



August 1, 2017

Ray-Mont Logistics Vancouver Inc.
15900 River Road,
Richmond, BC
V6V 1L5

Commissioner's Decision

Ray-Mont Logistics Vancouver Inc. (CTC Decision No. 15/2017)

Introduction

1. Ray-Mont Logistics Vancouver Inc. ("Ray-Mont") 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 January of 2017 the Acting Commissioner directed an auditor to audit Ray-Mont records to determine if its directly employed operators ("company drivers") 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, 2014 and October 1-31, 2016 (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 many of Ray-Mont's company drivers were not being paid the minimum rates required under the Regulation. The auditor concluded that during the initial audit period Ray-Mont owed company drivers adjustment payments totaling \$3,842.88.

Expanded Audit Period

5. Having discovered that Ray-Mont was paying non-compliant rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the entire period from April 3rd, 2014 to January 23rd, 2017, (the Expanded Audit Period).¹

¹ The auditor reports that beginning on January 23rd, 2017 Ray-Mont began to pay all of its driver's at least \$26.28

6. Under the direction of the auditor Ray-Mont reviewed its records and calculated the total amounts of compensation its company 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 determined that Ray-Mont owed its company drivers adjustment amounts totaling \$20,961.59 (inclusive of the amounts found to be owing during the Initial Audit Period). The auditor reviewed Ray-Mont's calculations, spot audited the results, and was satisfied that the calculations accurately record the adjustment amounts owing to Ray-Mont's company drivers.
7. The auditor further reports that Ray-Mont 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. Ray-Mont provided copies of records confirming that the adjustment payments were in fact made as represented.
8. The audit report concludes with the following summarized findings:
 - a. Ray-Mont has now brought itself into compliance with the *Act* for the period April 3, 2014 to January 23rd, 2017;
 - b. Ray-Mont has been paying its company drivers in accordance with the *Act* and *Regulation* since January 23rd, 2017.
9. The auditor reports that Ray-Mont was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion. Furthermore the auditor reports that Ray-Mont's record keeping met the conditions of its licence.

Decision

10. I accept the findings of the auditor.
11. As described above, the circumstances of this case are that:
 - a) the Commissioner ordered an audit of Ray-Mont's company drivers;
 - b) the audit process disclosed that between April 3, 2014 and January 23rd, 2017 Ray-Mont failed to pay many of its company drivers the minimum rate required under the *Act* and *Regulation* and that adjustments totaling \$20,961.59 were owed to 14 company drivers;
 - c) Ray-Mont has accepted the audit results and has paid the amounts determined to be owing;
 - d) Ray-Mont was co-operative and helpful during the audit process.
 - e) since January 23rd, 2017 Ray-Mont has been paying its company drivers hourly rates which meet the requirements of the *Act* and *Regulation*;
 - f) Ray-Mont is now substantially compliant with the legislation.

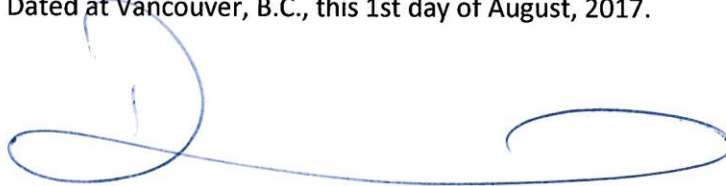
per hour, the minimum rate required under Section 13 of the the *Regulation*.

12. As Ray-Mont 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.
13. 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.
14. 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.
15. In this case it has been determined that between April 3rd, 2014 and January 23rd, 2017 Ray-Mont failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period Ray-Mont owed 14 company drivers adjustments totaling \$20,961.59.
16. As recorded above Ray-Mont was cooperative during the audit and immediately conceded its non-compliant behaviors and its failure to pay the required minimum rates. In addition, not only is Ray-Mont now paying compliant rates, it has paid out the adjustment amounts calculated by the auditor to be owing.
17. Nevertheless, as a holder of a Container Trucking Licence Ray-Mont is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that Ray-Mont ultimately failed to fulfill this obligation. For this reason, I have concluded that an administrative fine is appropriate here.
18. 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 \$3,000.00 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 Ray-Mont for past non-compliant behaviors while at the same time recognizing Ray-Mont's 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 circumstances present here a larger fine is unnecessary to deter future non-compliance.
19. 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 Ray-Mont in the amount of \$3,000.00;

- b. Should it wish to do so, Ray-Mont 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 Ray-Mont provides a written response in accordance with the above I will consider its response, and I will provide notice to Ray-Mont 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.

20. This decision will be delivered to Ray-Mont and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 1st day of August, 2017.



Duncan MacPhail, Commissioner