



July 12, 2016

Super Star Trucking Ltd.
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Original via courier

Commissioner's Decision

Super Star Trucking Ltd. (CTC Decision No. 13/2016)

Introduction

1. Super Star Trucking Ltd. ("Super Star") 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. A complaint was filed with the Office of the Commissioner respecting the rates being paid to directly employed operators ("company drivers"). In response to the complaint the then Acting Commissioner directed Super Star to provide a compliance letter for company drivers from a Certified General accountant for the periods between April 1, 2014 – April 30, 2014 and June 1, 2015 - June 30, 2015.
5. On January 29th, 2016 the Office of the British Columbia Container Trucking Commissioner ("OBCCTC") received a compliance letter from a Certified Professional Accountant advising that in the opinion of the Certified Professional Accountant Super Star was in compliance, in all material respects with the criteria established by Part 4 – Rates and Remuneration of the *Regulation* for the periods between April 1, 2014 – April 30, 2014 and June 1, 2015 and June 30, 2015.
6. Following receipt of the compliance letter the then Acting Commissioner directed an OBCCTC auditor to conduct an audit to determine whether Super Star's company drivers were being paid in

accordance with legislative requirements. The auditor requested and received records and documentation from Super Star with respect to the periods under audit.

April 2014

7. The auditor reviewed the company records and determined that for the period April 3, 2014 – April 30, 2014 there were 9 company drivers all of whom were being paid on an hourly basis at the rate of \$25.13 per hour. The auditor further determined that a number of these drivers had performed 2,340 or more hours of container trucking services and therefore were entitled to higher hourly rate of \$26.28 prescribed by section 13(1)(b) of the *Regulation*.
8. The auditor was advised by a Super Star representative that upon discovering that it was not in compliance with the *Regulation* it performed its own internal calculations and on December 31, 2015 paid adjustments to all employees who were entitled to the higher rate of \$26.28 thereby bringing itself into compliance. The auditor reviewed the Super Star's calculations, and related adjustment cheques and concluded that the steps taken by Super Star brought it into substantial compliance for this audit period.
9. In summary the auditor determined that Super Star did not initially pay all of its drivers in accordance with the *Regulation* in April of 2014 but subsequently rectified the shortfall by making adjustment payments on December 31, 2015. I accept this conclusion.

June 2015

10. The auditor reviewed the company records and determined that in June of 2015 Super Star employed 8 company drivers all of whom were being paid on an hourly basis at the rate of \$25.13 per hour. The auditor further determined that a number of these drivers had performed 2,340 or more hours of container trucking services and therefore were entitled to higher hourly rate of \$26.28 prescribed by section 13(1)(b) of the *Regulation*.
11. The auditor reports that Super Star had previously done its own internal calculations for this period and on December 31, 2015 made adjustment payments to bring itself into compliance with the *Regulation* for this period. The auditor reviewed Super Star's calculations and evidence of payment and concluded that Super Star did in fact bring itself into compliance for this period.

June 2015 Forward

12. Having determined that Super Star was not paying its company drivers in accordance with the *Regulation* in April of 2015 and June of 2015, the auditor investigated the period after June 2015 to determine if Super Star was complying with its payment obligations under the *Regulation*.
13. The auditor determined the following:
 - a. Super Star had already undertaken its own internal review;
 - b. Super Star's internal review disclosed that many of its company drivers were being paid a rate of \$25.13 per hour when they were entitled to the higher rate of \$26.28 required by

- the *Regulation*;
- c. Super Star calculated the amounts owing to its company drivers and on December 31st, 2015 Super Star made adjustment payments necessary to bring itself into compliance for this period.
 - d. Beginning on December 1st, 2015 all Super Star drivers who have performed 2,340 or more hours of container trucking services are being paid the higher hourly rate of \$26.28 required by the *Regulation*.
14. The auditor is satisfied that the adjustments calculated and paid by Super Star fully compensate its employees for the retroactive amounts owing and that Super Star is now paying its company drivers in accordance with the *Regulation* for container trucking services.
15. I accept the auditor's findings.

Decision

16. As described above, the circumstances of this case are that Super Star:
- a) was subject to an Appendix D audit and an OBCCTC spot audit both of which focused on April 2014 and June 2015;
 - b) fully cooperated with the OBCCTC auditor;
 - c) conducted its own internal review;
 - d) did not initially pay many of its company drivers the hourly rate required by the *Regulation* but rectified any shortfalls by calculating and paying adjustment payments on December 31, 2015;
 - e) since December 1, 2015 has been paying its company drivers the rates prescribed by the *Regulation*;
 - f) is now substantially compliant with its obligations under the *Act* and *Regulation*.
17. As Super Star 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.
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 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 the present case, Super Star cooperated fully with the auditor's investigation into the complaint. The auditor determined that, upon learning that it was not paying a number of its drivers in accordance with the *Regulation*, Super Star voluntarily took steps to calculate outstanding amounts owing to its company drivers for work performed and on December 31, 2015 (well before the January 22nd, 2016 deadline imposed by the former Acting Commissioner) paid the retroactive amounts owing to its drivers for these periods thereby retroactively bringing itself into compliance with the rate requirements of the *Act* and *Regulation*. Since December 1, 2015 Super Star has paid its drivers in accordance with the *Act* and *Regulation*.

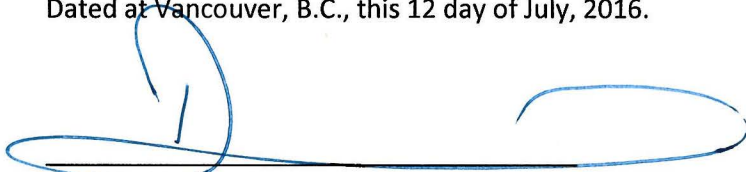
22. Considering all of the circumstances of this case, I conclude this is not an appropriate case to issue a penalty.

Conclusion

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

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

Dated at Vancouver, B.C., this 12 day of July, 2016.



A handwritten signature in blue ink, consisting of a large loop and a horizontal stroke, is written over a horizontal line.

Duncan MacPhail, Commissioner