



February 15, 2017

Canadian Boys Transport Ltd.
12453 – 69A Avenue
Surrey, BC V3W 0L8

Via email: sukh@cbtrans.ca
Original to follow via mail

Attention: Mr. Sukh Rai

Commissioner's Decision Canadian Boys Transport Ltd. (CTC Decision No. 03/2017)

Introduction

1. Canadian Boys Transport Ltd. ("Canadian Boys") 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.
3. In February of 2016 the then Acting Commissioner directed an auditor to audit Canadian Boys records to determine if its directly employed operators ("company drivers") and independent operators were being paid the minimum rates required under the *Container Trucking Regulation* (the "Regulation"). The auditor was directed to audit the periods April 1-30, 2015 and October 1-31, 2015 (together the "Initial Audit Period").

Initial Audit Period

4. The auditor requested, obtained and reviewed relevant records and determined that during the Initial Audit Period:
 - a. Company drivers were often not being paid the hourly rates required under the *Regulation*. The auditor found that during this period the hourly rates being paid to company drivers ranged from \$14 - \$26 per hour.
 - b. Independent Operators were being paid rates which complied with those required under the *Regulation*.

5. The auditor determined that for the Initial Audit Period company drivers were owed adjustment amounts totaling \$5,105.09.
6. The auditor reports that when presented with her conclusions Canadian Boys conceded that during the Initial Audit Period they had failed to pay their company drivers the minimum rates required under the *Regulation* and agreed to pay (and did in fact pay) the amounts found to be owing. The following table summarizes the auditors findings:

Number of Drivers	Audit Period	Initial Amount Owing	Retroactive Pay Paid July 2016	Final Amount Owing
7	Apr-15	2,164.98	2,164.98	0.00
4	Oct-15	2,940.11	2,940.11	0.00
		5,105.09	5,105.09	0.0

Expanded Audit Period

7. In July of 2016, having discovered that Canadian Boys was paying non-compliant rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the period from April 3rd, 2014 to June 30, 2016, excluding the months of April and October 2015 which had already been audited. (the Expanded Audit Period).¹
8. Under the direction of the auditor Canadian Boys reviewed its records and calculated the total amounts of compensation its drivers should have received during the Expanded Audit Period applying the minimum rates required under the *Regulation*. Comparing this amount to what was actually paid, it was ultimately determined that Canadian Boys owed its drivers adjustment amounts totaling a further \$23,090.37. The auditor reviewed Canadian Boys' calculations, spot audited the results, and was satisfied that the calculations accurately record the adjustment amounts owing to Canadian Boys' drivers.
9. The auditor further reports that Canadian Boys has accepted that it failed to pay compliant rates during the Expanded Audit Period and that it has now paid out the adjustment amounts calculated to be owing.
10. The audit report concludes with the following summarized findings:

¹ The auditor reports that by July 1, 2016 Canadian Boys no longer employed independent operators and that having investigated the matter she was satisfied that as of this date all company drivers were being the minimum hourly rate required under Section 13 of the *Regulation*.

- a. Canadian Boys has now brought itself into compliance with the *Act* for the period April 3, 2014 to present;
- b. Canadian Boys has been paying its company drivers in accordance with the *Act* and *Regulation* since July 1, 2016.

11. In addition the auditor reports that Canadian Boys was, “very attentive during the entire audit process”, “all emails and phone call were returned immediately” and its calculations were, “extremely well done”.

Other Relevant Auditor Findings

12. During the audit process the auditor discovered that Canadian Boys had entered into a set-off arrangement with one of its independent operators. Under the terms of this arrangement an agreement was reached between Canadian Boys and the independent operator that required the driver’s earnings be applied to pay off monies previously loaned to him by Canadian Boys. Although neither the loan or the set-off repayment arrangement were reduced to writing, both parties agreed that the monies were owed and that any compensation earned by the owner operator was to be applied to pay off the loan. Between April and August of 2014, roughly \$18,500 of earnings was set off against the loan.
13. The auditor reports that when she discovered this set-off arrangement she advised Canadian Boys that notwithstanding its agreement with the owner operator, it could not apply earnings directly to the loan and that any monies earned would have to be paid back to the independent operator. Simply put, Canadian Boys was informed that the independent operator’s earnings could not be set off against the loan. Canadian Boys accepted the views of the auditor and has provided the independent operator with a cheque compensating him for his work.

Decision

14. I accept the findings of the auditor.
15. As described above, the circumstances of this case are that:
 - a) the then Acting Commissioner ordered an audit of Canadian Boys’ drivers;
 - b) the audit process disclosed that between April 3, 2014 and June 30, 2016 Canadian Boys often paid its drivers less than the minimums required under the *Act* and *Regulation* and that, in total, adjustments totaling \$28,195.46 were owed to its drivers;
 - c) Canadian Boys has accepted the audit results and has paid the amounts determined to be owing;
 - d) the audit disclosed an agreed upon loan repayment set-off arrangement between Canadian Boys and one of its independent operators. When informed by the auditor that such an arrangement was not permissible under the *Act*, Canadian Boys paid the independent operator his earnings;
 - e) since July 1st, 2016 Canadian Boys has been paying its company drivers hourly rates

- which meet the requirements of the *Act* and *Regulation*;
- f) with the payment of the adjustment amounts found to be owing Canadian Boys brought itself into compliance for the periods covered by the audit;
 - g) Canadian Boys was helpful during the audit process, responded promptly to all emails and telephone call and provided extremely well done calculations; and
 - h) Canadian Boys is now substantially compliant with the legislation.
16. As Canadian Boys has paid the amounts owing to its drivers 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.
17. 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.
18. 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.
19. In this case it has been determined that between April 3rd, 2014 and July 1, 2016 Canadian Boys failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period Canadian Boys owed its drivers adjustments totaling \$28,195.06.
20. In addition the auditor found that Canadian Boys entered into a set-off loan repayment arrangement with one of its owner operators which is not permitted under the *Act*.
21. As recorded above Canadian Boys was very cooperative during the audit and immediately conceded its non-compliant behaviors and its failure on numerous occasions to pay the required minimum rates. In addition, not only is Canadian Boys now paying compliant rates, it has voluntarily paid out the adjustment amounts calculated to be owing. However, at the end of the day, as a holder of a Container Trucking Licence Canadian Boys is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that Canadian Boys ultimately failed to fulfill this obligation. For this reason, I have concluded that an administrative fine is appropriate here.
22. Turning now the issue of how large the fine should be and applying the relevant penalty quantum factors articulated in Smart Choice Transportation Ltd. (CTC Decision No. 21/2016), I have decided that a relatively small administrative penalty of \$3,500.00 is appropriate in all of the circumstances. The relatively small size of the fine is intended to strike a delicate balance. It is intended to respond to and penalize Canadian Boys for past non-compliant behaviors while at the same time recognizing Canadian Boys' cooperation and efforts during the audit process, its immediate and unequivocal acceptance of its non-compliant behaviors and its efforts to bring itself into substantial compliance,

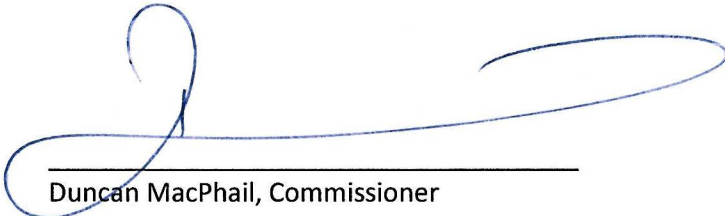
both in the past and going forward into the future. The size of the fine reflects my view that in the specific and unique circumstances present here a larger fine is unnecessary to deter future non-compliance. Simply put, in my view Canadian Boys is now on the right track.

23. 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 Canadian Boys in the amount of \$3,500.00;
- b. Should it wish to do so, Canadian Boys 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 Canadian Boys provides a written response in accordance with the above I will consider its response, and I will provide notice to Canadian Boys 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.

24. This decision will be delivered to Canadian Boys and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 15th day of February, 2017.



Duncan MacPhail, Commissioner