



March 6, 2018

Aquatrans Distributors Inc.
101 – 5355 152 Street
Surrey, BC V3S 5A5

Commissioner's Decision

Aquatrans Distributors Inc. (CTC Decision No. 06/2018)

Introduction

1. Aquatrans Distributors Inc. ("Aquatrans") 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 Aquatrans' 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 the Initial Audit Period, Aquatrans did not pay its company drivers the minimum hourly rates required under the *Regulation*. Specifically, the auditor found that the hourly rate paid by Aquatrans was less than \$26.28. In those instances where Aquatrans was able to demonstrate that a driver had less than 2340 hours of experience, the auditor calculated their rate of pay at \$25.13 per hour. As a result, the auditor concluded that during the Initial Audit Period, Aquatrans owed its company drivers adjustment payments totaling \$2,062.12.

Expanded Audit Period

5. Having established that Aquatrans paid its company drivers incorrect hourly rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the periods from April 3, 2014 to April 1, 2017 - the date which Aquatrans began paying its company drivers a minimum of \$26.28 per hour (the "Expanded Audit Period").
6. The auditor reviewed Aquatrans' records, undertook a benefits calculation, and provided Aquatrans with a copy of the calculations. Aquatrans reviewed the calculations and identified drivers who were only entitled to the lower of the two prescribed rates. Aquatrans also noted that some of the drivers included in the auditor's calculations did not always perform container trucking services ("CTS"). As a result, it was found that Aquatrans' records did not differentiate between CTS and non-CTS work. Aquatrans was able, however, to identify the non-CTS hours worked. The auditor spot audited Aquatrans' calculations and, where applicable, calculated driver rates at \$25.13 per hour and excluded non-CTS hours worked.
7. Ultimately, the auditor concluded that during the Expanded Audit Period, Aquatrans owed its company drivers an additional \$13,589.42.
8. The auditor reports that Aquatrans accepted her calculations and has now paid \$12,252.92 of the adjustment amounts calculated to be owing and provided copies of records confirming that the adjustment payments were in fact made as represented. The remaining \$1,336.50 is owed to two drivers who are no longer employed by Aquatrans and have been contacted via email (phone numbers no longer in service) to confirm that their payments are available for pick-up.
9. The audit report concludes by noting that Aquatrans is now compliant with the *Act* for the period April 3, 2014 to April 1, 2017 and has brought themselves into compliance with the *Act* for the period April 1, 2017 to present. The auditor reports that Aquatrans was cooperative and helpful throughout the audit process and 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 Aquatrans' company drivers;
 - b. During the Initial and Expanded Audit Periods, Aquatrans failed to pay its company drivers the correct minimum rates required under the *Act* and *Regulation*;
 - c. Adjustments totaling \$13,589.42 were owed to 13 company drivers;
 - d. Aquatrans did not keep proper driver records pursuant to Appendix D to Schedule 1 of its Container Trucking Services Licence;
 - e. Aquatrans has accepted the audit results and has paid the amounts determined to be owing;
 - f. Aquatrans was co-operative and helpful during the audit process; and

- g. Aquatrans is now substantially compliant with the legislation.
12. As Aquatrans 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.
 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 April 1, 2017, Aquatrans failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period Aquatrans owed 13 company drivers adjustments totaling \$13,589.42. The adjustment payments were required because Aquatrans did not pay its company drivers the prescribed hourly rates.
 16. As recorded above, Aquatrans was cooperative during the audit and conceded their non-compliant behaviors and failure to pay the required minimum rates. Aquatrans is now paying compliant rates and have paid out the adjustment amounts calculated by the auditor to be owing.
 17. Nevertheless, as a holder of a Container Trucking Services Licence, Aquatrans is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that Aquatrans 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 decided that an administrative penalty of \$5000.00 is appropriate in this case. The size of this fine is intended to strike a balance between Aquatrans' cooperation and efforts during the audit process; its acceptance of its non-compliant behaviors; and its failure to bring itself into compliance with the *Act* and *Regulation* and its Container Trucking Services Licence between April 3, 2014 and April 1, 2017.
 19. On December 11, 2015, the Acting Commissioner imposed a January 22, 2016 deadline for licence holders to bring themselves into compliance with the *Act* and *Regulation*. The Acting Commissioner's memo directed licence holders to "carefully review the legislation" in an effort to ensure compliance. This audit demonstrates that Aquatrans did not, or did not sufficiently, review the legislation at that time and attempt to correct its non-compliant behavior. Rather, Aquatrans waited until it was audited to comply and only corrected its non-compliant payroll practices in April

of 2017 (14 months after the Acting Commissioner's deadline).

20. Further, on August 10, 2016, the Commissioner issued a bulletin to all licence holders reminding them of the record keeping requirements under their Container Trucking Services Licence. The audit has demonstrated that Aquatrans failed to consider the Commissioner's bulletin and fully comply with the record keeping requirements under its Container Trucking Services Licence.
21. 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 Aquatrans Distributors Inc. in the amount of \$5000.00;
 - b. Should it wish to do so, Aquatrans Distributors Inc. 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 Aquatrans Distributors Inc. provides a written response in accordance with the above I will consider its response and I will provide notice to Aquatrans Distributors Inc. 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.
22. This decision will be delivered to the Companies and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 6th day of March, 2018.



Michael Crawford, Commissioner