



December 12, 2017

Raja Road Rail Services Ltd.
Trans BC Freightways Ltd.
400 Ewen Avenue
New Westminster, BC V3M 5B2

Commissioner's Decision

Raja Road Rail Services Ltd. & Trans BC Freightways Ltd.

CTC Decision No. 31/2017

**(Application for Reconsideration of CTC Decision No. 27/2017 and
Penalty Decision Notice No. 27/2017)**

I. Nature of Application

1. Raja Road Rail Services Ltd. & Trans BC Freightways Ltd. (together, "the Companies") apply under Section 39 of the *Container Trucking Act* (the "Act") for a reconsideration of CTC Decision No. 27/2017 (the "Original Decision").

II. Introduction

2. On December 6th, 2017 the Companies filed an application for reconsideration of the Original Decision. Specifically, the Companies' seek to have me reconsider my position that the Companies did not adequately determine if drivers hired by the Companies at a \$25.13 rate of pay were entitled to the higher rate of \$26.28.

3. In the Original Decision I found:

"...that between April 3, 2014 and August 31, 2017 the Companies failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period the Companies owed five company drivers adjustments totaling \$1442.71. The adjustment payments were required because the Companies had paid five of its company drivers the lower of the two prescribed rates (\$25.13 per hour rather than \$26.28 per hour).

And proposed that a \$500.00 administrative fine be imposed.

4. In assessing the appropriate administrative penalty to be issued, I considered and applied the factors outlined in *Smart Choice Transportation Ltd.* (CTC Decision No. 21/2016). In particular, I assessed the appropriate administrative penalty based on the following facts which I considered to be relevant to the Smart Choice Transportation factors:
 - a. The Companies failed to pay some of its company drivers compliant hourly rates over approximately a three year period, which caused financial harm to those drivers; and
 - b. The Companies fully cooperated with the auditor during the investigation.
5. On November 17th, 2017, I issued a Decision Notice confirming the proposed penalty and ordering the Companies to pay an administrative penalty of \$500.00.
6. Although the Companies have paid the administrative penalty as ordered, the Companies invite me to reconsider my decision to impose an administrative penalty and refund the penalty paid by the Companies. In doing so, the Companies argue that the penalty should not have been levied as the Companies paid the correct hourly rate.

III. Decision

7. The purpose of penalties under the *Container Trucking Act* and the factors which will be considered were outlined in *Smart Choice Transportation Ltd.* (CTC Decision No. 21/2016) and referenced at paragraph 19 of the Original Decision:

“The administrative penalties made available under Section 34 of the *Act* and Section 28 of the *Regulation* are designed to encourage compliance with the *Act* and *Regulation*. Penalties are intended to have a general and specific deterrence purpose – that is, to protect drivers and to discourage non-compliance with the legislation.

To ensure that licensees receive the appropriate deterrent message, the amount of any financial penalty must be sufficiently large to meet the objective of deterring non-compliance. The large financial penalties available under the *Act* and *Regulation* demonstrate an intention to ensure that administrative fines are not seen by licensees as merely another cost of doing business or part of the licensing costs.

In keeping with the above described purpose of the legislation the factors which will be considered when assessing the appropriate administrative penalty include the following:

- The seriousness of the respondent’s conduct;
- The harm suffered by drivers as a result of the respondent’s conduct;
- The damage done to the integrity of Container Trucking Industry;
- The extent to which the Licensee was enriched;
- Factors that mitigate the respondent’s conduct;

- The respondent's past conduct;
- The need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of having a Container Trucking Services Licence;
- The need to deter those Licensees from engaging in inappropriate conduct, and
- Orders made by the Commission in similar circumstances in the past.

This list is not intended to be exhaustive. (Paras. 25-27)

8. In the Original Decision, I concluded that an administrative penalty of \$500.00 was necessary to achieve the described purposes and was arrived at after carefully assessing and considering the Smart Choice factors. Having carefully considered the Companies' application for reconsideration, I am not persuaded to reconsider my original decision.
9. The Companies argue two points:
 1. Section 13 of the *Container Trucking Regulation* ("the *Regulation*") should be interpreted to mean that a licensee must pay a directly employed operator either \$25.13 or \$26.28 per hour if the directly employed operator has performed less or more than 2,340 hours of "container driving to and from the port" (the Companies quote); and
 2. Incentives given to the Companies' drivers should have been included in the auditor's calculation of the hourly rate paid by the Companies.

Section 13, Container Trucking Regulation

10. Section 13 states that a licensee must pay a directly employed operator an amount equal or greater to either \$25.13 or \$26.28 per hour, inclusive of benefits, if the directly employed operator has performed less than or more than 2,340 hours of **container trucking services** on behalf of **any licensee**.
11. The *Act* defines "container trucking services":

"container trucking services" means the transportation of a container by means of a truck."
12. The *Regulation* defines "Lower Mainland" as the geographic area of British Columbia within the borders of the listed municipalities, as they existed on December 1, 2014.
13. In *Forfar Enterprises Ltd.* (CTC Decision No. 20/2016) the Commissioner found that the rate protections set out in Section 13 of the *Regulation* "apply to all container trucking services performed by company drivers employed by licensees including off-dock trips." The definition of container trucking services, therefore, is not restricted to "container driving to and from the port" as argued by the Companies. As such, the calculation of hours of service for the purpose of fulfilling the requirement of Section 13 of the *Regulation* include on and off-dock work within the Lower Mainland as defined in the *Regulation*.

14. In TMS Transportation Management (CTC Decision No. 06/2016) the Commissioner ruled that in determining the correct hourly rate for the purpose of an audit, if a licensee “provides evidence satisfactory to the Commissioner’s auditor that a company driver has worked less than 2,340 hours for any licensee, audits are done at the \$25.13/hour rate for that driver. Otherwise audits are done to the \$26.28/hour rate.”
15. As outlined in the Original Decision, during the Initial Audit, the Companies did not identify the number of hours of container trucking services undertaken by the company drivers; therefore, the auditor calculated each drivers’ hourly rate at \$26.28 per hour, consistent with previous rulings of the Commissioner. For the Expanded Audit Period, the Companies reviewed their records and concluded that they had incorrectly paid the lower hourly rate (\$25.13) to five of its drivers. The auditor confirmed this conclusion which I accepted in the Original Decision.

Incentive Pay

16. Office of the BC Container Trucking Commissioner (“OBCCTC”) auditors have conducted several audits that have given rise to considerations regarding bonuses and incentive pay.¹ OBCCTC auditors have been instructed by the OBCCTC that bonuses are not benefits but are included in the calculation of remuneration.
17. In case of this audit, I am advised by the auditor that during the Initial Audit Period, there was no indication of incentive pay in the Companies’ payroll. However, during the Expanded Audit Period, the Companies’ self-audit included some amounts paid as incentives, which the auditor correctly considered to be bonuses and were therefore allowed to be included in the calculation of hourly pay.

Conclusion

18. For these reasons, I confirm my decision to impose a \$500.00 administrative penalty and hereby dismiss the Companies’ application for reconsideration.

Dated at Vancouver, B.C., this 12th day of December, 2017.



Michael Crawford, Commissioner

¹ See for example: *Forfar Enterprises Ltd.* (CTC Decision No. 20/2016); *Smart Choice Transportation Ltd.* (CTC Decision No. 21/2016); and *ProWest Trucking Ltd.* (CTC Decision No. 06/2017)