



July 6, 2016

Burton Delivery Service Ltd.
8970 River Road
Delta, BC V4G 1B5

Via email: Shinda@aheer.com
Original via courier

Commissioner's Decision Burton Delivery Service Ltd. (CTC Decision No. 09/2016)

Introduction

1. Burton Delivery Service Ltd. ("Burton") 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 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. Under Section 26 of the Act, any person may make a complaint to 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.
3. On November 20, 2015 a complaint was filed with the Office of the Commissioner alleging that Burton was underpaying its drivers.
4. The then Acting Commissioner directed an auditor to conduct an audit to determine whether or not Burton was paying its drivers in accordance with the requirements set out in the Regulation. The auditor requested and received records and documentation from Burton with respect to the period September 1, 2015 to October 31, 2015.

September 2015

5. During the month of September 2015 Burton operated with 4 independent operators and 3 directly employed operators ("company drivers").
6. The auditor reviewed the independent operator monthly records and determined that Burton was in substantial compliance with the on dock rates, off dock rates and fuel surcharge required under the Regulation.
7. The auditor reviewed company driver records and determined that with the exception of a few

minor errors totaling \$361.35 Burton was paying its company drivers the minimum hourly rate required by the *Regulation*. The auditor determined that the errors were inadvertent mathematical timesheet errors. Upon being advised of the errors, Burton paid the outstanding amounts owing to its company drivers.

October 2015

8. During the month of October 2015 Burton operated with 4 independent operators and 2 company drivers.
9. The auditor reviewed the independent operator monthly records and determined that Burton was in substantial compliance with the on dock rates, off dock rates and fuel surcharge required under the *Regulation*.
10. The auditor reviewed company driver records and determined that with the exception of a few minor errors totaling \$170.82 Burton was paying its company drivers the minimum hourly rate required by the *Regulation*. The auditor determined that the errors were inadvertent mathematical timesheet errors. Upon being advised of the errors, Burton paid the outstanding amounts owing to its company drivers.

Auditor's Conclusion

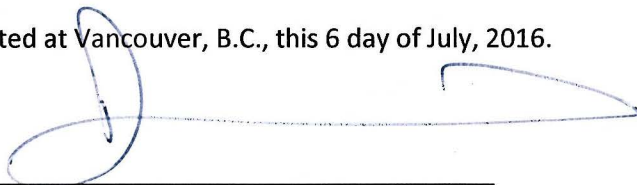
11. Based on the results of her investigation the Auditor concluded that during the months of September and October 2015 Burton was paying its independent operators and company drivers the minimum rates and fuel surcharges required under the *Act* and *Regulation* and that during this period Burton was in substantial compliance with the legislation.
12. The auditor further determined that the Complainant was paid according to the legislation.
13. I accept the auditor's findings.

Decision

14. I find that for the months of September and October, 2015 Burton was paying its drivers, including the Complainant, in accordance with the *Act* and *Regulation*. Accordingly the complaint is dismissed.

This decision will be delivered to the Complainant and Burton and published on the Commissioner's website. (www.bc-ctc.ca).

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



Duncan MacPhail, Commissioner