



November 6, 2017

Raja Road Rail Services Ltd.
Trans BC Freightways Ltd.
400 Ewen Avenue
New Westminster, BC V3M 5B2

Deputy Commissioner's Decision Raja Road Rail Services Ltd. & Trans BC Freightways Ltd. (CTC Decision No. 27/2017)

Introduction

1. Raja Road Rail Services Ltd. ("Raja") and Trans BC Freightways Ltd. ("Trans BC") (together, "the Companies") are a joint licence holder within the meaning of the *Container Trucking Act* (the "Act"). The joint licence held by the Companies, gives Raja six truck tags and Trans BC three truck tags. The Companies pool their nine truck tags for use by a single fleet of trucks which are owned by the Companies and driven by directly employed operators ("company drivers").
2. 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.
3. 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.
4. In July of 2017, the Commissioner directed an auditor to audit the Companies' records to determine if its 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

5. The auditor requested, obtained and reviewed relevant records and determined that during the Initial Audit Period the Companies did not pay its company drivers the minimum rates required under the *Regulation*. The auditor found that all company drivers working during the Initial Audit Period were paid \$25.13 per hour. The Companies did not identify the number of hours of container trucking services undertaken by the company drivers; therefore, the auditor calculated each

drivers's hourly rate at \$26.28 per hour. The auditor's calculations also included no deductions for meal breaks. Based on calculating each driver's entitlement to \$26.28/hour and no deductions for meal breaks, the auditor concluded that during the Initial Audit Period, the Companies owed its company drivers adjustment payments totaling \$5648.40.

Expanded Audit Period

6. Having established that the Companies were deducting meal breaks and may not have been paying its company drivers the correct hourly rate, the auditor expanded the scope of the audit to cover the periods from April 3, 2014 to October 31, 2014; December 1, 2014 to February 28 2017; and April 1, 2017 to August 31, 2017 (the "Expanded Audit Period").
7. Under the direction of the auditor, the Companies reviewed their records and concluded that they had incorrectly paid the lower hourly rate (\$25.13) to five of its drivers. The Companies also confirmed that the time worked by the company drivers, which had not been paid during the Initial Audit Period represented unpaid meal breaks taken each day after 5 hours on the road. In a written submission, the Companies confirmed that consistent with OBCCTC Decision No. 10/2017, the drivers had taken their breaks each day thereby entitling the Companies to deduct the break time from driver pay.
8. The auditor and the OBCCTC accepted the Companies' position on unpaid breaks and after reviewing the Company's self-audit calculations and spot auditing the results, was satisfied that the hourly rate for five company drivers should be increased from \$25.13 to \$26.28 for specific pay periods. It was determined that money owed by the Companies during the Initial and Expanded Audit Periods should be reduced to \$1442.71.
9. The auditor reports that the Companies accepted that it miscalculated the hourly rate owing to five of its company drivers and that it has now paid out all the required adjustment amounts calculated to be owing. The Companies provided copies of records confirming that the adjustment payments were in fact made as represented.
10. The audit report concludes by noting that the Companies have now brought themselves into compliance with the *Act* for the period April 3, 2014 to August 31, 2017. The auditor reports that the Companies were cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.

Decision

11. I accept the findings of the auditor.
12. As described above, the circumstances of this case are that:
 - a. the Commissioner ordered an audit of the Companies' company drivers;
 - b. the audit process disclosed that between April 3, 2014 to August 31, 2017, the Companies failed to pay five of its company drivers the correct minimum rate required under the *Act* and *Regulation* and that adjustments totaling \$1442.71 was owed to company drivers;

- c. The Companies have accepted the audit results and have paid the amounts determined to be owing;
 - d. The Companies were co-operative and helpful during the audit process.
 - e. The Companies are now substantially compliant with the legislation.
13. As the Companies have paid the amounts owing to its 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.
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. In this case it has been determined that between April 3, 2014 and August 31, 2017 the Companies failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period the Companies owed five company drivers adjustments totaling \$1442.71. The adjustment payments were required because the Companies had paid five of its company drivers the lower of the two prescribed rates (\$25.13 per hour rather than \$26.28 per hour).
17. As recorded above, the Companies were cooperative during the audit and conceded their non-compliant behaviors and its failure to pay the required minimum rates. The Companies are now paying compliant rates and have paid out the adjustment amounts calculated by the auditor to be owing.
18. Nevertheless, as a holder of a Container Trucking Services Licence, the Companies are responsible to know their obligations under the *Act* and to pay their drivers compliant rates. This audit makes clear that the Companies ultimately failed to fulfill this obligation. For this reason, I have concluded that an administrative fine is appropriate here.
19. Regarding the size of the proposed fine and, consistent with previous audit decisions of this nature, I have decided that a small administrative penalty of \$500.00 is appropriate in this case. The size of this fine is intended to strike a balance between the Companies' non-compliant behaviors while recognizing their efforts to pay a legislated rate; their cooperation and efforts during the audit process; their acceptance of their non-compliant behaviors; and their efforts to bring themselves into substantial compliance, both in the past and going forward into the future. For these reasons it is my view that the imposition of a larger fine in this case is unnecessary.

20. 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 the Companies in the amount of \$500.00;
- b. Should it wish to do so, the Companies have 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 the Companies provide a written response in accordance with the above I will consider its response and I will provide notice to the Companies 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.

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

Dated at Vancouver, B.C., this 6th day of November, 2017.



Michael Crawford, Deputy Commissioner