



September 19, 2017

Prudential Transportation Ltd.
Unit 239 – 8138 128th Street
Surrey, BC V3W 1R1

Deputy Commissioner’s Decision Prudential Transportation Ltd. (CTC Decision No. 21/2017)

Introduction

1. Prudential Transportation Ltd. (“Prudential”) 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 26 of the Act, any person may make a complaint to the British Columbia Container Trucking Commissioner (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 Regulation or a licence. (I note the Commissioner has authority under Section 31 to conduct such audits and investigations whether or not the Commissioner has received a complaint).
3. Section 27 of the Act provides, in essence, that complaints may be made confidentially to the Commissioner. That is, if a complaint is made on a confidential basis, the Commissioner “must make best efforts to avoid disclosing any identifying information respecting the complainant” unless disclosure becomes necessary for purposes of the Act.

Facts

April 3, 2014 – December 22, 2014 (The Retroactive Period) Audit

4. The Act and the Regulation came into effect on December 22, 2014, and a Commissioner was appointed on February 16, 2015. On July 28, 2015, complaints were filed with the Office of the BC Container Trucking Commissioner against several licensee companies, including Prudential. The complaint against Prudential alleged the company’s payments to its independent operators for numerous trips from April 3, 2014 were not in compliance with the retroactive on-dock and off-dock rates that came into effect with the passage of the legislation in December of that year (“retroactive pay”).
5. The Commissioner directed an audit to begin with respect to complaint.

6. Because of the volume of the records received, the auditor visually examined the payroll records for the month of April 2014 and then conducted a full audit of Prudential's payment of Independent Operators for the sample month of May 2014. After a detailed analysis of the records and documentation for that month in light of the legislative requirements, the auditor concluded the rates Prudential paid to its 67 Independent Operators for on-dock moves were in substantial compliance with the Schedule 2 on-dock trips rates in the *Regulation*, the rates it paid for off-dock moves met or exceeded the Schedule 1 off-dock rates in the *Regulation*, and the fuel surcharge paid was also compliant with the legislation.
7. The auditor then visually examined the records for remaining months in the audit period and concluded that they were consistent with the audited records of May 2014, and that there was no evidence of non-compliance or of retroactive pay owing.
8. The records showed Prudential had anticipated the need to increase its trip rates and fuel surcharge payment from April 2014 onward. The auditor found that, as a result, the company was substantially compliant, did not owe retroactive pay to its Independent Operators and was in substantial compliance with the *Act* and the *Regulation*.
9. There being no evidence of any adjustments owing during the retroactive period, and in view of the auditor's finding that Prudential was in substantial compliance during the retroactive period the former Acting Commissioner suspended the audit.

February Audit, 2015 Spot Audit

10. Following his appointment in March of 2016, Commissioner MacPhail directed the auditor to conclude the audit process by conducting a spot audit of the month of February 2015.
11. The auditor conducted a detailed audit of the rates paid by Prudential during the month of February 2015 and concluded that with a few minor exceptions (totaling less than \$800.00) Prudential had paid its 67 Independent Operators rates which were substantially compliant with those required under the Container Trucking Legislation. During this month Prudential's Independent Operator's completed almost 5,000 trips.
12. Prudential has since paid the adjustment amounts calculated to be owing.

Further Complaint

13. In November 2016, the Office of the British Columbia Container Trucking Commissioner received a complaint alleging that contrary to the Prudential's Container Trucking Services Licence Prudential was making improper deductions from the compensation owing to its Independent Operators. The OBCCTC directed the auditor to investigate this complaint.
14. The auditor began the investigation by reviewing Prudential's February 2015 records and discovered that during this month Prudential had deducted a total of \$550 from 5 of its Independent Operators.

Further investigation revealed that the deductions were for “failure to notify the dispatcher”. Under the Container Trucking Services Licence, the deduction of Business Costs is not permitted.

15. The auditor continued the investigation by directing Prudential to review its records from March 1, 2015 to the present for the purpose of identifying all deductions taken by Prudential in response to missed reservations. Prudential's review disclosed a further \$1275.00 in deductions including \$475.00 in deductions made to the complainant. The auditor has investigated the work undertaken by Prudential and is satisfied that it is complete.
16. Prudential has since voluntarily paid back the deductions to the affected Independent Operators.
17. Prudential cooperated fully with the auditor's investigation of the complaint. It complied with the directions given by the auditor, including disclosing records.
18. I accept and adopt the findings of the auditor.

Conclusion

19. As described above the circumstance of this case are that:
 - a. with a few minor exceptions (which have been remedied) Prudential has paid substantially compliant rates during the audited periods;
 - b. contrary to its Container Trucking Services Licence, Prudential was making deductions from Independent Operator compensation related to “failure to notify the dispatcher”. These deductions (which totaled \$1825.00) have been identified and repaid; and
 - c. Prudential cooperated fully with the auditor during his investigation.
20. As Prudential has paid the amount owing under the *Act* and has corrected its non-compliant behavior I find that there is no need for me to issue an order pursuant to Section 9 of the *Act* requiring Prudential to comply with the *Act*.
21. I also find that this is not an appropriate case to exercise my discretion in favour of imposing a penalty. I come to this conclusion for a number of reasons including the following:
 - a. Prudential cooperated fully with the auditor during the investigation and complied with all directions including the production of records;
 - b. Prudential did not engage in any form of fraudulent, deceptive, dishonest or bad faith behaviours;
 - c. Prudential anticipated the need to increase its trip rates and fuel surcharge payment from April 2014 onward and with some minor exceptions paid substantially compliant rates throughout the entire period covered by the audit including the retroactive period prior to December 22nd, 2014; and
 - d. the deductions relating to missed reservation fees, although contrary to Prudential's licence were done with the knowledge of the union and arguably were permitted under the collective agreement.

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

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

A handwritten signature in blue ink, appearing to read 'Michael Crawford', written in a cursive style.

Michael Crawford, Deputy Commissioner