



September 25, 2017

Future Trucking Ltd.
6278 125A Street,
Surrey, BC V3X 3M9

Deputy Commissioner's Decision Future Trucking Ltd. (CTC Decision No. 23/2017)

Introduction

1. Future Trucking Ltd. ("Future") 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 June of 2017, the Commissioner directed an auditor to audit Future's 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 June 1-30, 2014 and March 1-31, 2017. The audit period was later expanded to include May 14, 2015 to April 30, 2017.

Audit

4. The auditor requested, obtained and reviewed relevant records and determined that during the audit period Future paid its company drivers the minimum rates required under the Regulation. Specifically, the auditor found that in June of 2014, the company paid its drivers trip rates but converted its payroll to an hourly rate scheme following the introduction of the amended Regulation in May of 2015. To confirm that the company had correctly changed its payroll practices in May of 2015, the auditor requested records for May and June of 2015. The auditor found that Future was paying the correct hourly rate following the introduction of the amended Regulation.

Confirmation of Hourly Rate/Hours of Service

5. The auditor also noted that in June of 2015, Future paid all of its drivers \$21.13 per hour. In order to determine if any Future drivers had met the threshold of 2340 hours providing container trucking services (thereby entitling them to a rate of \$26.28 per hour), the auditor requested records from Future which substantiated the number of hours their drivers had worked in the industry.
6. Future provided records for the periods May 2015 to April 2017 which indicated that each of its drivers had been paid the correct regulated rates based on their hours of service in the industry.
7. The audit report concludes with the following summarized findings:
 - Future has been paying its company drivers rates in accordance with the *Act* and *Regulation* during the audit period; and
 - Future was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.

Other Audit Issues

8. The auditor reports that:

Future consistently pays \$1000.00 to each driver at the end of each month and pays the balance of wages on the 15th of the following month.

9. Section 24 (1) of the *Regulation* states:

A licensee must pay remuneration or fuel surcharge owed to a directly employed operator at least semi-monthly and no later than 8 days after the end of the pay period.

10. The auditor has advised Future that its payroll practices are a violation of the *Regulation*. Future has agreed to amend its payroll so that its drivers are paid semi-monthly and eight days after the end of the pay period.

Decision

11. I accept the findings of the auditor.
12. As described above, the circumstances of this case are that:
 - the audit process disclosed that during the audit period, Future was paying its company drivers rates in accordance with the *Act* and *Regulation*; and
 - Future's payroll practices are a violation of Section 24 (1) of the *Regulation*.

13. As Future's payroll practices were in violation of the *Regulation*, pursuant to Section 9 of the *Act*, I hereby order Future to meet with an auditor by no later than October 25th, 2017 and demonstrate to the auditor's satisfaction that it has changed its payroll practices and brought itself into compliance with the *Act* and *Regulation*.
14. 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.
15. 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.
16. 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, Future cooperated fully with the audit and was found to be paying the correct rates to its company drivers. Considering the circumstances of this audit, I conclude this is not an appropriate case to issue a penalty. I record the fact of Future's non-compliance with the *Act* by way of this decision as well as Future's promise to bring itself into compliance and I have declined to exercise my discretion to impose a penalty on Future in this case.
17. This decision will be delivered to Future and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 25th day of September, 2017.



Michael Crawford, Deputy Commissioner