



September 12, 2016

Bestlink Transport Services Inc.
Unit #300 – 8335 Meadow Avenue
Burnaby, BC V3N 2W1

via email: dispatch@bestlinktransport.com
Original via mail

Attention: Mr. Maninder S. Johal

Commissioner's Decision **Bestlink Transport Services Inc. (CTC Decision No.16/2016)**

Introduction

1. Bestlink Transport Services Inc. ("Bestlink") 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. As well, 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.

Facts

4. On November 18, 2015, pursuant to Appendix D to Schedule 1 of the Container Trucking Services Licence, the then Acting Commissioner directed Bestlink to provide a compliance letter for directly employed drivers ("company drivers") from a Certified General accountant for the periods between April 1, 2014 – April 30, 2014 and June 1, 2015 - June 30, 2015 ("the Appendix D audit period").
5. On January 31, 2016, the Office of the British Columbia Container Trucking Commissioner ("OBCCTC") received a compliance letter from Bestlink's Certified Professional Accountant (the "CPA") indicating that with the exceptions noted in Appendix "A" to the compliance letter Bestlink was in compliance with the *Act* during the Appendix D audit period.

6. Appendix A to the CPA's audit letter states that the records of 6 drivers were examined for the June 2015 audit period and that all 6 drivers were being paid at a rate of \$25.13 per hour during this period. Appendix A further records that in view of the CPA, 4 of these drivers should have been receiving an hourly rate of \$26.28 during this period.
7. Following receipt of the compliance letter then Acting Commissioner directed an OBCCTC auditor to conduct a spot audit to determine if Bestlink was paying its company drivers the minimum hourly rates required under the *Act and Regulation* during the Appendix D audit period. The auditor requested and received certain payroll records and documentation from Bestlink.
8. The records provided for the first pay period in June of 2015 indicated that Bestlink was not paying its company drivers the minimum hourly rates required under the *Regulation*. As a result the Commissioner directed a full audit of all company drivers for the period from July 7, 2014¹ to April 30, 2016.
9. The records provided by Bestlink included the following:
 - Daily trip sheets;
 - Driver pay statements;
 - Recently issued port passes for company drivers where Bestlink claimed the driver had worked less than 2340 hours in the industry;
 - Time cards;
 - Pay cheque stubs and copies of cancelled pay cheques.
10. In addition to the above records, Bestlink also provided its own calculations identifying retroactive adjustment amounts it believed to be owing to its company drivers. Although Bestlink's own calculations confirmed that its company drivers were owed adjustment payments, Bestlink admitted in a July 19th, 2016 email that these adjustments had not yet been paid:

"I wanted to inform you that adjustments had not yet been paid as we were aware the audit was going to take place and wanted to ensure that the amount paid was correct.

Please let me know the total to pay for each of the drivers and we will cut those cheques and send you the requested copies."
11. The OBCCTC auditor audited the records of all company drivers who worked during the period between July 7, 2014 and April 30, 2016. On August 8th, 2016 the Auditor submitted her report to the OBCCTC. The audit report, discloses the following:
 - a. Prior to February 1, 2015 Bestlink paid its company drivers hourly rates ranging between \$15 and \$20 per hour.
 - b. Between February 1, 2015 and November 30, 2015 Bestlink paid \$25.13 per hour regardless of their experience in the drayage industry.
 - c. On and after December 1, 2015 drivers who had completed 2340 hours of work in the

¹ Bestlink was purchased on July 7, 2014 and current management were unable to obtain payroll records prior to this date.

- drayage industry were paid an hourly rate of \$26.28 per hour.
- d. Prior to November 30, 2015 Bestlink deducted a one-half hour meal break from the pay of hourly paid drivers. The auditor did not accept this deduction in her calculations as it was determined that drivers commonly ate their lunches in their trucks while working.
12. After reviewing all of the records the auditor determined that for the period running from July 7, 2014 to November 30, 2015 Bestlink owed its company drivers adjustment amounts totaling \$35,753.16.
13. The auditor is satisfied that going forward from December 1st, 2015 to the end of the audit period Bestlink has paid its company drivers rates which comply with the minimum requirements set forth in the *Act* and *Regulation*.
14. Bestlink accepted the auditor's calculations and conclusions. However as of the date of the auditor's report – August 8th, 2016- Bestlink had still not yet paid the amounts calculated by the auditor to be owing. Bestlink has advised the auditor that while it agreeable to paying the amounts owing it is unable to make a commitment as to when these payments will be made.
15. I accept the audit results and the auditor's findings as recorded above.

Interim Order

16. On August 11, 2016, having received and reviewed the auditor's report, and being concerned that Bestlink had not yet paid the amounts found to be owing, and about its reported unwillingness to commit to when the payments would be made, the Deputy Commissioner issued an interim order ordering Bestlink to pay the retroactive wage amounts owing to company drivers pursuant to the auditors findings. More particularly the Deputy Commissioner ordered the following:

“Specifically, I order that Bestlink pay the following amount which is the auditor's calculations as of today's date: \$35,753.16.

The amount noted above must be paid by no later than 4 p.m. on August 18, 2016.”

17. Bestlink has complied with the terms of the order and has now paid its company drivers the amounts found to be owing.

Decision

18. As described above, the circumstances of this case are that:
- a) the then Acting Commissioner ordered an Appendix D audit and subsequently a further audit of Bestlink's company drivers;
 - b) the audit process identified, and Bestlink has accepted, that for the period from July 7th, 2014 to November 30th, 2015 Bestlink was not paying its company drivers the minimum hourly rate required by the legislation. The audit report disclosed that Bestlink owed its company drivers a combined total of \$35,753.16 for this period.

- c) since December 1st, 2015 Bestlink has been paying its company drivers hourly rates which meet the requirements of the *Act* and *Regulation*;
- d) Bestlink failed to bring itself into compliance for the period July 7th, 2014 to November 30th, 2015 by the January 22, 2016 deadline established by the former Acting Commissioner;
- e) By August 8th, 2016 Bestlink had still not paid the amounts calculated to be owing and as a result an interim order requiring payment by not later than 4pm on August 18th, 2016 was issued by the Deputy Commissioner.
- f) Bestlink has complied with the terms of the Deputy Commissioner's order and has now paid its company drivers the amounts found to be owing.

19. As Bestlink has paid the amounts owing to its company drivers 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 pay its company drivers in compliance with the legislation.

20. 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.

21. 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.

22. 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.

23. 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.

24. On January 20, 2016 the then OBCCTC issued a further communication to the industry reinforcing its expectation that all licensees be in full compliance of retroactive owing by January 22, 2016:

1. Retroactive Pay

The Office of the BC Container Trucking Commission (“OBCCTC”) issued a memo on December 11, 2015 indicating that all companies should come into compliance with respect to retroactive pay on or before January 22, 2016. That date is this Friday. We thank the many stakeholders who have already complied and provided verification of these efforts to the OBCCTC. For those TLS licence holders who have not yet come into voluntary compliance, please be advised that when such non-compliance is identified by the OBCCTC, penalties pursuant to Section 34 of the Container Trucking Act (the “Act”) are likely to result after the abovementioned date.

As recorded above Bestlink failed to meet this deadline for bringing itself into compliance in a timely way. Moreover and importantly, Bestlink knew that it had failed to pay its company drivers the rates required by the *Regulation* yet failed to take any steps to pay outstanding amounts owing until after the OBCCTC issued its August 11th, 2016 interim order.

25. As I noted in Olympia Transportation (CTC Decision No. 02/2016):

“...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.”

26. Licensees who fail or refuse to take steps to ensure compliance until ordered to do so by the OBCCTC can reasonably expect to face penalties.
27. The Act is beneficial legislation intended to ensure that drivers are paid properly the legislated rates in a timely manner. The former Acting Commissioner provided clear and repeated notice to licensees that a failure to become compliant by January 22nd, 2016 will likely result in a penalty. I have repeatedly reminded stakeholders of their obligation to take steps to ensure compliance. In light of these circumstances, and taking into account all of the facts present in this case, including Bestlink’s failure to pay adjustments to its company driver’s until ordered to do so, I find this is an appropriate case to issue a penalty of \$7,000.00. The penalty is intended to reinforce the principle that licensees must comply with the legislation, as well as with notices and directions issued by this office. These notices and directions are issued to further the purposes of the legislation, which

include fostering industrial stability and fairness for companies and drivers through the timely payment of required wages by all licensees.

28. In the result 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 Bestlink in the amount of \$7,000.00;
- b. Should it wish to do so, Bestlink 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 Bestlink provides a written response in accordance with the above I will consider its response, and I will provide notice to Bestlink 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.

29. I have also directed that an audit of Bestlink's independent operators be undertaken.

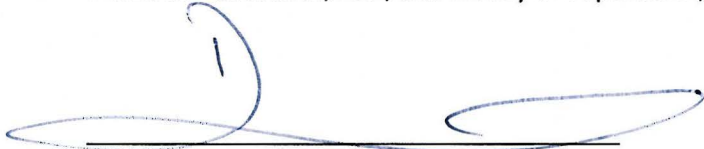
Conclusion

30. With this decision I remind licensees that under Section 13 of the *Regulation* company drivers are entitled to receive an hourly rate of \$26.28 once they have performed 2,340 hours of container trucking services on behalf of **any licensee**.

31. I also once again remind the industry that the onus to become and remain compliant with the requirements of the *Act* and the *Regulation* rest with the licensee. Licensees who fail to meet this obligation can reasonably expect to be fined.

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

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



Duncan MacPhail, Commissioner