



June 6th, 2016

Gulzar Transport
7-8760 River Road,
Delta BC V4 G 1B5

Via email: billing.gulzar@gmail.com
Original via mail

Commissioner's Decision

Gulzar Transport (CTC Decision No. (05)/2016)

Introduction

1. Gulzar Transport ("Gulzar") 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 *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. A number of complaints were received through the ConfidenceLine alleging that Gulzar was underpaying its drivers.
5. The then Acting Commissioner directed an Office of the British Container Trucking Commission ("OBCCTC") investigator to conduct an investigation into the allegations that Gulzar has contravened the *Act* by failing to pay regulated rates to truckers for hours worked performing container trucking services.
6. Gulzar was directed to produce all relevant records for audit purposes, including driver trip sheets and corresponding pay statements, for the sample periods of December 1, 2014 – December 31,

2014 and November 1, 2015 – November 30, 2015. Gulzar complied with this request.

7. The investigator reviewed the records provided. They showed that Gulzar employed 35 employee drivers and 1 independent operator during the December 2014 audit period and 39 employee drivers and one independent operator during the November 2015 audit period.
8. Gulzar did not provide any evidence that any driver had worked less than 2,340 hours in the industry; therefore, a rate of \$26.28 per hour was used to calculate what each employee driver had earned during the audit periods.
9. The records provided by Gulzar showed that it paid its drivers a rate of \$24.17 per hour. In addition, the auditor's review of the sample audit periods showed the company had made minor errors in calculating some driver's total hours worked during for those periods (December 2014 and November 2015). She found that 9 of the 36 drivers in the December 2014 sample period were owed a total adjustment amount for these calculation errors of \$1,449.07 and 7 of the 40 drivers in the November 2015 sample period were owed a total adjustment amount for these calculation errors of \$417.66.
10. After the investigation was initiated, Gulzar voluntarily performed its own calculation of retroactive pay owing to its drivers due to its failure to pay \$26.28 per hour, and in an effort to bring itself into compliance by January 22, 2016, the date by which all licensees were required by the previous Acting Commissioner to bring themselves into compliance.
11. Gulzar's own calculations, which covered the period from April 1, 2014 to May 15, 2015, were delivered to the investigator, along with payroll records. The investigator reviewed Gulzar's calculations for accuracy and found them to be generally accurate, with minor calculation errors.
12. As a result of its own calculations, Gulzar voluntarily paid out \$119,650.53 to 37 employee drivers and 1 independent operator on January 20th, 2016, meeting the January 22, 2016 deadline for voluntary compliance. The investigator contacted a large sampling of drivers to confirm that the calculated payments were in fact paid.
13. The investigator did further testing to assess if Gulzar was paying its drivers in accordance with its obligations under the *Act* and *Container Trucking Regulation* (the "*Regulation*") beyond May 31st, 2015. As a result of these investigations, the investigator was satisfied that Gulzar was paying its drivers in accordance with the *Act and Regulation* from June 1, 2015 onward, and is substantially compliant to date.
14. The investigator found that Gulzar:
 - was very helpful during the investigation and always responded to the auditor's emails and phone calls immediately;
 - undertook its own audit for the period from April 3, 2014 to May 31st, 2015 and determined that it owed its drivers \$119,650.53;
 - paid its drivers the full amount of this calculated adjustment on January 20th, 2016, 2 days before the deadline imposed by the former Acting Commissioner;

- made some small inadvertent errors in its calculations and that it owed a further \$1,866.74;
- paid the additional \$1,866.74 found to be owing; and
- is now substantially in compliance with its obligations under the *Act* and *Regulation*.

Decision

15. As described above, the circumstances of this case are that Gulzar:

- a) has undergone an audit, during which it cooperated fully with the auditor;
- b) has voluntarily performed its own internal audit for the period from April 1, 2014 to May 15th, 2015 and determined that it owed its drivers in excess of \$100,000; and
- c) has voluntarily paid the retroactive adjustment amounts calculated to be owing as determined by its own internal calculations prior to the January 22nd deadline established by the former Acting Director;

16. In addition I accept that:

- a. with the exception of some minor discrepancies Gulzar's calculations were accurate;
- b. the discrepancies were inadvertent;
- c. the remaining outstanding amounts found by the auditor to be owing for the audit periods (\$1,866.74) were accepted by Gulzar and immediately paid out.
- d. Gulzar is now substantially compliant and is paying its drivers in accordance with the *Act* and *Regulation*.

17. As Gulzar has paid the amounts owing under the *Act* and is now paying its drivers in accordance with the legislation, I find there is no need for me to issue an order pursuant to Section 9 of the *Act* requiring Gulzar to comply with the *Act*.

18. 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.

19. 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.

20. The *Act* does not, however, require penalties to be imposed for non-compliance in all cases. Rather, the Commissioner is granted a discretion to impose penalties in appropriate cases. There are many circumstances in which discretion to impose a penalty or penalties is likely to be exercised. These include, but are not limited to, where a licensee:

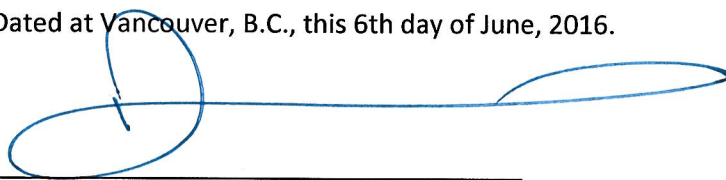
- does not cooperate fully with an audit or investigation;

- does not comply with orders or directions given by the Commissioner (or a delegate of the Commissioner, including an auditor);
 - engages in meritless dispute of, or delays in paying, amounts found to be owing;
 - engages 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.
21. In this case, Gulzar has cooperated fully with the investigator's investigation into the complaints. It has complied with the directions given by the auditor, including disclosing records and paying the amounts found to be owing. It has not engaged in meritless disputes of the process or the amount calculated by the auditor to be owing under the *Act*.
22. In addition, and importantly, Gulzar voluntarily performed its own internal calculations for the purpose of bringing itself into compliance before the January 22nd, 2016 deadline imposed by the former Acting Commissioner and paid its drivers the \$119,650.53 calculated to be owing prior to the deadline. Thus, Gulzar recognized its obligation to pay the amounts owing under the *Act* and made serious efforts to voluntarily bring itself into compliance. As well, I am satisfied that as of May 11, 2016 Gulzar is substantially compliant with its obligations under the *Act* and *Regulation*.
23. In these circumstances, I find that a penalty is not warranted in this case.

Conclusion

24. In summary, as a result of an OBCCTC investigation process initiated after receipt of complaints filed with the Commissioner, it was determined that Gulzar owed a total of \$121,517.27 to 37 employee drivers and 1 independent operator under the *Act and Regulation*. Gulzar cooperated fully in the audit investigation process, and voluntarily took steps to bring itself into compliance. With the exception of a very small adjustment amount (which was paid promptly after it was identified by the auditor), Gulzar paid the money it owed to its drivers prior to January 22, 2016, the deadline for compliance imposed by the former Acting Commissioner. In these circumstances, while I record the fact of Gulzar's non-compliance with the *Act* by way of this decision, as well as Gulzar's appropriate actions to bring itself into compliance, I have declined to exercise my discretion to impose a penalty on Gulzar in this case.
25. This decision will be delivered to Gulzar and published on the Commissioner's website (www.bc-ctc.ca).

Dated at Vancouver, B.C., this 6th day of June, 2016.



Duncan MacPhail, Commissioner