



September 19, 2017

Triangle Transportation Ltd.  
8970 River Road  
Delta, BC V4B 1B5

## **Deputy Commissioner's Decision Triangle Transportation Ltd. (CTC Decision No. 20/2017)**

### **Introduction**

1. Triangle Transportation Ltd. ("Triangle") 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 April of 2017, the Commissioner directed an auditor to audit Triangle's records to determine if its directly employed operators ("company drivers") and independent owner operators ("I/O's") were being paid the minimum rates required under the *Container Trucking Regulation* (the "Regulation"). The auditor was directed to audit the periods November 1-30, 2014 and March 1-31, 2017 (together the "Audit Period"). The Audit Period was later amended to March 2017 following evidence supplied by Triangle, and verified by the Office of the BC Container Trucking Commissioner, that Triangle did not perform any container trucking services between April and December 2014.

### **Audit Period**

4. The auditor received from Triangle a copy of the relevant records and determined that during the Audit Period, Triangle paid its company driver (Triangle employed one company driver during the Audit Period) the minimum rates required under the Regulation. The auditor also determined that during the Audit Period, Triangle made some minor payroll errors and missed one container move, resulting in an adjustment amount of \$220.90 owing to its I/O for the Audit Period (Triangle employed one I/O during the Audit Period). Nevertheless, the auditor concludes that Triangle has paid its I/O the minimum rates required under the Regulation.

5. The auditor reports that Triangle accepted that it miscalculated the amount owing to its I/O and that it has now paid out all the required adjustment amount calculated to be owing. Triangle provided a copy of the record confirming that the adjustment payment was in fact made as represented.
6. The audit report concludes by finding that Triangle is in compliance with the *Act* for the period March 1st to 31st 2017. The auditor reports that Triangle was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.

### Decision

7. I accept the findings of the auditor.
8. As described above, the circumstances of this case are that:
  - a. the Commissioner ordered an audit of Triangle's company drivers and I/O's;
  - b. the audit process disclosed that during March 2017 Triangle paid its company driver and I/O the minimum rates required under the *Act* and *Regulation* and that an adjustment totaling \$220.90 representing minor payroll errors and one omission was owed and paid to the I/O;
  - c. Triangle has accepted the audit results and has paid the amount determined to be owing;
  - d. Triangle was co-operative and helpful during the audit process;
  - e. Triangle is substantially compliant with the legislation.
9. As Triangle has paid the amount owing to its I/O there is no need to issue an order pursuant to Section 9 of the *Act* requiring the company to pay its I/O in compliance with the legislation.
10. 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.
11. 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. 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.
12. 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. In this case, Triangle cooperated fully with the auditor and voluntarily took steps to rectify minor payroll errors and one payroll omission found during the audit of Triangle's I/O. Triangle has paid its drivers in accordance with the *Regulation*.

13. Considering all of the circumstances of this case, I conclude this is not an appropriate case to issue a penalty. I record the fact of Triangle's non-compliance with the *Act* by way of this decision as well as Triangle's appropriate actions to bring itself into compliance and I have declined to exercise my discretion to impose a penalty on Triangle in this case.
14. This decision will be delivered to Triangle and published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 19th day of September, 2017.



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Michael Crawford, Deputy Commissioner