



April 18, 2018

H. Rattan Trucking Ltd.
908 Edinburgh Street
New Westminster, BC V3M 2V3

Commissioner's Decision

H. Rattan Trucking Ltd. (CTC Decision No. 12/2018)

Introduction

1. H. Rattan Trucking Ltd. ("H. Rattan") 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 H. Rattan'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 the Initial Audit Period, H. Rattan did not pay its company drivers the minimum hourly rates required under the Regulation. Specifically, the auditor found that H. Rattan paid its company drivers monthly salaries during the Initial Audit Period resulting in instances where H. Rattan's company drivers were paid more or less than the regulated minimum rates in different pay periods. In addition, H. Rattan's payroll records, as a result of the method of payment, did not differentiate between container trucking services and non-container trucking services performed by its drivers.
5. Using the records provided, the auditor was able to calculate the number of hours each driver performed container trucking services in the Initial Audit Period. The auditor concluded that two drivers were owed \$23.63 during the Initial Audit Period.

Expanded Audit Period

6. Having established that H. Rattan did not always pay its company drivers the correct minimum hourly rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the period from April 3, 2014 to March 31, 2018 (the "Expanded Audit Period").
7. H. Rattan reviewed its records, separated container trucking services from non-container trucking services and adjusted the hourly rate to \$25.13. H. Rattan concluded that an adjustment of \$702.13 was owing to five company drivers during the Expanded Audit Period.
8. The auditor reviewed and amended H. Rattan's calculations to reflect an hourly rate of \$26.28 for the drivers, as H. Rattan was not able to supply any evidence which indicated that each driver had performed less than 2340 hours of container trucking services on behalf of any licensee. The auditor provided H. Rattan with a copy of her calculations, indicating a revised total of \$881.12 owing to the five company drivers during the Expanded Audit Period.
9. H. Rattan accepted the auditor's revised calculations and the auditor reports that H. Rattan 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.
10. The audit report concludes by noting that H. Rattan has now brought itself into compliance with the *Act* for the period April 3, 2014 to March 31, 2018 and has revised its record keeping practices in order to identify all container trucking services performed in a pay period. The auditor reports that H. Rattan was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.

Decision

11. As described above, the circumstances of this case are that:
 - a. the Commissioner ordered an audit of H. Rattan's company drivers;
 - b. the audit process disclosed that between April 3, 2014 and March 31, 2018, H. Rattan failed to pay five company drivers the correct hourly rate of pay required under the *Act* and *Regulation* and that adjustments totaling \$907.75 was owed;
 - c. the audit process also disclosed that H. Rattan did not keep records sufficient to identify the hours of container trucking services undertaken by its drivers;
 - d. H. Rattan has accepted the audit results, paid the amounts determined to be owing and has revised its record keeping practices;
 - e. H. Rattan was co-operative and helpful during the audit process; and
 - f. H. Rattan is now substantially compliant with the legislation.
12. As H. Rattan 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.
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. 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 March 31, 2018 H. Rattan failed to comply with the minimum hourly rates and record keeping provisions required under the *Act* and *Regulation*. The audit findings indicate that over this period, H. Rattan owed five company drivers adjustments totaling \$907.75.
16. As recorded above, H. Rattan was cooperative during the audit and conceded their non-compliant behaviors. H. Rattan is now paying the required hourly rates, has adjusted its record keeping practices and has paid out the adjustment amounts calculated by the auditor to be owing.
17. Nevertheless, as a holder of a Container Trucking Services Licence, H. Rattan is responsible to know its obligations under the *Act*, keep proper records and to pay its drivers the correct hourly rates. This audit makes clear that H. Rattan ultimately failed to fulfill this obligation.
18. In Lower Mainland Fast Freight Inc. (CTC Decision No. 07/2018), I noted that 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*. In that case, a penalty was proposed, in part, because the licence holder did not review the legislation at that time and attempt to correct its non-compliant behavior. Rather, the licence holder waited until it was audited to comply and only corrected its non-compliant payroll 14 months after the Acting Commissioner's deadline.
19. I find some of the circumstances in Lower Mainland Fast Freight Inc. (CTC Decision No. 07/2018) to be analogous to those here. Therefore, I have concluded that an administrative fine is appropriate in this case.
20. Regarding the size of the proposed fine I have decided that a small administrative penalty of \$1,500.00 is appropriate. The size of this fine is intended to strike a balance between H. Rattan's non-compliant behavior while recognizing the small quantum of the money found to be owing. For these reasons it is my view that the imposition of a larger fine in this case is unnecessary.
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 H. Rattan Trucking Ltd. in the amount of \$1,500.00;

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- b. Should it wish to do so, H. Rattan Trucking 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 H. Rattan Trucking Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to H. Rattan Trucking 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.

22. This decision will be delivered to H. Rattan Trucking Ltd. and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 18th day of April, 2018.



Michael Crawford, Commissioner