



April 1, 2016

Olympia Transportation Ltd.
8335 Meadow Ave.
Burnaby, B.C. V3N 2W1

Commissioner's Decision

Olympia Transportation Ltd. (CTC Decision No. 02 /2016)

Introduction

1. Olympia Transportation Ltd. ("Olympia") 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 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 26 of the Act, any person may make a complaint to the British Columbia Container Trucking Commissioner (the "Commissioner") that a licensee has contravened a provision of the Act. Under Section 29, the Commissioner reviews such complaints and, under Section 31, may conduct an audit or investigation to ensure compliance with the Act, the *Container Trucking Regulation* (the "Regulation") or a licence. (I note the Commissioner has authority under Section 31 to conduct such audits and investigations whether or not the Commissioner has received a complaint).
3. Section 27 of the Act provides, in essence, that complaints may be made confidentially to the Commissioner. That is, if a complaint is made on a confidential basis, the Commissioner "must make best efforts to avoid disclosing any identifying information respecting the complainant" unless disclosure becomes necessary for purposes of the Act.

Facts

4. The Act and the Regulation came into effect on December 22, 2014, and a Commissioner was appointed on February 16, 2015. In July of 2015 the Commissioner's office received a confidential complaint alleging that Olympia was paying less than the minimum rates of remuneration and was not paying wages for all hours worked. More particularly, the complaint alleges that Olympia was paying less than the minimum rates required under the Act beginning in mid-May after it shifted from a flat rate compensation system to an hourly rate of pay system. The Complainants do not complain about payments made under the flat-rate system.
5. On July 7th, 2015 the Commissioner directed an audit to begin with respect to the complaint. The auditor requested pertinent records and documentation from Olympia in relation to the period from May 1, to June 30, 2015. Records were to be delivered to the BC Container Trucking commissioner by July 17, 2015.

6. While Olympia delivered records to the Office of the BC Container Trucking Commissioner within the time frame for delivery, it soon became apparent to the auditor that the records were deficient. The auditor identified the following specific issues:

- a. In many cases the drivers start and finish times as noted on the trip sheets differed from the information noted on the truck logs.
- b. Many trip sheets and/or truck logs were missing.
- c. PMV records indicated in some cases that a particular truck was active at the port on particular days for which no trip sheet and/or truck log was submitted.
- d. In most cases, the addition on the drivers' pay statements showing the total earnings for the month was incorrect.
- e. In many cases the total earnings indicated on the pay statement was not the same amount as indicated on the cheque stub.
- f. In some cases, the net pay indicated on the cheque stub was different from the amount on the corresponding pay cheque.
- g. Neither the pay statements nor the pay cheque stubs show how wages are calculated. Although the hourly rate is shown on the pay statements, the number of hours being paid is not indicated on either the pay statements or the cheque stubs.

These issues were brought to Olympia's attention by the auditor in early September, 2015.

7. The above noted deficiencies were problematic for the auditor. For example the auditor was unable to reconcile the number of hours worked from the records in her possession to any degree of accuracy. Eventually, out of necessity the auditor used Olympia's statement of hours worked.
8. It is important at this point to make reference to the record keeping obligations found in all TLC licences. Paragraph 3 of Appendix D to Schedule 1 of Licence "B" requires the following:

3. *The Licensee must retain a record for each Trucker who performs Container Trucking Services for the Licensee of the following information:*

- a) The Trucker's name, date of birth, telephone number and residential address;*
- b) The date the Trucker first performed Container Trucking Services for the Licensee;*
- c) The rate of remuneration for the Trucker, whether hourly or per trip;*
- d) Fuel surcharges paid to the Trucker;*
- e) Payment of Wait Time Remuneration;*
- f) Hours worked and trips completed on each day by the Trucker on behalf of the Licensee;*
- g) Benefits, if any, paid to the Trucker;*
- h) Total Compensation, before taxes and any other deductions, paid to the Trucker; and*
- i) Any deductions made from the Trucker's Compensation, and the reason for the deduction.*

9. Additionally, Paragraph (g) of Schedule 2 to Licence "B" requires Licensees to maintain, "payroll records, as defined and required by Section 28 of the *Employment Standards Act*, RSBC 1996, c. 113,

of the Licensee and Related Persons, affiliates and successor companies;”.

10. It is expected that these records will be complete, accurate, and up to date.
11. During the audit it became apparent that Olympia was deducting one-half hour worked each day as an unpaid meal break. Olympia asserted that the drivers stopped work and ate their lunch in the company yard. The Complainants took issue with this position, claiming that they ate their lunch in their trucks while waiting in line for entry to the Ports. The Auditor’s report indicates that Olympia has now agreed to pay for this time.
12. The auditor determined that with a few exceptions all Olympia drivers met the threshold of having worked in the drayage industry for more than 2430 hours. Although it originally took a different position Olympia ultimately agreed with the auditor’s conclusion. Thus all drivers save two were entitled to receive \$26.28 per hour.
13. In mid-September, 2015 the auditor provided Olympia with her audit calculations and advised that she was submitting her report to the Commissioner.
14. In November, Olympia provided its own calculations and paid adjustment amounts to its drivers which together with an earlier adjustment for May 13-15 (paid to the drivers in June 2015) amounted to \$22,196.91. This was less than the total amount found to be owing to the drivers by the auditor.
15. The auditor reviewed Olympia’s calculations and determined that further adjustments were required eventually concluding that a further \$2,203.16 was owed to the drivers. The revised calculations were communicated to Olympia on February 12th, 2016 and on February 17, 2016 Olympic issued further adjustment cheques to its drivers totaling \$2, 203.16.
16. The Auditor reports that in her conversation with the Complainants they have advised that they are now satisfied with how their pay cheques are being calculated, and in particular that they are being paid the correct hourly rates and there are no longer any deductions for unpaid meal breaks. Unpaid overtime remains an issue and drivers have indicated that they may or may not pursue this issue with the Employment Standards Branch.
17. The Auditor submitted her report on March 2, 2015 concluding:
 - a. that for the period May 1 to May 12, 2015 Olympia was out of compliance with the minimum flat-rates with respect to 6 drivers.
 - b. That Olympia was out of compliance with the minimum hourly rates of remuneration for the period May 13 to June 30, 2015 with respect to all company drivers.
18. The auditor further concludes that she is satisfied that these areas of non-compliance are now rectified and that the Complainants are satisfied with the result for the audit period.
19. The auditor offers no opinion on whether or not Olympia is compliant with the *Act and Regulations* for the period going forward from July 1, 2015 to the date of this decision.

Decision

20. As described above, the circumstances of this case are that Olympia:

- has undergone an audit, during which while it cooperated with the auditor, it became apparent that its record keeping was deficient;
- challenged but eventually accepted (with some adjustments) the auditor's calculation of the amounts it owed under the *Act*;
- paid the adjustment amounts calculated by the auditor as owing to its company drivers. While the majority of the adjustments were paid in June and November of 2015, the final adjustment payment was not made until February 16, 2016.

21. 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.

22. 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 legislative scheme (*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.

23. The *Act* gives the Commission a broad discretion as to whether or not a penalty should be issued in any particular case. The factors to be taken into account have been identified in earlier decisions and include the following:

- did the company cooperate fully with an audit or investigation;
- has the company complied with orders or directions given by the Commissioner (or a delegate of the Commissioner, including an auditor);
- has the company engaged in meritless dispute of, or delays in paying, amounts found to be owing;
- has the company engaged in any form of fraudulent, deceptive, dishonest or bad faith behavior with respect to compliance with the requirements of the *Act*, the *Regulation* or a licence.

24. Section 25 of the *Act* also grants to the Commissioner the power to require Licensees to "...prepare and keep records as required by the commissioner." I find this authority, as it operates together with the Commissioner's licencing powers present in the *Act*, and the specific licence provisions already noted above, to be particularly important in this case where the record keeping has been found to be deficient.

25. Taking into account the facts presented in this case I have concluded that this is an

appropriate case to issue a penalty. I come to this decision for the following reasons:

- a. While Olympia cooperated with the auditor its record keeping was deficient and did not meet its obligations under its licence. This prolonged the audit and made the audit process difficult and problematic. Furthermore, the deficient record keeping was a major contributor to the delay in Olympia becoming fully compliant for the period being audited; a period of more than 7 months;
- b. Olympia has a statutory obligation and an obligation under the terms of its licence to comply with the rates set out in the *Act*. The audit results disclose that it has not met this obligation. The compensation being paid to its drivers during the audit period was found to be inadequate and required adjustment. It must be emphasized that **the onus to become and remain compliant with the requirements of the *Act* rest entirely with the Licensee**. Licensees should not rely on Commission auditors to determine whether or not they are compliant, nor should they wait until a Commission audit process is undertaken before taking steps to ensure compliance;
- c. Some of the positions taken by Olympia during the audit process were not factually supportable (for example its position with respect to unpaid lunch breaks). Licensees should be careful not to advance factually unsupportable positions;
- d. I do not find that Olympia has engaged in any form of fraudulent, deceptive, dishonest or bad faith behavior with respect to compliance with the requirements of the *Act*.

26. For the reasons outlined 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 Olympia in the amount of \$4,000.00;
- b. Should it wish to do so, Olympia 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 Olympia provides a written response in accordance with the above I will consider its response, and I will provide notice to Olympia 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.

27. Additionally, I make the following orders:

- a. Pursuant to Section 9 of the *Act*, I order Olympia to bring itself into compliance with paragraph 3, of Appendix D to Schedule 1, and paragraph (g) of Schedule 2 of its Licence including:
 - i. introducing, keeping and maintaining payroll records which properly report and track hours worked, rates of remuneration for drivers, trips completed each day by drivers on your behalf, total compensation before taxes and any other deductions are paid, and any deduction made from the drivers compensation and the reason for the deduction;
- b. Within 1 month of this decision that Olympia bring itself into full compliance with the

rate requirements of the *Act* going forward from July 1, 2015 and continuing to the date of this decision;

- c. That by no later than May 9th, 2016 Olympia report to the auditor outlining what steps it has taken to ensure proper record keeping as ordered above and what steps it has taken to ensure full compliance with the *Act*.

- 28. In addition to the above I will direct the auditor to take any further audit steps that may be necessary to ensure that Olympia is in full compliance for the period beginning of July 1st, 2015 to the date of this decision.
- 29. This decision will be delivered to Olympia Transportation Ltd. and published on the Commissioner's website (www.bc-ctc.ca) the next business day.
- 30. With the publication of this decision, licencees have express notice that a failure to maintain required records will almost certainly result in penalty. The moderate amount of the penalty in this case reflects the fact that it is the first instance in which a penalty has been proposed for this form of non-compliance. Licensees should assume that a significantly higher penalty may be proposed for any future findings of non-compliance by failure to maintain required records. All licensees should accordingly review their record-keeping practices and ensure their payroll and driver records are complete, up-to-date and accurate.

Dated at Vancouver, B.C., this 1st day of April, 2016

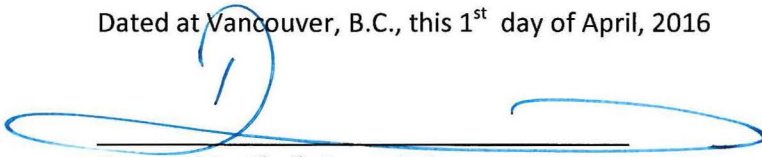
Duncan MacPhail, Commissioner

rate requirements of the Act going forward from July 1, 2015 and continuing to the date of this decision;

- c. That by no later than May 9th, 2016 Olympia report to the auditor outlining what steps it has taken to ensure proper record keeping as ordered above and what steps it has taken to ensure full compliance with the Act.

28. In addition to the above I will direct the auditor to take any further audit steps that may be necessary to ensure that Olympia is in full compliance for the period beginning of July 1st, 2015 to the date of this decision.
29. This decision will be delivered to Olympia Transportation Ltd. and published on the Commissioner's website (www.bc-ctc.ca) the next business day.
30. With the publication of this decision, licencees have express notice that a failure to maintain required records will almost certainly result in penalty. The moderate amount of the penalty in this case reflects the fact that it is the first instance in which a penalty has been proposed for this form of non-compliance. Licensees should assume that a significantly higher penalty may be proposed for any future findings of non-compliance by failure to maintain required records. All licensees should accordingly review their record-keeping practices and ensure their payroll and driver records are complete, up-to-date and accurate.

Dated at Vancouver, B.C., this 1st day of April, 2016



Duncan MacPhail, Commissioner