



August 8, 2018

GO Transport Ltd.
9975 199B Street
Langley, BC V1M 3G4

Commissioner's Decision

GO Transport Ltd.

(CTC Decision No. 22/2018)

Introduction

1. GO Transport Ltd. ("GO") 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 GO'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 and reviewed relevant records and determined that during the Initial Audit Period, GO employed three I/Os and no company drivers in November 2014 and three company drivers and no I/Os in March 2017. In November 2014, GO did not pay its I/Os the minimum trip rates required under the Regulation. GO was found to be owing three I/Os \$1,193.69 for November 2014. It was also determined that in March 2017, GO did not pay its company drivers hourly rates as required under the Regulation and was found to be owing three company drivers \$451.75. In total, GO was found to be owing \$1,645.44 during the Initial Audit Period.

Expanded Audit Period

5. Having established that GO did not pay its I/Os and company drivers the correct trip and hourly rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the period from April 3, 2014 to February 28, 2018 (the "Expanded Audit Period").
6. Under the direction of the auditor, GO reviewed its records and concluded that three I/Os were owed \$2,892.14 (inclusive of the amount found owing by the auditor for November 2014). This calculation did not include the months of June, September, October and December 2014 as the auditor confirms that GO's records for these months were lost as a result of contamination from offsite record storage (shed on owner's property). GO also concluded that three company drivers were owed \$8,436.50 (inclusive of the amount found owing by the auditor for March 2017).
7. The auditor reviewed GO's calculations and confirmed GO's calculation of its company drivers but found that GO had incorrectly calculated the amount owing to its I/Os. GO was ordered to re-calculate the amount owing to its I/Os. GO re-submitted its calculations which concluded that three I/Os were owed \$8,986.12 (inclusive of the amount found owing by the auditor for November 2014 but not including the months of June, September, October and December 2014). The auditor confirmed GO's re-calculations.
8. GO 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 GO has now brought itself into compliance with the *Act* for the period April 3, 2014 to February 28, 2018 and was paying compliant rates from March 1, 2018 to June 30, 2018. The auditor reports that GO was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.
10. The Office of the BC Container Trucking Commissioner notes that GO did not apply for a Container Trucking Services Licence in June of 2018 and as such, GO ceased to be a holder of a Container Trucking Services Licence on June 30, 2018.

Decision

11. As described above, the circumstances of this case are that:
 - a. the Commissioner ordered an audit of GO's company drivers and I/Os;
 - b. the audit process disclosed that between April 3, 2014 and February 28, 2018, GO failed to pay three of its I/Os the correct trip rates required under the *Act* and *Regulation* and that adjustments totaling \$8,986.12 were owed to I/Os;
 - c. the audit process also disclosed that between April 3, 2014 and February 28, 2018, GO failed to pay three of its company drivers the correct hourly rate required under the *Act* and *Regulation* and that adjustments totaling \$8,436.50 were owed to company drivers;
 - d. GO failed to provide required records for the months of June, September, October and December 2014 in contravention of Appendix D to Schedule 1 of its Container Trucking

- Services Licence;
- e. GO has accepted the audit results and has paid the amounts determined to be owing;
 - f. GO was co-operative and helpful during the audit process; and
 - g. GO was substantially compliant with the legislation until June 30, 2018 when it ceased being a Container Trucking Services Licence holder.
12. As GO 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.
 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 April 3, 2014 and February 28, 2017 GO failed to comply with the minimum remuneration requirements under the *Act* and *Regulation*. The audit findings indicate that over this period, GO owed three I/Os and three company drivers adjustments totaling \$17,422.62. GO was also found to be in contravention Appendix D to Schedule 1 of its Container Trucking Services Licence for failure to provide required records for the months of June, September, October and December 2014.
 16. As recorded above, GO was cooperative during the audit and conceded their non-compliant behaviors and their failure to pay the required rates. GO was paying compliant rates between March 1, 2018 and June 30, 2018 before its Container Trucking Services Licence was cancelled and paid out the adjustment amounts calculated by the auditor to be owing.
 17. Nevertheless, as a holder of a Container Trucking Services Licence, GO was responsible to know its obligations under the *Act* and to pay its drivers the correct rates. GO was also responsible to know its record keeping requirements under the Container Trucking Services Licence. A licensee's requirement to keep and maintain proper records under Appendix D to Schedule 1 of the Container Trucking Services Licence has been address in Olympia Transportation (CTC Decision No. 02/2016), MDW Express Transport Ltd. (CTC Decision No. 01/2017), and an August 10, 2016 OBCCTC Record Keeping Requirements Bulletin. This audit makes clear that GO ultimately failed to fulfill its rate paying and record keeping obligations while a licence holder. 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 a small administrative penalty of \$500.00 is appropriate in this case. The size of this fine is intended to strike a balance between GO's

non-compliant behavior while recognizing its cooperation and efforts during the audit process; its acceptance of its non-compliant behaviors; its efforts to bring itself into substantial compliance; its failure to properly store its records rather than a failure to create proper records; and ultimately the cancellation of its Container Trucking Services Licence. 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 GO Transport Ltd. in the amount of \$500.00;
- b. Should it wish to do so, GO Transport 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 GO Transport Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to GO Transport 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. This decision will be delivered to GO Transport Ltd. and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 7th day of August, 2018.



Michael Crawford, Commissioner