



May 9, 2018

Olympia Transportation Ltd.
8335 Meadow Avenue
Burnaby, BC V3R 1R4

Commissioner's Decision

Olympia Transport Ltd. (CTC Decision No. 16/2018)

Introduction

1. Olympia Transport Ltd. ("Olympia") 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 February of 2018, the Commissioner directed an auditor to audit Olympia's records to determine if its Independent Operators ("I/Os") and company drivers were being paid the minimum rates required under the *Container Trucking Regulation* (the "*Regulation*"). The auditor was directed to audit the periods July 1-31, 2016 and January 1-31, 2018 (together the "Initial Audit Period").

Initial Audit Period

4. The auditor requested and obtained relevant records for July 2016 and January 2018 and determined that during the Initial Audit Period, Olympia paid its I/Os trip rates consistent with the *Act* and *Regulation*. The auditor did, however, note that Olympia made several minor payroll errors, failed to pay one I/O for two container movements and contrary to section 12(3)(b) of the *Regulation*, did not pay its I/Os 1.5 times the applicable rate when moving two containers off-dock at the same time. As a result, Olympia was found to be owing \$610.32 to 16 I/Os during the Initial Audit Period.
5. To confirm Olympia's compliance with its record keeping requirements, the auditor also conducted a spot-check of truck activity using Gate Reports and GPS Reports obtained from the Port of Vancouver in order to investigate whether any Olympia I/Os worked on days where no work was recorded in the records. It was determined that trucks owned by three I/Os were active on four

days when Olympia's records indicated the I/Os were not working. This issue was raised with Olympia and Olympia responded confirming that two of the trucks in question were moved to repair facilities on the days in question. Olympia confirmed this by providing repair invoices corresponding with the dates of concern. Olympia also confirmed that one driver had failed to submit a trip sheet resulting in a missed payment of \$798.34. The auditor reports that Olympia has paid the full amount owing to this I/O.

6. The auditor also determined that during the Initial Audit Period, Olympia paid its company drivers hourly rates consistent with the *Act* and *Regulation*.

Expanded Audit Period

7. Having established that Olympia did not pay its I/Os 1.5 times the applicable rate when moving two containers off-dock at the same time during the Initial Audit Period, the auditor directed Olympia to self-audit its records for February and March 2018 (Olympia only began providing double-container moves in January 2018) – “the Expanded Audit Period”. Olympia undertook the self-audit and determined that during the Expanded Audit Period, a further pay adjustment to two I/Os totaling \$129.60 (\$120.00 + \$9.60 fuel surcharge) was owed. The auditor confirmed Olympia's calculations and confirms that Olympia has made this payment as represented.
8. Records provided by Olympia for the purpose of the audit also indicated that two Olympia I/Os employed two indirectly employed operators (“IEOs”). Therefore, the auditor directed Olympia to review the records of hours worked and wages paid for both IEOs for the period April 3, 2014 to present. The auditor reviewed the records provided by Olympia and determined that one IEO was paid hourly rates consistent with the *Act* and *Regulation*. With respect to the second IEO, through consultation with Olympia, the auditor determined that Olympia's I/O had not been paying the regulated rates to his IEO. A pay adjustment of \$395.50 was found to be owing and Olympia advised the auditor that its I/O's non-compliance was the result of the IEO being paid “as per the [his] requirement.” Olympia confirmed with the auditor that it has now included the IEO on its payroll and has begun independently advising its IEOs of their earnings owed to them by Olympia I/Os.

Decision

9. As described above, the circumstances of this case are that:
 - a. The Commissioner ordered an audit of Olympia's I/Os and company drivers;
 - b. Olympia paid its I/Os and company drivers rates consistent with the *Act* and *Regulation*;
 - c. Olympia made some minor payroll errors and did not pay its I/Os 1.5 times the applicable rate when moving two containers off-dock at the same time (in contravention of section 12(3)(b) of the *Regulation*) and adjustments totaling \$739.92 were found to be owing to 16 I/Os during the audit periods;
 - d. Olympia did not record moves made by one I/O in a pay period and an adjustment of \$798.34 was found to be owing to the I/O;
 - e. An IEO of an Olympia I/O was not paying rates consistent with the *Act* and *Regulation* and \$395.50 was found to be owing to the IEO;
 - f. Olympia has accepted the audit results and has paid the amounts determined to be owing;

- g. Olympia was co-operative and helpful during the audit process; and
h. Olympia is now substantially compliant 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. The *Act* does not, however, require penalties to be imposed for non-compliance in all cases. Rather, the Commissioner is granted discretion to impose penalties in appropriate cases.
12. In this case, it has been determined that Olympia committed minor payroll oversights and violated section 12(3)(b) of the *Regulation* as well as failed to ensure that one IEO was paid according to the *Regulation*. Olympia has been reminded of the requirement to pay 1.5 times the applicable rate under section 12(3)(b) of the *Regulation* and its responsibility to ensure that its I/Os are complying with the *Regulation* when paying their IEOs. I note that the auditor has confirmed that Olympia has corrected its payment practices in both regards.
13. Despite these issues, Olympia was found to be paying compliant rates to its drivers and the nature of its non-compliance was sufficiently short enough in duration and small enough in size that, when taking into account Olympia's cooperation and its demonstrated action to correct its mistakes, I have determined that the imposition of a penalty on Olympia in this case is not warranted.
14. This decision will be delivered to the Company and published on the Commissioner's website (www.abcctc.ca).

Dated at Vancouver, B.C., this 9th day of May, 2018.



Michael Crawford, Commissioner