



October 10, 2017

Team Transport Services Ltd.
8970 River Road
Delta, BC, V4G 1B5

Deputy Commissioner's Decision Team Transport Services Ltd. (CTC Decision No. 25/2017)

Introduction

1. Team Transport Services Ltd. ("Team") 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 July of 2017 the Commissioner directed an auditor to audit Team's records to determine if its 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 November 1-30, 2014 and March 1-31, 2017 (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, Team did not pay its I/O's the correct rates required under the *Regulation*. The auditor concluded that during the initial audit period Team owed three I/O's adjustment payments totaling \$637.54 for container trucking services undertaken in 2014 (Team was found to be compliant in the March 2017 period). The amounts were owed because Team paid round trip rates during the period April to December 2014. Upon review of its records, Team determined that, due to round trip payments in 2014, it had paid in excess of the minimum legislated rates for off-dock container moves. As such, Team was of the opinion that that excess payments compensated for some underpayments which also resulted from the payment of round trips.
5. Team was advised by the Office of the BC Container Trucking Commissioner (OBCCTC) auditor that the regulated rates are minimums and excess payments may not be offset against underpayments.

Expanded Audit Period

6. Having discovered that Team had attempted to offset underpayments during the Initial Audit Period, the auditor expanded the scope of the audit to cover the entire period from April 3, 2014 to December 31, 2014 (the "Expanded Audit Period").¹
7. Under the direction of the auditor, Team reviewed its records and calculated the total amounts of compensation its I/O's should have received during the Expanded Audit Period, applying the minimum rates required under the *Regulation*. Comparing this amount to what was actually paid, it was determined that Team owed its four I/O's adjustment amounts totaling \$8,470.78 (inclusive of the amounts found to be owing during the Initial Audit Period). The auditor reviewed Team's calculations, spot audited the results and was satisfied that the calculations accurately record the adjustment amounts owing to Team's I/O's.
8. The auditor further reports that Team has accepted that it failed to pay the correct rates during the Expanded Audit Period and that it has now paid out the adjustment amounts calculated to be owing to its drivers. Team provided copies of records confirming that the adjustment payments were in fact made as represented.
9. The audit report concludes with the following summarized findings:
 - a. Team has now brought itself into compliance with the *Act* for the period April 3, 2014 to April 1, 2017; and
 - b. Team has been paying its I/O's in accordance with the *Act* and *Regulation* since April 1, 2017; and
10. The auditor reports that Team was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.

Decision

11. I accept the findings of the auditor.
12. As described above, the circumstances of this case are that:
 - a. the Commissioner ordered an audit of Team's I/O's;
 - b. the audit process disclosed that between April 3, 2014 and December 31, 2014 Team failed to pay its I/O's the correct rates required under the *Act* and *Regulation* and that adjustments totaling \$8,470.78 were owed to four I/O's;
 - c. Team has accepted the audit results and has paid the amounts determined to be owing;
 - d. Team was co-operative and helpful during the audit process.
 - e. since January 1, 2015 Team has been paying its I/O's trip rates which meet the requirements of the *Act* and *Regulation*;
 - f. Team is now substantially compliant with the legislation.

¹ The auditor reports that effective January 2015, Team ceased paying round trip rates and began to pay all of its I/O's trip rates pursuant to the *Regulation*.

13. As Team 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 I/O's in compliance with the legislation.
14. 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.
15. 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.
16. In this case it has been determined that between April 1, 2014 and December 31, 2014 Team failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period Team owed four I/O's adjustments totaling \$8,470.78. The adjustment payments were required because Team had paid round trip rates during the period was of the opinion that that excess payments compensated for some underpayments which also resulted from the payment of round trips.
17. As recorded above, Team was cooperative during the audit and immediately conceded its non-compliant behaviors and its failure to pay the required minimum rates. Team is now paying compliant rates and it has paid out the adjustment amounts calculated by the auditor to be owing.
18. Nevertheless, as a holder of a Container Trucking Services Licence, Team is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that Team ultimately failed to fulfill this obligation. For this reason, I have concluded that an administrative fine is appropriate here.
19. 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 \$1,500.00 is appropriate in this case. The size of this fine is intended to strike a balance between Team's past non-compliant behaviors while recognizing Team'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. For these reasons it is my view that the imposition of a larger fine in this case is unnecessary.

20. 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 Team in the amount of \$1,500.00;
- b. Should it wish to do so, Team 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 Team provides a written response in accordance with the above I will consider its response and I will provide notice to Team 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.

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

Dated at Vancouver, B.C., this 10th day of October, 2017.



Michael Crawford, Deputy Commissioner