



December 6, 2017

Global Pacific Xpress Inc.
9685 160A Street
Surrey, BC V4N 3K8

Commissioner's Decision

Global Pacific Xpress Inc. (CTC Decision No. 30/2017)

Introduction

1. Global Pacific Xpress Inc. ("Global") is a licence holder 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 Global's records to determine if its company drivers and Independent 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 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 determined that during the Initial Audit Period, Global paid its company drivers a trip rate consistent with the *Act* and *Regulation*. However, Global did not pay some of its company drivers the minimum hourly rates required under the *Regulation*. Specifically, the auditor found that one company driver working during the Initial Audit Period was paid \$25.13 per hour. Global did not identify the number of hours of container trucking services undertaken by the company driver; therefore, the auditor calculated the company drivers' hourly rate at \$26.28 per hour. The auditor also found that this company driver had unpaid meal breaks deducted from their pay. The auditor concluded that during the Initial Audit Period, Global owed one company driver an adjustment payment totaling \$383.85.

5. During the Initial Audit Period, the auditor also concluded that Global paid its I/O's trip rates and a fuel surcharge which was in accordance with the *Regulation*. The auditor further found that one Indirectly Employed Operator was paid in accordance with the *Regulation*.

Expanded Audit Period

6. Having established that Global paid one driver an incorrect hourly rate and deducted meal breaks from their pay during the Initial Audit Period, the auditor expanded the scope of the audit to cover the periods from May 15, 2015 (the date which Global began paying an hourly rate to its company drivers) to February 28, 2017 and April 1, 2017 to November 26, 2017 (the "Expanded Audit Period").
7. Under the direction of the auditor, Global reviewed its records and concluded that the company driver in question was owed an additional \$1588.49 after increasing the company drivers' rate of pay to \$26.28 per hour and adding one-half hour's pay to each day worked by the company driver. In addition, Global reported that another company driver was owed \$420.09 during the Expanded Audit Period as a result of minor payroll errors.
8. The auditor reports that Global accepted that it miscalculated the hourly rate and deducted meal breaks from one of its company drivers and made minor payroll errors which effected the amount of money owing to another company driver. The auditor reports that Global has now paid out all the required adjustment amounts calculated to be owing and provided copies of records confirming that the adjustment payments were in fact made as represented.
9. The audit report concludes by noting that Global was compliant with the *Act* for the period April 3, 2014 to May 13, 2015 and has now brought themselves into compliance with the *Act* for the period May 15, 2015 to November 26, 2017. The auditor reports that Global 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 Global's company drivers and I/O's;
 - b. The audit process disclosed that between April 3, 2014 and March 13, 2015, Global paid its company drivers a trip rate consistent with the *Act* and *Regulation*;
 - c. Between March 15, 2015 and November 26, 2017, Global failed to pay one of its company drivers the correct minimum rate required under the *Act* and *Regulation* and incorrectly deducted meal breaks from the same company driver;
 - d. Between March 15, 2015 and November 26, 2017, Global failed to pay another one of its company drivers the correct minimum rate required under the *Act* and *Regulation* due to minor payroll errors;

- e. Adjustments totaling \$2392.43 was owed to two company drivers;
 - f. Global has accepted the audit results and has paid the amounts determined to be owing;
 - g. Global was co-operative and helpful during the audit process; and
 - h. Global is now substantially compliant with the legislation.
12. As Global 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 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 March 15, 2015 and November 26, 2017, Global failed to comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period Global owed two company drivers adjustments totaling \$2392.43. The adjustment payments were required because Global paid one of its company drivers the lower of the two prescribed rates (\$25.13 per hour rather than \$26.28 per hour) and deducted meal breaks. The other company driver was owed money as a result of minor payroll errors.
 16. As recorded above, Global was cooperative during the audit and conceded their non-compliant behaviors and failure to pay the required minimum rates. Global is now paying compliant rates and have paid out the adjustment amounts calculated by the auditor to be owing.
 17. Nevertheless, as a holder of a Container Trucking Services Licence, Global is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that Global 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 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 Global's non-compliant behaviors while recognizing its efforts to pay the legislated rate to the majority of its drivers; its cooperation and efforts during the audit process; its acceptance of its non-compliant behaviors; and its unsolicited 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 Global Pacific Xpress Inc. in the amount of \$500.00;
- b. Should it wish to do so, Global Pacific Xpress Inc. 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 Global Pacific Xpress Inc. provides a written response in accordance with the above I will consider its response and I will provide notice to Global Pacific Xpress Inc. 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 the Companies and published on the Commissioner's website (www.obcctc.ca).

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



Michael Crawford, Commissioner