding Co. Ltd.*, CTC Decision No. 10/2017 ("Sunlover #1"), found Sunlover was not in compliance with the Act and the Regulation with respect to hourly wages owed to its directly employed operators ("Company Drivers"). In the decision, the Commissioner ordered Sunlover to:
 - immediately take all necessary steps to bring itself into compliance with the requirements of the Act and Regulation as interpreted in this decision;
 - immediately pay its Company Drivers the \$45,796.95 adjustment amount found by the auditor to be owing to its Company Drivers; and
 - meet with an auditor by no later than the 9th day of June, 2017 and demonstrate to the auditor's satisfaction that it has taken all necessary steps to bring itself into compliance with the legislation and that it has paid all adjustment amounts owing to its Company Drivers.

4. On June 9th, 2017, Sunlover provided an auditor with copies of driver pay stubs and cheque images for each of the Company Drivers owed adjustment amounts under *Sunlover #1*. The auditor asked Sunlover to provide evidence that the drivers received the cheques and on July 13th, 2017, Sunlover provided copies of cancelled cheques that had cleared its bank account. At that time, 24 of the 47 cheques had cleared. On July 14th, 2017, Sunlover closed the bank account from which all of the adjustment amount cheques were issued, resulting in 23 drivers not receiving adjustment amounts totaling \$11,760.13 owed to them under the Order given in *Sunlover #1*.
5. In the meantime, in June of 2017, the Office of the BC Container Trucking Commissioner (“OBCCTC”) received complaints from Sunlover’s Independent Operators (“I/O’s”) that they were not being paid in accordance with the *Act*. Specifically, I/O’s complained that Sunlover had missed payroll during the period March 2017 and June 2017. The OBCCTC also received a complaint from a Company Driver in July 2017 about a pay cheque from Sunlover not clearing the bank.
6. In light of the complaints received by the OBCCTC in June and July 2017, an audit was conducted to determine Sunlover’s compliance with the *Act* during the period March through June 2017 (the “Audit Period”). The audit focused on the question of whether cheques made out by Sunlover to its drivers were clearing the bank, such that Company Drivers and I/Os received their payment owing under the legislation.
7. Because of difficulties the auditor was having in obtaining documents confirming compliance from Sunlover, on July 27, 2017, the Deputy Commissioner ordered Sunlover to provide evidence that the outstanding 23 cheques issued further to *Sunlover #1* had cleared the bank and evidence that all current and previously employed Sunlover I/O’s had been compensated for services performed during the Audit Period (“the Deputy Commissioner’s Order”).
8. At Sunlover’s request, the auditor provided Sunlover’s bank with a listing identifying all cheques written by Sunlover to I/O’s and Company Drivers during the Audit Period. The auditor compared the bank’s list with the list provided to the bank and found that 22 cheques had not cleared (in addition to the outstanding cheques issued further to *Sunlover #1*).
9. The auditor has determined that during the Audit Period, Sunlover failed to pay one I/O \$3,819.15 in March 2017 and two I/O’s a total of \$11,599.98 in April 2017 due to paycheques not clearing the bank.
10. The auditor reported that, at the time of issuing the audit report, all of Sunlover’s cheques for I/O’s for June 2017 had cleared the bank, but Sunlover was in arrears to their I/O’s for the July 2017 payroll.
11. The auditor also determined that during the Audit Period, Sunlover failed to pay 11 Company Drivers \$27,389.90 in May 2017 and one Company Driver \$1,650.00 in June 2017 due to paycheques not clearing the bank. On September 19th, 2017, Sunlover advised the auditor that it had re-issued some May 2017 cheques for its employee drivers. The auditor has confirmed that nine of those cheques have cleared the bank. At the time of this Decision, Sunlover owes Sunlover owes its Company Drivers \$8,577.62 for the May 2017 and June 2017 periods.

12. On August 31, 2017, Sunlover's bank advised the auditor that one of the 23 outstanding cheques owed to a Company Driver under *Sunlover #1* had cleared Sunlover's account, bringing the new total of adjustment amounts owing under the Decision to \$10,322.75 owed to 22 drivers.
13. In June 2017, the OBCCTC received a phone call complaining that Sunlover had not distributed wait time payments issued by the Port of Vancouver to its I/O's. Upon request, the Port of Vancouver provided the OBCCTC with a record of the last two wait time payment distributions made to Sunlover:

Wait Time Payment Period	Date of Payment to Sunlover	Amount
Sept 1 – Dec 31, 2016	Feb 24, 2017	\$775.00
Jan 1 – Feb 28, 2017	May 16, 2017	\$1,735.00
		\$2,510.00

14. Section 24 (2) of the *Regulation* states:

A licensee must pay remuneration, wait time remuneration or fuel surcharge owed to an independent operator no later than 30 days after the end of the calendar month in which the independent operator performed the container trucking services for which the remuneration, wait time remuneration or fuel surcharge is owed.

15. On August 19, 2017, the auditor asked Sunlover about the outstanding wait time payments. Sunlover responded by email on August 24th, 2017, stating that they had not distributed either wait time payments to their I/O's. Sunlover immediately prepared cheques totaling \$2,510.00 and provided copies of the cheque images to the auditor. The auditor contacted two drivers on September 7th, 2017 to confirm receipt of the wait time payment cheques. Both drivers stated that they had not received the cheques.

Decision

16. I accept the findings of the auditor.

17. As described above, the circumstances of this case are that:

- In *Sunlover #1*, the Commissioner ordered Sunlover to bring itself into compliance with the legislation, including by immediately paying its Company Drivers adjustment amounts totalling \$45,796.95, and by demonstrating to an OBCCTC auditor that it had done so by June 9th, 2017;
- Sunlover has failed to demonstrate to the satisfaction of the auditor that it had paid all of its Company Drivers the adjustment amounts owing under *Sunlover #1*. The auditor found a total of \$10,322.75 remained outstanding to 22 Company Drivers;

- In light of complaints of missed payrolls and cheques made out to drivers by Sunlover not clearing the bank, the Commissioner ordered an audit of Sunlover's payments to I/O's and Company Drivers for the period May to June 2017 (the "Audit Period");
- the audit disclosed that Sunlover has failed to pay its I/O's and Company Drivers in accordance with the *Act* during the Audit Period;
- The auditor calculates that a total of \$15,419.13 is owed to I/O's for the Audit Period and \$8,577.62 to Company Drivers is now owed for the Audit Period. Together with the remaining \$10,322.75 outstanding from *Sunlover #1*, the auditor advised that these amounts came to a total of \$34,319.50;
- Sunlover also has not paid \$2,510.00 in wait time payments owing to its I/O's as set out above; and
- Sunlover has not paid the amounts owing to its drivers under either Order or during the Audit Period.

18. As Sunlover has not paid the amounts owing to its drivers under the legislation, or complied with the Commissioner's Order or Deputy Commissioner's Order, I make the following Order pursuant to Section 9 of the *Act*.

I hereby order Sunlover to:

- a. comply with the *Sunlover #1* Order and the Deputy Commissioner's Order, and pay forthwith, and in any event no later than October 10th, 2017, the 22 Company Drivers owed \$10,322.75 for container trucking services performed between December 22nd, 2014 and July 31st, 2016;
- b. pay forthwith, and in any event no later than October 10th, 2017, the wait time payment amounts totaling \$2,510.00 owing to I/O's; and
- c. meet with an auditor by no later than October 10th, 2017 and provide to the auditor evidence that bank drafts have been provided to each driver owed money under this Order along with a breakdown of the bank draft amount for each driver.

19. On October 10th, 2017, I propose the following penalty under Section 34 of the *Act*:

that Sunlover's Container Trucking Services Licence No. 60040(2016) be suspended effective October 10th, 2017 and remain suspended until such time as Sunlover complies with the above Orders.

20. In addition to the above Orders, I further order Sunlover to:

- a. pay forthwith, and in any event no later than October 25th, 2017, the amounts totaling \$23,996.75 found by the auditor to be owing to I/O's and Company Drivers as a result of missed payroll; and
- b. meet with an auditor by no later than October 25th, 2017 and provide to the auditor evidence that bank drafts have been provided to each driver owed money under this Order along with a breakdown of the bank draft amount for each driver.

21. Failure to comply with this Order will be viewed as serious non-compliance with the *Act*. Should Sunlover not comply with the above Order, under Section 34 of the *Act* the Commissioner or delegate may impose a penalty on the licensee. Based on the egregious facts in this case, the available penalties will all be considered, including cancellation of Sunlover's licence.
22. I am also directing the auditor to complete the audit by reviewing Sunlover's I/O records for the periods March – June 2017 to determine if Sunlover's I/O's have been paid the correct amount of remuneration required by the legislation.
23. In addition, and for the reasons which follow, I find it is appropriate to impose a penalty on Sunlover for its non-compliance to date with the Commissioner's Order in *Sunlover #1* and the Deputy Commissioner's Order.
24. As demonstrated above, Sunlover has failed to satisfy the auditor that each Company Driver owed money under *Sunlover #1* has been paid. On July 14th, 2017, Sunlover closed the bank account from which all of the *Sunlover #1* cheques were issued, resulting in 22 drivers having not received \$10,322.75 of money owed to them under the Decision.
25. Confirmation of compliance with *Sunlover #1* and the most recent audit process has been impeded and prolonged by Sunlover's failure to provide fulsome records in a timely way. The Deputy Commissioner was required to order Sunlover to produce records following a missed deadline and the provision of incomplete records. Further, Sunlover chose to only partially comply with the Deputy Commissioner's Order to produce the required records and only provided evidence that the 23 cheques issued to Sunlover employees under *Sunlover #1* had cleared the bank. Adjustment amounts owing to its Company Drivers remain outstanding.
26. The auditor has determined that Sunlover has missed several payrolls in 2017 and, to date, owes its I/O's for the March, April and July 2017 payrolls and a Company Driver for the June 2017 payroll only after paying its Company Drivers for the May 2017 payroll in September 2017.
27. Sunlover was found to be in violation of Section 24 (2) of the *Regulation* and Appendix E to Schedule 1 of the Container Trucking Services Licence as a result of failure to distribute wait time payments issued by the Port of Vancouver to its I/O's.
28. In these circumstances of significant and prolonged non-compliance with the legislation, I have concluded that an administrative fine is appropriate here. 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 decided that an administrative penalty of \$40,000.00 is appropriate in this case. The significant size of this fine reflects Sunlover's ongoing failure to comply with Orders made by the Commissioner and Deputy Commissioner and its ongoing failure to comply with the terms of its Container Trucking Services Licence and the *Act*. I note that Sunlover paid the \$7,000.00 administrative fine imposed in *Sunlover #1*; however, it is clear that the previous administrative fine was insufficient to deter Sunlover from further non-compliance. The purpose of the fine is also one of general deterrence; to send the message to the community that non-compliance with Orders will not be tolerated.

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

- a. In addition to the suspension of licence Order contained in paragraph 19 above;
- b. I propose to impose an administrative fine against Sunlover in the amount of \$40,000.00;
- c. Should it wish to do so, Sunlover has 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalties should not be imposed; and
- d. If Sunlover provides a written response in accordance with the above I will consider its response and I will provide notice to Sunlover of my decision to either:
 - i. Refrain from imposing any or all of the penalties; or
 - ii. Impose any or all of the proposed penalties.

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

Dated at Vancouver, B.C., this 25th day of September, 2017.



Michael Crawford, Deputy Commissioner