



October 3, 2017

Jete's Lumber Company Ltd.
1877 Upland Drive
Vancouver, BC V5P 2C5

Attention: Mr. Deepak Mattu

**Deputy Commissioner's Decision
Jete's Lumber Company Ltd., CTC Decision No. 24/2017 (Application for
Reconsideration of CTC Decision No. 17/2017)**

I. Nature of Application

1. Jete's Lumber Company Ltd. ("Jete's") applies under Section 39 of the *Container Trucking Act* (the "Act") for a reconsideration of CTC Decision No. 17/2017 (the "Original Decision").

II. Introduction

2. On September 28th, 2017 Jete's filed an application for reconsideration with the Office of the British Columbia Container Trucking Commissioner (the "OBCCTC"). Jete's application for reconsideration is repeated below in its entirety:

"We would like to request a reversal of the \$3000.00 administration fine that you have issued against Jete's Lumber Co. Ltd.

The reason being, we thought that all drivers were to be paid \$26.28 after they completed 2340 hours with us. We also thought we were okay because none of them ever brought it to our attention that they were being paid the wrong amount.

We would also like to bring it to your attention that except for a few small amounts at the beginning of 2016, we have pretty much been in compliance with the rules for well over the past year.

Thank you in advance for your reconsideration on this matter."

3. In CTC Decision No. 17/2017 (the “Original Decision”) I found:

“that between May 14th 2015 and April 7th, 2017 Jete’s failed to comply with the minimum rates required under the *Act* and *Regulation*. Over this period Jete’s owed 24 company drivers adjustments totaling \$16,313.04 because Jete’s had paid some company drivers the lower of the two prescribed rates (\$25.13 per hour rather than \$26.28 per hour) but had not satisfied the auditor the lower rate was applicable to those drivers.”

And proposed that a \$3000.00 administrative fine be imposed.

4. In assessing the appropriate administrative penalty to be issued, I considered and applied the factors outlined in *Smart Choice Transportation Ltd.* (CTC Decision No. 21/2016). In particular, I assessed the appropriate administrative penalty based on the following facts which I considered to be relevant to the Smart Choice Transportation factors:
- a. Jete’s failed to pay some of its company drivers compliant hourly rates over a two year period, which caused financial harm to those drivers;
 - b. Jete’s fully cooperated with the auditor during the investigation; and
 - c. I view administrative penalties as a necessary deterrent that sends a clear message to Licensees in general that such conduct is unacceptable and will not be tolerated regardless of the quantum which results from non-compliant behavior. (See Original Decision at paragraph 18).
5. On September 7, 2017, I issued a Decision Notice confirming the proposed penalty and ordering Jete’s to pay an administrative penalty of \$3,000.00.
6. Although Jete’s does not contest any of the findings of fact outlined in the Original Decision, or the grounds articulated for imposing an administrative penalty of \$3,000.00, it invites me to reconsider my decision to impose an administrative penalty. It argues, in essence, that because it was not aware of the wording of the legislation, no driver complained about underpayment and that it has now brought itself into compliance, an administrative penalty is not appropriate.

III. Decision

7. The purpose of penalties under the *Container Trucking Act* and the factors which will be considered were outlined in *Smart Choice Transportation Ltd.* (CTC Decision No. 21/2016) and referenced at paragraph 18 of the Original Decision:

“The administrative penalties made available under Section 34 of the *Act* and Section 28 of the *Regulation* are designed to encourage compliance with the *Act* and *Regulation*. Penalties are intended to have a general and specific deterrence purpose – that is, to protect drivers and to discourage non-compliance with the legislation.

To ensure that licensees receive the appropriate deterrent message, the amount of any financial penalty must be sufficiently large to meet the objective of deterring non-compliance. The large financial penalties available under the Act and Regulation demonstrate an intention to ensure that administrative fines are not seen by licensees as merely another cost of doing business or part of the licensing costs.

In keeping with the above described purpose of the legislation the factors which will be considered when assessing the appropriate administrative penalty include the following:

- The seriousness of the respondent's conduct;
- The harm suffered by drivers as a result of the respondent's conduct;
- The damage done to the integrity of Container Trucking Industry;
- The extent to which the Licensee was enriched;
- Factors that mitigate the respondent's conduct;
- The respondent's past conduct;
- The need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of having a Container Trucking Services Licence;
- The need to deter those Licensees from engaging in inappropriate conduct, and
- Orders made by the Commission in similar circumstances in the past.

This list is not intended to be exhaustive. (Paras. 25-27)

8. In the Original Decision, I concluded that an administrative penalty of \$3000.00 is necessary here to achieve the above described purposes and is arrived at after carefully assessing and considering the Smart Choice factors. Having carefully considered Jete's application for reconsideration, I am not persuaded to reconsider my original decision.
9. Jete's argues that they, in essence, did not read or understand the legislation. Section 13 of the *Regulation* clearly states that a licensee must pay directly employed operators a specific hourly rate if the directly employed operator has performed a certain number of hours or container trucking services "on behalf of **any** licensee."
10. In *TMS Transportation Management Services Ltd.* (CTC Decision No. 06/2016 – June 7, 2016) and in subsequently posted FAQ's on the OBCCTC website, the Commissioner reiterated the OBCCTC's position on Section 13 of the *Regulation*:

Issue #1: Determination of Applicable Hourly Rate

If a company provides evidence satisfactory to the Commissioner's auditor that a company driver has worked less than 2,340 hours for any licensee, audits are done at the \$25.13/hour rate for that driver. Otherwise, audits are done to the \$26.28/hour rate. See, for example, the following two decisions recently issued by the Commissioner and available on the website: *Amalgamated Transport Systems Ltd.*, CTC Decision No. 2/2015 ("*Amalgamated*") and *AC Transport Ltd.*, CTC Decision No. 3/2105 ("*AC Transport*").

11. In my view, Jete's has been provided ample opportunity to familize themselves with the requirements of the legislation. Further, several OBCCTC Decision's have pointed out that the onus to become and remain compliant rests with the Licensee. Licensees should not rely on OBCCTC auditors, or in this case a company's own employees, to determine if they are or are not compliant (see for example *Olympia Transportation Ltd.* (CTC Decision No. 02/2016).
12. For these reasons, I confirm my decision to impose a \$3,000.00 administrative penalty and hereby dismiss Jete's application for reconsideration.

Dated at Vancouver, B.C., this 3rd day of October, 2017.



Michael Crawford, Deputy Commissioner