

April 18, 2018

ADP Transport Ltd.
PO Box 55557 Impact Plaza
Surrey, BC V3R 0J7

Commissioner's Decision

ADP Transport Ltd. (CTC Decision No. 11/2018)

Introduction

1. ADP Transport Ltd. ("ADP") 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 ADP's 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

4. The auditor requested and obtained relevant records for October 2014 and March 2017. ADP supplied October 2014 rather than November 2014 records in error and the auditor accepted the October 2014 records. The auditor reviewed the records and determined that during the Initial Audit Period, ADP paid its company drivers trip rates between April 2014 and January 2015. A regulated trip rate for company drivers was not introduced until December 22nd, 2014. This rate was \$40 per trip and did not have retroactive effect. ADP paid its drivers \$50 per trip between April 2014 and January 2015 and, as such, the auditor found that ADP was compliant in October 2014.
5. The auditor also determined that in March 2017, ADP paid its company drivers \$26.28 per hour consistent with the Act and Regulation. Having established that ADP paid correct trip and hourly rates during the Initial Audit Period, the auditor determined that there was no need to expand the

scope of the audit.

6. However, in reviewing the records, the auditor noted that ADP calculates wages on a monthly basis but pays the wages semi-monthly. ADP pays an advance of \$1500 on the first of the month following the month in which the work was performed and the balance of the wages are reconciled and paid on the 15th of the month following the month in which the work was performed. As a result, wages are paid approximately 15 days after the end of each pay period.
7. ADP's pay practice is not consistent with the requirements of section 24 (1) of the *Regulation* which requires a licensee to pay remuneration or fuel surcharge owed to a directly employed operator at least semi-monthly and no later than 8 days after the end of a pay period.
8. ADP was notified of the contravention in a letter sent by the auditor on April 10, 2018, which requested that ADP revise its pay system in order to comply with the *Regulation*. ADP responded and advised that it has instructed its payroll staff to amend its payroll system to reflect the requirements of the *Regulation*.

Decision

9. I accept the findings of the auditor.
10. As described above, the circumstances of this case are that:
 - a. The Commissioner ordered an audit of ADP's company drivers;
 - b. The audit process disclosed that ADP paid its company drivers rates consistent with the *Act* and *Regulation*;
 - c. ADP's payroll practices were found to be inconsistent with the requirements of the *Regulation* and ADP has now revised its payroll system in order to bring itself into compliance with the *Regulation*;
 - d. ADP was co-operative and helpful during the audit process; and
 - e. ADP is now substantially compliant with the legislation.
11. 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.
12. 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.

13. The *Act* does not, however, require penalties to be imposed for non-compliance in all cases. Rather, the Commissioner is granted discretion to impose penalties in appropriate cases. In this case it has been determined that ADP paid compliant rates to its drivers. ADP was found to be in violation of section 24 (1) of the *Regulation* when it paid its drivers wages approximately 15 days after the end of each pay period rather than the required 8 days or less. When advised of its error, ADP took immediate steps to correct its payroll practices.
14. In these circumstances, while I record the fact of ADP's non-compliant payroll practices by way of this decision, I note ADP's compliance with the rate requirements of the legislation and, I decline to exercise my discretion to impose a penalty on ADP in this case.
15. This decision will be delivered to the Companies and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 18th day of April, 2018.



Michael Crawford, Commissioner