



March 28, 2017

United Coastal Logistics Ltd.
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Attention: Mr. Raj Dhillon

Commissioner's Decision

United Coastal Logistics Ltd. (CTC Decision No. (05/2017))

Introduction

1. United Coastal Logistics Ltd. ("United Coastal") 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 United Coastal to provide a compliance letter for directly employed drivers ("company drivers") from a certified professional accountant ("CPA") for the periods April 1, 2014 – April 30, 2014 and June 1, 2015 - June 30, 2015 ("the Appendix D audit period").
5. On February 1, 2016 the Office of the British Columbia Container Trucking Commissioner ("OBCCTC") received a letter from the CPA. The letter identified that United Coastal was mistakenly including vacation pay in its calculation of the compensations payable under Section 13 of the Regulation.

6. In TMS Transportation Services Ltd. (CTC No. 8/2016) I confirmed that vacation pay is not included in the minimum rates established by Section 13 of the *Regulation*.
7. In his letter the CPA concludes that as a result of mistakenly including vacation pay in its calculation of compensation required under Section 13 of the *Regulation*, United Coastal underpaid its company drivers during the period covered by the Appendix D audit by \$8,047.48. United Coastal accepted the view of the CPA and in January of 2016 paid out the monies calculated to be owing.
8. On February 17, 2016, following receipt of aforementioned letter from the CPA, the then Acting Commissioner directed an OBCCTC auditor to conduct a spot audit, "... on the work performed by the CPA..." The auditor selected a sample of drivers who worked for United Coastal in April of 2014 and June of 2015 and requested and received relevant records and documentation from United Coastal.
9. Following the engagement of the OBCCTC auditor, but prior to the auditor reviewing the requested records, United Coastal voluntarily undertook its own review of its payroll for the purpose of identifying and calculating adjustment amounts owing to company drivers resulting from the mistaken inclusion of vacation pay in the rates being paid. The voluntary review covered the period between July 1, 2015 and November 30, 2015. United Coastal calculated that for this period it owed its company drivers adjustment payments totaling \$20,893.66. United Coastal paid these adjustments to its drivers in April of 2016.¹
10. The OBCCTC auditor reviewed the work undertaken by the CPA and by United Coastal. The auditor discovered a mathematical error in the CPA's calculations. She also discovered that a review of the period May 16 – 31, 2015 had been inadvertently omitted. In the end result, the auditor concluded that an additional \$3,173.53 was owing to United Coastal company drivers. United Coastal was provided with the auditor's work and did not dispute the calculations. A further adjustment was paid by United Coastal in January of 2017.
11. The audit results can be summarized as follows:

Audit Summary	Adjustments Calculated as Owing	Paid
May 16-31, 2015	\$2,198.09	January, 2017
April 2014 & June 2015	\$8,047.58	January 2016
Additional June, 2015	\$975.44	January 2017
July – November, 2015	\$20,893.66	April 2016
	<u>31,893.66</u>	

12. The auditor reports that United Coastal maintained adequate records, was helpful during the audit process, and promptly replied to all emails and telephone calls.

¹ Between April of 2014 and May 15, 2015 United Coastal paid its company drivers trip rates which did not run afoul of the requirements of the Container Trucking Legislation.

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13. Finally, the auditor reports:
- a. With the payment of the aforementioned adjustments United Coastal brought itself into compliance for the period April 3, 2014 to November 30, 2015;
 - b. Going forward from December 1, 2015 United Coastal has paid substantially compliant rates to its company drivers.
14. I accept the audit results and the auditor's findings as recorded above.

Decision

15. As described above, the circumstances of this case can be summarized as follows:
- a. Prior to December 1st, 2015 United Coastal failed to pay its company drivers rates which complied with the minimums required under Section 13 of the *Regulation*. More particularly during this period United Coastal mistakenly included vacation pay in its calculation of the basic rates required under the Container Trucking *Regulation*. As a result, company drivers employed by United Coastal during this period were underpaid by amounts totaling \$31,893.66.
 - b. The non-compliant payment practice was first discovered and reported by a CPA as part of an Appendix D audit.
 - c. Upon discovering that it was not in compliance with the rate requirements established under the *Regulation*, United Coastal immediately took steps to pay the adjustment amounts identified by the CPA as owing during the Appendix D audit period, and took immediate steps to voluntarily review its payment practices.
 - d. With the payment of \$31,893.66 United Coastal brought itself into compliance for the period prior to December 1, 2015.
 - e. Since December 1, 2015 United Coastal has paid its company drivers rates which comply with those required under Section 13 of the *Regulation*.
 - f. United Coastal maintained adequate records, was helpful during the audit process, and promptly replied to all emails and telephone calls.
16. As United Coastal 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.
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 the facts are that United Coastal mistakenly included vacation pay in its calculation of the hourly rates payable to company drivers under Section 13 of the *Regulation* and as a result underpaid its company drivers. However, when this mistake was discovered through the Appendix D audit process United Coastal immediately took steps to compensate its drivers for the period covered by the Appendix D audit and immediately reviewed its payment practices beyond the Appendix D audit period. It then promptly corrected its non-compliant behaviour by promptly paying out adjustments amounts calculated to be owing prior to November 30, 2015. These steps brought United Coastal into substantial compliance for the period prior ending on November 30, 2015. Additionally the audit confirmed that United Coastal has paid compliant rates to its company drivers since December 1, 2015.
20. In addition to taking prompt steps to identify and resolve its non-compliant behaviour, and to bring itself into compliance the audit disclosed that United Coastal kept proper records and was helpful and responsive during the audit process.
21. While I must acknowledge all of the positive steps taken by United Coastal to promptly bring itself into compliance, it cannot be forgotten that for a period of time the compensation being paid by United Coastal to its company drivers fell below that required under the *Act*. As I have said on many previous occasions, the onus rests on the licensee to ensure compliance. Here, however inadvertent the mistake may have been, it still remains the case that United Coastal failed to meet this responsibility and for a period of time was enriched by this mistake. For this reason I have determined that a small administrative fine in the amount of \$1,500.00 is warranted. The auditor's report gives me confidence that United Coastal understands and acknowledges its past mistake and that it will ensure that its compliant behaviours continue into the future. Were I of a different view, I would have imposed a higher fine.
22. 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 United Coastal in the amount of \$1,500.00;
 - b. Should it wish to do so, United Coastal 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 United Coastal provides a written response in accordance with the above I will consider its response, and I will provide notice to United Coastal 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.
23. I have also directed that an audit of United Coastal's independent operators be undertaken.

Conclusion

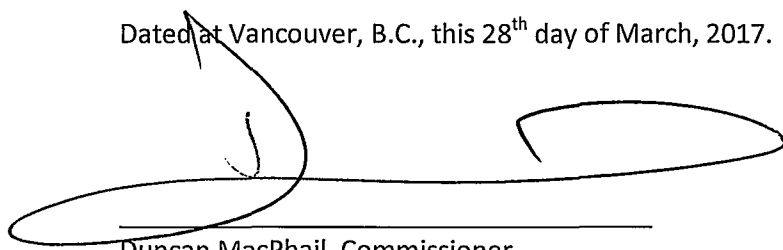
24. With this decision I remind licensees that under Section 13 of the *Regulation* company drivers are entitled to receive an hourly rate of \$26.28 once they have performed 2,340 hours of container

trucking services on behalf of **any licensee**. Vacation pay must be additional to the minimum hourly rate required by the *Regulation*, not included within that amount.

25. 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.

26. This decision will be delivered to United Coastal and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 28th day of March, 2017.

A large, stylized handwritten signature in black ink, consisting of a large loop on the left and a horizontal line extending to the right.

Duncan MacPhail, Commissioner