

October 16, 2017

Canstar Trucking Company Limited
7098 – 150 A Street
Surrey, BC V3S 2E2

Deputy Commissioner's Decision Canstar Trucking Company Limited (CTC Decision No. 26/2017)

Introduction

1. Canstar Trucking Company Ltd. ("Canstar") 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 July of 2017, the Commissioner directed an auditor to audit Canstar'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 November 1-30, 2014 and March 1-31, 2017 (together the "Initial Audit Period").

Initial Audit Period

4. The auditor requested, obtained and reviewed relevant records and concluded that during November 2014, Canstar paid its company drivers a trip rate which, although unregulated at the time, was consistent with the regulated trip rate of \$40 which came in effect December 22nd, 2014. In March 2017, the auditor concluded that Canstar paid its company drivers an hourly rate consistent with the Regulation. However, in order to confirm compliance with the Regulation, Canstar had to demonstrate to the auditor's satisfaction that it was paying a regulated hourly rate which accurately reflected the hours of container trucking services in the industry each driver had performed.

Expanded Audit Period

5. The auditor expanded the scope of the audit and examined Canstar's records for the month of June 2015. The records indicated that the majority of Canstar's company drivers were paid \$25.13 per hour during this period. As such, Canstar was instructed to conduct a self audit of the period from May 14, 2015 to August 31, 2017 ("Expanded Audit Period") to confirm which company drivers paid \$25.13 per hour had performed less than 2340 hours of container trucking services on behalf of any licensee.
6. Under the direction of the auditor, Canstar reviewed its records and determined that during the Expanded Audit Period, 13 company drivers were owed adjustment amounts totalling \$4,150.79. The auditor reviewed Canstar's calculations, spot audited the results and was satisfied that the calculations accurately record the adjustment amounts owing to Canstar's company drivers.
7. The auditor further reports that Canstar has accepted that it failed to pay the correct rates during the Expanded Audit Period and that it has now paid out the adjustment amounts calculated to be owing to its company drivers. Canstar 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. Canstar has now brought itself into compliance with the *Act* for the period May 14, 2015 to August 31, 2017; and
 - b. Canstar is now paying its company drivers in accordance with the *Act* and *Regulation*.
9. The auditor reports that Canstar was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.

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 Canstar's company drivers;
 - b. the audit process disclosed that between May 14, 2015 to August 31, 2017 Canstar failed to pay its company drivers the correct rates required under the *Act* and *Regulation* and that adjustments totaling \$4,150.79 were owed to 13 company drivers;
 - c. Canstar has accepted the audit results and has paid the amounts determined to be owing;
 - d. Canstar was co-operative and helpful during the audit process; and
 - e. Canstar is now substantially compliant with the legislation.
12. As Canstar has paid the amounts owing to its company 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 May 14, 2015 to August 31, 2017 Canstar failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period Canstar owed 13 company drivers adjustments totaling \$4,150.79. The adjustment payments were required because Canstar had not paid a regulated hourly rate which accurately accounted for the hours of container trucking services performed by the company drivers.
16. As recorded above, Canstar was cooperative during the audit and immediately conceded its non-compliant behaviors and its failure to pay the required minimum rates. Canstar is now paying compliant rates and it has paid out the adjustment amounts calculated by the auditor to be owing.
17. Nevertheless, as a holder of a Container Trucking Services Licence, Canstar is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that Canstar ultimately failed to fulfill this obligation. For this reason, I have concluded that an administrative fine is appropriate here.
18. Regarding the size of the proposed fine, I have applied the relevant penalty quantum factors articulated by Commissioner MacPhail in Smart Choice Transportation Ltd. (CTC Decision No. 21/2016) and, consistent with previous audit decisions of this nature, I have decided that a small administrative penalty of \$1,500.00 is appropriate in this case. The size of this fine is intended to strike a balance between Canstar's past non-compliant behaviors while recognizing Canstar's timely recognition of the regulated hourly rates, its cooperation and efforts during the audit process, its immediate and unequivocal acceptance of its non-compliant behaviors and its immediate efforts to bring itself into substantial compliance. For these reasons it is my view that the imposition of a larger fine in this case is unnecessary.

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 Canstar in the amount of \$1,500.00;
- b. Should it wish to do so, Canstar 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 Canstar provides a written response in accordance with the above I will consider its response and I will provide notice to Canstar 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 Canstar and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 16th day of October, 2017.



Michael Crawford, Deputy Commissioner