



March 13, 2018

Lower Mainland Fast Freight Inc.
101 – 1500 Hartley Avenue
Coquitlam, BC V3K 7A1

Commissioner's Decision

Lower Mainland Fast Freight Inc. (CTC Decision No. 07/2018)

Introduction

1. Lower Mainland Fast Freight Inc. ("LMFF") 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 LMFF's records to determine if its independent owner operators ("*I/Os*") 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, LMFF paid its *I/Os* the minimum trip rates required under the *Regulation* in November 2014 but did not pay its *I/Os* the minimum trip or hourly rates required under the *Regulation* in March 2017. Specifically, the auditor found minor payroll entry errors which resulted in *I/Os* not being paid for trips. These trip rate errors totaled \$273.30 during the March 2017 period. In addition, the auditor found that LMFF was paying its *I/Os* \$45.00 per hour with no fuel surcharge in March 2017 which resulted in LMFF owing its *I/Os* \$235.36. In total, LMFF owed \$508.66 for the Initial Audit Period.
5. The auditor also reports that in March 2017, LMFF paid its *I/Os* a combination of hourly rates and trip rates within the same pay period.

Expanded Audit Period

6. Having established that LMFF paid its I/Os incorrect hourly rates and no fuel surcharge during the Initial Audit Period, the auditor expanded the scope of the audit to cover the periods from April 3, 2014 to May 31, 2017, after which point LMFF stopped paying its I/Os hourly rates (the "Expanded Audit Period").
7. Under the direction of the auditor, LMFF reviewed its records and concluded that five I/Os were owed \$18,402.78 collectively during the Expanded Audit Period. The auditor confirmed LMFF's calculations and further confirmed, following a spot audit, that LMFF stopped paying its I/Os hourly rates by June 2017.
8. On March 6, 2018, LMFF provided the auditor with copies of cheque images totaling \$18,402.78 for the five I/Os found to be owed money during the Expanded Audit Period but declined to distribute the cheques pending the publication of this decision.
9. The audit report concludes by noting that LMFF has not brought itself into compliance with the *Act* for the period April 3, 2014 to May 31, 2017 but is in compliance with the *Act* for the period June 1, 2017 to present. The auditor reports that LMFF was slow in replying to the auditor's communications and often did so only after multiple emails and phone calls to LMFF by the auditor.

Decision

10. As described above, the circumstances of this case are that:
 - a. The Commissioner ordered an audit of LMFF's I/Os;
 - b. During the Initial and Expanded Audit Periods, LMFF failed to pay its I/Os the correct minimum rates and fuel surcharge required under the *Act* and *Regulation*;
 - c. Adjustments totaling \$18,402.78 are owed to five I/Os;
 - d. LMFF paid its I/Os a combination of hourly rates and trip rates within the same pay period in contravention of Appendix A to Schedule 1 of its Container Trucking Services Licence;
 - e. LMFF has not paid the amounts determined to be owing but has provided the auditor with copies of cheques that it intends to distribute to its I/Os once this decision is made; and
 - f. LMFF was not entirely co-operative or helpful during the audit process.
11. As LMFF has not paid the amounts owing to its drivers under the legislation, I make the following Order pursuant to section 9 of the *Act*.

I hereby order LMFF to:

 - a. pay forthwith, and in any event no later than March 21, 2017, the five I/Os owed \$18,402.78 for container trucking services performed between April 3, 2014 and May 31, 2017; and
 - b. provide evidence to the auditor by no later than March 22, 2017 that each driver owed money under this order has been paid.
12. Failure to comply with this order will be viewed as serious non-compliance with the *Act*. Should

LMFF not comply with the above order, the Commissioner may impose a penalty on the licensee.

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 May 31, 2017, LMFF failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period LMFF owed five I/Os adjustments totaling \$18,402.78. The adjustment payments were required because, in addition to some minor payroll entry errors, LMFF paid its I/Os \$45.00 per hour and did not pay a fuel surcharge.
16. It has also been determined that LMFF paid its I/Os a combination of hourly rates and trip rates during the same pay period. Appendix A to Schedule 1 1(g) of the Container Trucking Services Licence states that a licensee must not:

“pay Truckers a method of Compensation that is a hybrid of per trip and hourly”
17. This prohibition was included in the Container Trucking Services Licence on the recommendation of Vince Ready and Corinn Bell, who, in their October 2015 report stated that:

...an important aspect of the Joint Action Plan, and one that we support, is that trucking companies be prohibited from moving drivers from an hourly model to a trip rate model, depending on the day and/or circumstances. We feel that it is important that drivers know whether they are employed with a company on a trip rate basis or an hourly rate basis and that such is clearly defined by the company at the outset of the relationship. We recommend that a prohibition respecting employing hybrid hourly/trip rate drivers remain an important feature of the sector going forward.
18. As a holder of a Container Trucking Services Licence, LMFF is responsible to know its obligations under the *Act* and the Licence.
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*. This audit demonstrates that LMFF did not review the legislation at that time and attempt to correct is non-compliant behavior. Rather, LMFF waited until it was audited to comply and only corrected its non-compliant

payroll practices in June 2017 (14 months after the Acting Commissioner's deadline).

20. For these reasons, I have concluded that an administrative fine is appropriate here. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$10,000.00 is appropriate in this case. The following factors were considered when proposing this penalty:
1. LMFF's failure to pay any fuel surcharge during this period and the fact this non-compliance continued for over three years;
 2. LMFF's violation of its Container Trucking Services Licence;
 3. LMFF's failure to comply with the Acting Commissioner's January 22, 2016 deadline;
 4. LMFF refusal to pay the amounts owing without an order requiring it to do so; and
 5. LMFF's failure to assist in the timely completion of the audit.
21. In addition to the order to pay contained in paragraph 12 above 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 Lower Mainland Fast Freight Inc. in the amount of \$10,000.00;
 - b. Should it wish to do so, Lower Mainland Fast Freight 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 Lower Mainland Fast Freight Inc. provides a written response in accordance with the above I will consider its response and I will provide notice to Lower Mainland Fast Freight 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 13th day of March, 2018.



Michael Crawford, Commissioner