



January 25, 2018

KD Truckline Ltd.
Unit 160 – 7400 River Road
Richmond, BC V6X 1X6

Commissioner's Decision **KD Truckline Ltd. (CTC Decision No. 03/2018)**

Introduction

1. KD Truckline Ltd. ("KD") 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 KD's records to determine if its Company Drivers and Independent Operators ("I/Os") 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, KD paid its Company Drivers hourly rates consistent with the *Act* and *Regulation*.
5. However, the auditor also determined that KD did not always pay its I/Os off-dock trip rates consistent with the *Act* and *Regulation*. The auditor's report suggests that this was the result of poor record keeping. Specifically, the auditor found that KD relied on the driver's trip sheets to determine where and when an off-dock trip occurred. As a result of the abbreviations used in the driver logs and the drivers' poor knowledge of the legislated zones and their corresponding rate, KD mispaid drivers for off-dock trips during the Initial Audit Period.
6. KD's I/Os were also sometimes incorrectly paid for on-dock trips. KD did not pay its I/Os on-dock trip rates consistent with the *Act* and *Regulation* as a result of KD's practice of rounding rates to the nearest dollar. The audit revealed that in April 2014, KD undertook a review of the Joint Action Plan

and, based on its review of the Joint Action Plan, increased its on-dock trip rates by 12% but rounded those rates to the nearest dollar. As a result, KD's I/Os have at times been underpaid due to the rounding of the on-dock rates.

7. The auditor advised KD that the *Regulation* sets minimum rates which must be paid. Overpayments cannot be used as a set-off against remuneration owed by a Licensee to its drivers. The auditor concluded that during the Initial Audit Period, KD owed its I/Os adjustment payments totaling \$1,213.98 resulting from rounding errors and poorly kept records.

Expanded Audit Period

8. Having established that KD had paid incorrect on-dock trip rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the period from December 2014 to present. This is referred to as the "Expanded Audit Period." The auditor did not, however, ask KD to correct its off-dock I/O calculations for the Expanded Audit Period. Nor did the auditor direct KD to include the period April 3, 2014 to October 31, 2014 in the Expanded Audit Period.
9. Nevertheless, under the direction of the auditor, KD reviewed its records and concluded that its on-dock I/Os were owed a further \$186.59 during the Expanded Audit Period as a result of the on-dock rounding error. The auditor confirmed KD's calculations and reports that KD has now paid out adjustments totaling \$1,400.57 for incorrect on-dock rate payments during the period November 1, 2014 to present and incorrect off-dock rate payments for the Initial Audit Period. KD provided copies of records confirming that the adjustment payments were in fact made as represented.
10. The auditor reports that KD was cooperative and helpful throughout the audit process.

Decision

11. As described above, the circumstances of this case are that:
 - a. The Commissioner ordered an audit of KD's company drivers and I/Os;
 - b. The audit process disclosed that KD paid its Company Drivers hourly rates consistent with the *Act* and *Regulation*;
 - c. The audit process disclosed that KD did not always pay its I/Os off-dock trip rates consistent with the *Act* and *Regulation*;
 - d. The audit process disclosed that KD did not always pay its I/Os on-dock trip rates consistent with the *Act* and *Regulation*;
 - e. Adjustments totaling \$1,400.57 were found to be owing to I/Os for on and off-dock trip rates during the period November 1, 2014 to present;
 - f. The Initial and Expanded audit periods did not include the full scope of the time covered by the *Act* and *Regulation* including the "retro" period in 2014 (April 3, 2014 to October 31, 2014) for I/Os paid on-dock rates;
 - g. The Initial and Expanded audit periods did not include the full scope of the time covered by the *Act* and *Regulation* including the "retro" period in 2014 (April 3, 2014 to October 31,

- 2014 and December 1, 2014 to February 28, 2017 and April 1, 2017 to January 17, 2018) for I/Os paid off-dock trip rates;
- h. KD accepted the auditor's calculations and has paid the preliminary amounts determined to be owing; and
 - i. KD was co-operative and helpful during the audit process.
12. 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.
 13. The seriousness of the available penalties indicates the gravity of non-compliance with the *Act*. The *Act* is remedial 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.
 14. In this case it has been determined that between November 1, 2014 and January 17, 2018, KD failed to consistently comply with the minimum rates required under the *Act* and *Regulation*. The audit findings indicate that over this period KD owed its I/Os adjustments totaling \$1,400.57. The adjustment payments were required because KD rounded its on-dock trip rates to the nearest dollar and failed to keep proper records of off-dock trips undertaken by its I/Os.
 15. Based on the auditor's report I also find that KD has not meet its record-keeping obligations.
 16. As recorded above, KD was cooperative during the audit and conceded their non-compliant behaviors and failure to pay the required minimum rates. KD paid out the adjustment amounts calculated by the auditor to be owing for periods under review.
 17. Nevertheless, as a holder of a Container Trucking Services Licence, KD is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that KD 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 decided that an administrative penalty of \$1,500.00 is appropriate in this case for the following reasons:
 - a. While KD cooperated with the auditor its record keeping was deficient and it did not meet its obligations under its licence despite several decisions and an August 10, 2016 Record Keeping Requirements Bulletin issued by the Commissioner discussing the importance of proper record keeping;

- b. The rates set out in the *Act* are mandatory minimum rates and cannot be rounded down for the convenience of payroll processes. Furthermore, the *Act* is remedial legislation intended to benefit drivers and the rounding down of rates will, over time, negatively impact the income of drivers to the benefit of a licensee; and
- c. The size of this fine is intended to strike a balance between KD's non-compliant behaviors while recognizing its efforts to pay the legislated rates to 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 following its April 2014 12% increase to its on-dock rates.

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 KD Truckline Ltd. in the amount of \$1,500.00;
- b. Should it wish to do so, KD Truckline Ltd. 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 KD Truckline Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to KD Truckline Ltd. 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. Additionally, I make the following orders:

- a. Pursuant to Section 9 of the *Act*, I order KD to bring itself into compliance with paragraph 3, of Appendix D to Schedule 1, and paragraph (g) of Schedule 2 of its Licence including:
 - i. introducing, keeping and maintaining payroll records which properly report and track hours worked, rates of remuneration for drivers, trips completed each day by drivers on your behalf, total compensation before taxes and any other deductions are paid, and any deduction made from the drivers' compensation and the reason for the deduction;
- b. Within 1 month of the date of this decision KD must bring itself into full compliance with the rate requirements of the *Act* for the period from April 3, 2014 to October 31, 2014 for I/Os paid on-dock rates and for the periods from April 3, 2014 to October 31, 2014, December 1, 2014 to February 28, 2017, and April 1, 2017 to present for I/Os paid off-dock trip rates;
- c. No later than March 5, 2018, KD must report to the auditor outlining what steps it has taken to ensure proper record keeping as ordered above and what steps it has taken to ensure full compliance with the *Act*.

21. In addition to the above I will direct the auditor to take any further audit steps that may be necessary to ensure that KD is in full compliance for the period beginning of April 3, 2014 to the date of this decision.

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

Dated at Vancouver, B.C., this 25rd day of January, 2018.

A handwritten signature in blue ink, appearing to read "Michael Crawford", written over a horizontal line.

Michael Crawford, Commissioner