

February 5, 2018

Intertran Holdings Ltd.  
13560 Mitchell Road  
Richmond, BC V6V 1M8

## **Commissioner's Decision**

### **Intertran Holdings Ltd.**

### **(CTC Decision No. 04/2018)**

#### **Introduction**

1. Intertran Holdings Ltd. ("Intertran") is a licence holder 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 Intertran'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 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 November 2014, Intertran paid its company drivers the minimum trip rates required under the *Regulation*. In March 2017, Intertran paid its company drivers \$25.13 per hour. After discussing the audit findings with Intertran, Intertran confirmed that its company drivers had met or exceeded the required number of hours of container trucking services to warrant an hourly payment of \$26.28 per hour in March 2017. Therefore, the auditor calculated each driver's hourly rate in March 2017 at \$26.28 per hour and informed Intertran of his findings.

#### **Expanded Audit Period**

5. Having established that Intertran did not pay its company drivers the correct hourly rate in

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March 2017, the auditor expanded the scope of the audit to cover the period from May 1, 2015 (the date Intertran began paying its drivers an hourly rate) to December 31, 2017 (the “Expanded Audit Period”).

6. Under the direction of the auditor, Intertran reviewed its records and concluded that ten company drivers were owed \$2,511.77 (inclusive of the amount found owing by the auditor for March 2017). The auditor confirmed Intertran’s calculations and reports that Intertran has now paid out all the required adjustment amounts calculated to be owing and provided copies of records confirming that the adjustment payments were in fact made as represented.
7. The audit report concludes by noting that Intertran was found to be paying the correct minimum trip rates prior to May 1, 2015 and has now brought itself into compliance with the *Act* for the period May 1, 2015 to December 31, 2017. The auditor reports that Intertran was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.

### Decision

8. As described above, the circumstances of this case are that:
  - a. the Commissioner ordered an audit of Intertran’s company drivers;
  - b. the audit process disclosed that between May 1, 2015 and December 31, 2017, Intertran failed to pay ten of its company drivers the correct minimum rate required under the *Act* and *Regulation* and that adjustments totaling \$2,511.77 was owed to company drivers;
  - c. Intertran has accepted the audit results and has paid the amounts determined to be owing;
  - d. Intertran was co-operative and helpful during the audit process; and
  - e. Intertran is now substantially compliant with the legislation.
9. As Intertran 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.
10. 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.
11. 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.
12. In this case it has been determined that between May 1, 2015 and December 31, 2017 Intertran

failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period, Intertran owed ten company drivers adjustments totaling \$2,511.77. The adjustment payments were required because Intertran paid ten of its company drivers the lower of the two prescribed rates (\$25.13 per hour rather than \$26.28 per hour).

13. As recorded above, Intertran was cooperative during the audit and conceded their non-compliant behaviors and their failure to pay the required minimum rates. Intertran is now paying compliant rates and have paid out the adjustment amounts calculated by the auditor to be owing.
14. Nevertheless, as a holder of a Container Trucking Services Licence, Intertran is responsible to know their obligations under the *Act* and to pay their drivers compliant rates. This audit makes clear that Intertran ultimately failed to fulfill this obligation. For this reason, I have concluded that an administrative fine is appropriate here.
15. Regarding the size of the proposed fine and, consistent with previous audit decisions of this nature, I have decided that a small administrative penalty of \$500.00 is appropriate in this case. The size of this fine is intended to strike a balance between Intertran's non-compliant behaviors while recognizing their efforts to pay a legislated hourly rate; the correct payment of trip rates; their cooperation and efforts during the audit process; their acceptance of their non-compliant behaviors; and their efforts to bring themselves into substantial compliance, both in the past and going forward into the future. For these reasons it is my view that the imposition of a larger fine in this case is unnecessary.
16. 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 Intertran Holdings Ltd. in the amount of \$500.00;
  - b. Should it wish to do so, Intertran Holdings Ltd. 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 Intertran Holdings Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to Intertran Holdings Ltd. 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.
17. This decision will be delivered to Intertran Holdings Ltd. and published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 5<sup>th</sup> day of February, 2018.



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Michael Crawford, Commissioner