



April 3, 2018

Embassy Transportation Inc.
3013 – 2560 Shell Road,
Richmond, BC V6X 0B8

Commissioner's Decision Embassy Transportation Inc. (CTC Decision No. 09/2018)

Introduction

1. Embassy Transportation Inc. ("Embassy") 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 June of 2017, the Commissioner directed an auditor to audit Embassy's records to determine if its company drivers and independent 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 December 1-31, 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, Embassy paid its company drivers the minimum trip rates required under the *Regulation*. It was also determined that during the Initial Audit Period, Embassy paid its I/Os on-dock trip rates as required under the *Regulation* and paid off-dock trip rates on a round trip basis which met or exceeded the off-dock trip rates required under the *Regulation*. However, the auditor determined that in March 2017, Embassy did not correctly calculate and pay the required fuel surcharge.

Expanded Audit Period

5. Having established that Embassy did not pay its I/Os the correct fuel surcharge in March 2017, the auditor expanded the scope of the audit to cover the period from October 2014 (the first month Embassy engaged an I/O) to present (the "Expanded Audit Period").
6. Under the direction of the auditor, Embassy reviewed its records and concluded that three I/Os were owed \$3,354.49 (inclusive of the amount found owing by the auditor for March 2017). The auditor confirmed Embassy's calculations and reports that Embassy 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 Embassy has now brought itself into compliance with the *Act* for the period October 2014 to present. The auditor reports that Embassy 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 Embassy's company drivers and I/Os;
 - b. the audit process disclosed that between October 1, 2014 and March 30, 2018, Embassy failed to pay three of its I/Os the correct fuel surcharge required under the *Act* and *Regulation* and that adjustments totaling \$3,354.49 was owed to I/Os;
 - c. Embassy has accepted the audit results and has paid the amounts determined to be owing;
 - d. Embassy was co-operative and helpful during the audit process; and
 - e. Embassy is now substantially compliant with the legislation.
9. As Embassy 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 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 October 1, 2014 and March 30, 2018 Embassy failed to comply with the minimum fuel surcharge payment required under the *Act* and *Regulation*. The audit findings indicate that over this period, Embassy owed three I/Os adjustments totaling \$3,354.49.
13. As recorded above, Embassy was cooperative during the audit and conceded their non-compliant behaviors and their failure to pay the required fuel surcharge amount. Embassy is now paying compliant fuel surcharges and has paid out the adjustment amounts calculated by the auditor to be owing.
14. Nevertheless, as a holder of a Container Trucking Services Licence, Embassy is responsible to know their obligations under the *Act* and to pay their drivers the correct fuel surcharge amount. This audit makes clear that Embassy 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 Embassy's non-compliant behavior while recognizing their efforts to pay the legislated 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 Embassy Transportation Inc. in the amount of \$500.00;
 - b. Should it wish to do so, Embassy Transportation 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 Embassy Transportation Inc. provides a written response in accordance with the above I will consider its response and I will provide notice to Embassy Transportation 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.
17. This decision will be delivered to Embassy Transportation Inc. and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 3rd day of April, 2018.



Michael Crawford, Commissioner