



November 8, 2017

PTG Transport Ltd.
200 – 16080 Portside Road,
Richmond, BC V6W 1M1

Deputy Commissioner's Decision PTG Transport Services Ltd. (CTC Decision No. 28/2017)

Introduction

1. PTG Transport Services Ltd. ("PTG") 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 PTG's records to determine if its independent owner operators ("I/O's") 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 (together the "Initial Audit Period").

Initial Audit Period

4. The auditor requested, obtained and reviewed relevant records and determined that during the Initial Audit Period, PTG did not pay its I/O's the correct rates required under the *Regulation*. The auditor concluded that during the initial audit period PTG owed nine I/O's adjustment payments totaling \$1155.16 for container trucking services undertaken in June of 2014 (PTG was found to be compliant in the March 2017 period). The amounts were owed because PTG paid round trip rates during the period April to December 2014. Upon review of its records, PTG determined that, due to round trip payments in 2014, it had paid in excess of the minimum legislated rates for off-dock container moves. As such, PTG was of the opinion that the excess payments compensated for some underpayments which also resulted from the payment of round trips.
5. PTG was advised by the Office of the BC Container Trucking Commissioner (OBCCTC) auditor that the regulated rates are minimums and excess payments may not be offset against underpayments.

Expanded Audit Period

6. Having discovered that PTG had attempted to offset underpayments during the Initial Audit Period, the auditor expanded the scope of the audit to cover the entire period from April 3, 2014 to May 31, 2014 and July 1, 2014 to December 31, 2014 (the "Expanded Audit Period").¹
7. Under the direction of the auditor, PTG reviewed its records and calculated the total amounts of compensation its I/O's should have received during the Expanded Audit Period, applying the minimum rates required under the *Regulation*. Comparing this amount to what was actually paid, it was determined that PTG owed ten I/O's adjustment amounts totaling \$862.69. The auditor reviewed PTG's calculations, spot audited the results and determined that PTG's self-audit was incorrect. A further self-audit was undertaken by PTG at the auditor's request and it was determined that PTG owed fourteen (14) I/O's adjustment amounts totaling \$20,837.52 (inclusive of the amounts found to be owing during the Initial Audit Period). The auditor reviewed PTG's calculations once again and determined that PTG had failed to include fuel surcharges in its calculations. The auditor subsequently added the fuel surcharge to PTG's calculations and determined that PTG owed 14 I/O's adjustment amount totaling \$24,171.52.
8. The auditor further reports that PTG 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 drivers. PTG provided copies of records confirming that the adjustment payments were in fact made as represented.
9. The audit report concludes with the following summarized findings:
 - a. PTG has now brought itself into compliance with the *Act* for the period April 3, 2014 to April 1, 2017; and
 - b. PTG has been paying its I/O's in accordance with the *Act* and *Regulation* since April 1, 2017.
10. The auditor reports that PTG was 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 PTG's I/O's;
 - b. the audit process disclosed that between April 3, 2014 and December 31, 2014 PTG failed to pay its I/O's the correct rates required under the *Act* and *Regulation* and that adjustments totaling \$24,171.52 were owed to 14 I/O's;
 - c. PTG has accepted the audit results and has paid the amounts determined to be owing;
 - d. PTG was co-operative and helpful during the audit process;

¹ The auditor reports that effective January 2015, PTG ceased paying round trip rates and began to pay all of its I/O's trip rates pursuant to the *Regulation*.

- e. since January 1, 2015 PTG has been paying its I/O's trip rates which meet the requirements of the *Act* and *Regulation*; and
 - f. PTG is now substantially compliant with the legislation.
13. As PTG has 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 I/O's 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 1, 2014 and December 31, 2014 PTG failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period PTG owed 14 I/O's adjustments totaling \$24,171.52. The adjustment payments were required because PTG had paid round trip rates during the period and was of the opinion that that excess payments compensated for some underpayments which also resulted from the payment of round trips.
 17. As recorded above, PTG was cooperative during the audit and immediately conceded its non-compliant behaviors and its failure to pay the required minimum rates. PTG is now paying compliant rates and it has paid out the adjustment amounts calculated by the auditor to be owing.
 18. Nevertheless, as a holder of a Container Trucking Services Licence, PTG is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that PTG 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, 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, including the Team Transport Ltd. audit, I have decided that a small administrative penalty of \$1,500.00 is appropriate in this case. Once again, the size of this fine is intended to strike a balance between PTG's past non-compliant behaviors while recognizing PTG's 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.

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

Dated at Vancouver, B.C., this 8th day of Novmeber, 2017.



Michael Crawford, Deputy Commissioner