



May 1, 2018

AMK Carrier Inc.
12431 Horseshoe Way
Richmond, BC V7A 4X6

Commissioner's Decision AMK Carrier Inc. (CTC Decision No. 14/2018)

Introduction

1. AMK Carrier Inc. ("AMK") 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 AMK's records to determine if its company drivers and independent owner 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, AMK did not retain I/Os in November 2014 and paid its I/Os the minimum trip rates required under the *Regulation* in March 2017. However, AMK did not pay its I/Os a fuel surcharge in March 2017. The auditor also determined that AMK paid its company drivers by the trip in November 2014. As this was permissible at the time, the auditor reviewed AMK's records for August 2015 and March 2017 to confirm that AMK had switched to paying a compliant hourly rate to its company drivers.
5. The auditor reviewed pay records for August 2015 and March 2017 and determined that AMK had transitioned to an hourly rate as required. In August 2015, AMK was paying \$25.13 per hour to its company drivers and in March 2017 AMK paid \$26.28 per hour.

Expanded Audit Period

6. Having established that AMK did not pay its I/Os a fuel surcharge in March 2017 and paid the lower of the two prescribed rates to its company drivers in August 2015, the auditor expanded the scope of the audit to cover the period September 1, 2015 (the month upon which AMK first retained I/Os) to December 31, 2017 for I/Os and September 1, 2015 (the month upon which AMK first retained company drivers) to August 2016 (the month upon which AMK raised its hourly rate to \$26.28) for company drivers.
7. Under the direction of the auditor, AMK reviewed its records and concluded that eight I/Os were collectively owed \$69,452.55 for fuel surcharge between September 1, 2015 and December 31, 2017. The auditor has confirmed AMK's calculations and reports that AMK has paid, in full, the eight I/Os found to be owed money and also confirms that that AMK has completed a self-audit covering the period from January 1, 2018 to February 28, 2018 and issued additional adjustments totaling \$11,241.34 for fuel surcharge payments owed.
8. In consultation with the auditor, AMK confirmed that its company drivers had performed 2340 or more hours of container trucking services on behalf of any licensee at the time of their hire and, as such, its drivers were entitled to \$26.28 per hour beginning in August 2015. The auditor also confirmed that AMK began paying its company drivers \$26.28 per hour in August 2016, one year later.
9. Under the direction of the auditor, AMK reviewed its records and concluded that two company drivers were collectively owed \$4,879.16 between August 2015 and August 2016. The auditor confirmed AMK's calculations and reports that AMK has paid, in full, the two company drivers found to be owed money.

Decision

10. As described above, the circumstances of this case are that:
 - a. The Commissioner ordered an audit of AMK's I/Os and company drivers;
 - b. AMK failed to pay its I/Os the fuel surcharge and adjustments totaling \$80,693.89 were found to be owing to eight I/Os between September 1, 2015 and February 28, 2018;
 - c. AMK paid its company drivers the lower to the two prescribed hourly rates despite the company drivers having performed 2340 hours of service or more for any licensee and adjustments totaling \$4,879.16 were owed to two company drivers between August 2015 and August 2016;
 - d. AMK has accepted the audit results and has paid the amounts determined to be owing;
 - e. AMK was co-operative and helpful during the audit process; and
 - f. AMK is now substantially compliant with the legislation during the audit periods.
11. As AMK 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 drivers in compliance with the legislation.
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 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.
14. In this case it has been determined that between November 1, 2014 and February 28, 2018, AMK failed to comply with the minimum rates and fuel surcharge required under the *Act* and *Regulation*. The audit findings indicate that over this period AMK owed eight I/Os adjustments totaling \$80,693.89 and two company drivers \$4,879.16. The adjustment payments were required because AMK did not pay its I/Os the fuel surcharge and paid its company drivers the lower to the two prescribed hourly rates.
15. As recorded above, AMK was cooperative during the audit and conceded their non-compliant behaviors and their failure to pay the required fuel surcharge and hourly rate amounts. AMK is now paying compliant hourly rates and has paid out the hourly rate and fuel surcharge adjustment amounts calculated by the auditor to be owing.
16. Nevertheless, as a holder of a Container Trucking Services Licence, AMK is responsible to know their obligations under the *Act* and to pay their drivers the fuel surcharge and correct hourly rates. This audit makes clear that AMK ultimately failed to fulfill this obligation. For these reasons, I have concluded that an administrative fine is appropriate here.
17. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$10,000.00 is appropriate in this case.
18. In November 2015, the Acting Commissioner issued two decisions¹ which made clear to all licensees "that, under the legislation, \$26.28 per hour is the current applicable wage rate for all company drivers except those who have not yet performed a total of 2,340 hours of container trucking services for any licensee."² This was reiterated by a subsequent Commissioner in TMS Transportation Management Services Ltd. (CTC Decision No. 06/2016) and has been addressed in several other audit decisions.

¹ Amalgamated Transport Systems Ltd. (CTC Decision No. 2/2015) and AC Transport Ltd. (CTC Decision No. 3/2015).

² AC Transport Ltd. (CTC Decision No. 3/2015), p. 3.

19. On December 11, 2015, the Acting Commissioner imposed a January 22, 2016 deadline for licence holders to bring themselves into compliance with the *Act* and *Regulation*. This audit demonstrates that AMK did not review the legislation at that time nor review decisions of this office and attempt to correct its non-compliant behavior. Rather, AMK waited until it was audited to comply (18 months after the Acting Commissioner's deadline).
20. Also of concern, is AMK's non-compliance regarding the payment of a fuel surcharge to its I/Os. The 2014 Joint Action Plan (which was signed as a result of a container trucker work stoppage at the Port of Vancouver) specifically committed to an increase in the fuel surcharge which had been in place since the previous work stoppage in 2005. While I recognize that AMK did not begin utilizing I/O services until September 2015, at that time, there would have been little chance that AMK was not aware of its obligation to pay a fuel surcharge. Further, it was incumbent upon AMK to know its obligations under the *Act* and its Container Trucking Services Licence and to not wait until an audit was performed to become compliant. Previous rulings of the Commissioner have stated that "the onus to become and remain compliant with the requirements of the *Act* rest entirely with the Licensee. Licensees should not rely on Commission auditors to determine whether or not they are compliant, nor should they wait until a Commission audit process is undertaken before taking steps to ensure compliance."³
21. Therefore, in accordance with section 34(2) of the *Act*, I hereby give notice as follows:
- a. I propose to impose an administrative fine against AMK Carrier Inc. in the amount of \$10,000.00;
 - b. Should it wish to do so, AMK Carrier 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 AMK Carrier Inc. provides a written response in accordance with the above I will consider its response and I will provide notice to AMK Carrier 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.
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 1st day of May, 2018.



Michael Crawford, Commissioner

³ Olympia Transportation Ltd. (CTC Decision No. 02/2016) and Seaville Transportation Logistics Ltd. (CTC Decision No. 12/06),