



February 12, 2020

Canada Drayage Inc.
1305 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Commissioner's Decision

Canada Drayage Inc. (CTC Decision No. 02/2020)

Introduction

1. Canada Drayage Inc. ("CDI") is a licensee 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 the Commissioner, and a licensee must comply with those 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 2019, the Office of the BC Container Trucking Commissioner ("OBCCTC") directed an auditor to audit CDI's records to determine if its independent operators ("I/Os") were being paid the minimum rates required under the *Container Trucking Regulation* (the "Regulation").
4. The auditor was directed to audit the months of October 2018 and March 2019 (together, the "Initial Audit Period") to determine compliance.

Initial Audit Period

I/Os

5. The auditor requested and obtained relevant records from CDI and determined that during the Initial Audit Period, CDI paid its I/Os trip rates consistent with the Act and Regulation.

Indirectly Employed Operators

6. The auditor also determined that during the Initial Audit Period, four I/Os utilized the container trucking services of five indirectly employed operators ("IEO"). The IEOs were found to be paid hourly by the I/Os. The auditor reviewed the IEO's timesheets, compared the record of hours worked to the IEO's pay stubs and determined that one IEO had not been paid the regulated rate

and another IEO had not been paid for all hours worked. A total amount of \$167.68 was found to be owing to both drivers during the Initial Audit Period.

Expanded Audit Period

7. Having established that CDI did not pay one IEO the correct hourly rate and did not pay one IEO for all hours worked during the Initial Audit Period, the auditor expanded the scope of the audit to cover the period from May 1, 2016 to September 30, 2019 (the "Expanded Audit Period").
8. CDI reviewed its records and concluded that \$10,358.99 was owed to ten IEOs for the Expanded Audit Period. Of this amount, one IEO was owed \$8,519.13. The auditor confirmed CDI's calculations and confirms that CDI has paid out all the required adjustment payments calculated to be owing and has provided copies of records confirming that all but one of the adjustment payments have been made. One IEO could not be reached despite CDI's efforts. A total of \$167.76 remains outstanding to that IEO and CDI confirms that the amount will be paid in the event the IEO contacts CDI or the I/O who employed him.
9. The audit report concludes by noting that CDI has corrected its record keeping and payment practices for IEOs, was helpful during the audit and is now in compliance with the *Act*.
10. CDI was provided a copy of the auditor's report on January 14, 2020 for review and was provided an opportunity to respond. CDI has not responded by the required deadline.

Decision

11. As described above, the circumstances of this audit are that:
 - a. On June 6, 2019 the Commissioner ordered an audit of CDI's I/Os;
 - b. The records provided by CDI demonstrate that in October 2018 and March 2019, CDI paid its I/Os the correct hourly trip rates;
 - c. In October 2018 and March 2019, CDI failed to ensure that one IEO was paid the correct hourly rate and one IEO was not paid for all hours worked;
 - d. Between May 1, 2016 and September 30, 2019, CDI failed to ensure that ten IEOs were correctly paid. Adjustments totaling \$10,358.99 were calculated to be owing;
 - e. CDI has paid all but one of the adjustment payments (the one payment is outstanding only because the IEO cannot be located) and has corrected its record keeping and payment practices;
 - f. CDI was helpful during the audit process; and
 - g. CDI is now in compliance with the *Act*.
12. As CDI 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 *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. In this case, it was determined that CDI was paying compliant rates to its I/Os; however, CDI failed to ensure that the IEOs performing container trucking services for its I/Os were always paid correctly by its I/Os. Nevertheless, the quantum of non-compliance was minor, with the bulk of the adjustment required owed to one IEO. Further, OBCCTC audits have not, to this point, focused extensively on compliance with payment to IEOs and therefore some leniency is appropriate here. CDI has also been cooperative throughout.
15. In these circumstances, while I record the fact of CDI's non-compliance with the *Act* and *Regulation* by way of this decision, I decline to exercise my discretion to impose a penalty on CDI in this case.

Conclusion

16. This decision predominantly addresses issues relating to the payment of IEOs. For clarity, an IEO (defined in the *Regulation*) is a person who is employed by an I/O to drive a truck owned by the I/O.
17. I take this opportunity to bring to the attention of licensees and I/Os that the Commissioner sets a rate for IEOs which must be paid. This rate is the same as the employee hourly rate. Licensees should be aware that the onus is on the licensee to ensure that any IEO performing container trucking services on behalf of a sponsored I/O at their company is being paid correctly. The OBCCTC does conduct audits of IEO pay and the penalty provisions of the *Act* apply should the Commissioner determine that instances of non-compliance in this regard have occurred.
18. This decision will be delivered to Canada Drayage Inc. and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 12th day of February, 2020.



Michael Crawford, Commissioner