



July 6, 2016

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Original via courier

Commissioner's Decision

Jet Speed Transport Ltd. (CTC Decision No. 10/2016)

Introduction

1. Jet Speed Transport Ltd. ("Jet Speed") 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. Under Appendix D to Schedule 1 of the Container Trucking Services Licence the Commissioner may direct a licensee to provide a compliance letter from a Certified Professional Accountant.
4. On November 16, 2015 the then Acting Commissioner communicated the following to the TLS community:

As previously stated, licence holders who voluntarily bring themselves into compliance in a timely way to the satisfaction of the Commissioner are far less likely to incur penalties for non-compliance than those who fail to do so. Please see section 34 of the *Act*, which sets out the penalties that can be imposed for the failure to comply.

5. On December 11, 2015 the Acting Commissioner followed up with a further communication wherein she informed the TLS community that:

On the issue of retroactive pay, we once again ask for immediate voluntary compliance of that legislation. While we have not yet exercised our discretion as Commissioners to impose penalties for non-compliance for retroactive pay to date, we are putting the industry on notice

that the Office expects all retroactive pay owing to drivers can be fully paid by licence holders prior to Friday, January 22, 2016 at the very latest. Companies that come into compliance between now and January 22, 2016 may still be subject to penalties pursuant to the Act. Each case will be assessed on a case by case basis and the reasons for non-compliance will be assessed on that basis. It will not be acceptable for a TLS licence holder to simply wait until January 21, 2016 to come into compliance.

It is expected that all companies pay the retroactive pay owing to drivers immediately, and that the industry will be in full compliance of retroactive pay owing by January 22, 2016 at the latest. After January 22, 2016, the imposition of a penalty pursuant to s. 34 of the Act will be highly likely for any company found in non-compliance with the retroactive provisions of the legislation.

6. Complaints were filed with the Office of the Commissioner respecting the rates being paid to directly employed operators ("company drivers"). In response to the complaints the then Acting Commissioner directed Jet Speed to provide a compliance letter for company drivers from a Certified Professional Accountant.
7. Subsequently the then Acting Commissioner also directed an OBCCTC auditor to audit Jet Speed to determine whether or not Jet Speed's company drivers were being paid in accordance with legislative requirements. The auditor requested and received records and documentation from Jet Speed with respect to the periods under audit.

Facts

8. The auditor requested and received relevant records from Jet Speed and determined the following.
9. In April and May of 2014 all company drivers were paid a rate of \$22.59 per hour for container trucking services which was less than the hourly rate required by section 13(1)(b) of the *Regulation*.
10. On June 1, 2014 Jet Speed adjusted its payroll system and from that point forward (with the exception of one driver – "S.G.") paid all of its company drivers, including those with less than 2,340 hours of container trucking services, a compliant hourly rate of \$26.28.
11. With respect to S.G. the auditor concluded as follows. SG was hired by Jet Speed on October 1, 2014. Between his date of hire and March 31, 2016 S.G. was paid an hourly rate of \$24.17 which is below that required by the *Regulation*. Jet speed could not explain to the auditor why S.G. was paid a lower hourly rate; however on April 1, 2015 S.G.'s hourly rate was increased to \$26.28 per hour.
12. The auditor reports that prior to the audit investigation Jet Speed calculated the outstanding amounts owing to its company drivers (including S.G.) and determined it owed a total of \$17,587.26. On January 20, 2016 Jet Speed issued cheques to its drivers (including S.G.) with the intention of bringing itself into compliance with the legislation.
13. Jet Speed's retroactive pay calculations were reviewed by both the CPA retained to do the Appendix "D" audit and the auditor and it was determined that with a very small adjustment the payments

were sufficient to bring Jet Speed into compliance. The identified balances owing were paid to the Jet Speed's drivers on January 30, 2016.

14. Retroactive pay cheques issued to Jet Speed drivers totaled \$18,751.90. The auditor confirmed that cheques totaling this amount were in fact issued and determined that most of these cheques have cleared the bank. For the few that have not, the auditor is satisfied that Jet Speed is actively taking steps to follow up.
15. In summary the auditor determined that Jet Speed did not initially pay all of its drivers in accordance with the *Regulation* but subsequently rectified the shortfall by making adjustment payments. With the exception of small adjustment payments made on January 30, 2016 the payments were made prior to the January 22nd deadline imposed by the former Acting Commissioner.
16. I accept the auditor's findings.

Decision

17. As described above, the circumstances of this case are that the OBCCTC received a complaint that Jet Speed was not paying the rates required by the *Regulation* and as a result Jet Speed:
 - a) was subject to both an Appendix D audit and an OBCCTC investigation audit;
 - b) fully cooperated with the OBCCTC auditor;
 - c) conducted its own internal review prior to the audit investigation, calculated the amounts of retroactive pay owing and issued cheques totaling the calculated amounts to its drivers prior to the January 22nd, 2016 deadline imposed by the former Acting Commissioner. Together with a small adjustment balance subsequently calculated to be owing and later paid, the retroactive payments brought Jet Speed into substantial compliance with the rates proscribed by the *Regulation*.
 - d) is now substantially compliant with its obligations under the *Act* and *Regulation*.
18. As Jet Speed has paid the amounts owing under the legislation and corrected its non-compliant payment practices, I find there is no need to issue an order pursuant to Section 9 of the *Act* requiring the company to comply with the legislation.
19. 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.
20. 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.

21. 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.

22. In the present case, Jet Speed cooperated fully with the auditor's investigation into the complaint. Prior to the audit Jet Speed took steps to bring itself into compliance with the *Regulation's* rate requirements, calculated the retroactive amounts owing to its drivers and issued cheques paying the amounts calculated to be owing prior to the January 22nd, 2016 deadline imposed by the former Acting Commissioner. With these payments, together with payment of a minor adjustment amount later calculated by the Appendix "D" CPA and accepted by the OBCCTC auditor, Jet Speed brought itself into substantial compliance with the rate requirements set out in the *Regulation*. The auditor reports that she is satisfied that Jet Speed is now paying its company drivers in accordance with the *Act* and *Regulation*.

23. Considering all of the circumstances of this case, I conclude this is not an appropriate case to issue a penalty.

Conclusion

24. While I record the fact of Jet Speed's non-compliance with the *Act* by way of this decision, as well as Jet Speed's appropriate actions to bring itself into compliance, I have declined to exercise my discretion to impose a penalty on Jet Speed in this case.

This decision will be delivered to Jet Speed 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