



October 14, 2021

PTG Transport Ltd.  
Unit 290-20353 64th Ave.  
Langley, B.C.  
V2Y 1N5

**Commissioner's Decision**  
**PTG Transport Ltd. (CTC Decision No. 11/2021)**

**Introduction**

1. PTG Transport Ltd. ("PTG") is a licensee 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 the Commissioner, and a licensee must comply with those 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. On November 6, 2020, the Office of the BC Container Trucking Commissioner ("OBCCTC") received a complaint alleging that independent operators ("I/Os") at PTG were not being paid for all trips performed and that there were payroll delays.
4. The Commissioner directed an auditor to audit PTG's records to determine if its I/Os were being paid the required minimum rates and paid pursuant to section 24 of the *Container Trucking Regulation* (the "Regulation"). The auditor was directed to audit driver records for the pay periods in the months of May and September 2020 (the "Initial Audit Period") to determine compliance.

**Initial Audit Period**

5. The auditor reviewed the relevant records and determined that during the Initial Audit Period, PTG did not pay for all trips and did not pay the Positioning Movement Rate ("PMR") in all cases. The auditor also calculated \$1,973.24 in trip rate errors resulting from incorrect zone rates being applied and identified \$572.50 in incorrect benefit deductions.
6. Following receipt of the OBCCTC's Initial Audit Letter on November 12, 2020, PTG conducted an undirected self-audit of its May and September 2020 records and identified \$3,955.19 in payroll errors. PTG advised that the errors were the result of an employee who had health problems that

affected her ability to perform her duties. PTG had paid the amounts owing to its I/Os before the start of the audit and submitted the self-audit records (calculations and cancelled cheques) to the auditor for review.

7. The auditor reviewed PTG's calculations and compared them to her initial audit calculations. The auditor determined that PTG's self-audit calculations were incorrect, and that \$875.18 was still owing for the Initial Audit Period.
8. In total, the auditor calculated that 20 I/Os were owed \$3,460.74 for the Initial Audit Period resulting from missed trip and PMR payments, trip rate payment errors and incorrect benefit deductions.

### **Expanded Audit**

9. Having established that PTG did not correctly pay its I/Os during the Initial Audit Period, the auditor expanded the scope of the audit and requested that PTG calculate amounts owing to all I/Os who provided container trucking services ("CTS") from April 1, 2017 to February 28, 2021 (the "Expanded Audit Period"). The auditor made the request to PTG in writing on March 26, 2021 and gave PTG until May 10, 2021 to provide the calculations.
10. PTG responded to the auditor on May 7, 2021 and requested a 4–6-week extension to provide the calculations. As a lengthy period had already elapsed, the auditor asked PTG to provide any work that had been done on the calculations to date and sought information to determine if PTG had gathered the necessary records from storage. PTG responded, stating that the calculations had not been started but the records had been collected.
11. The auditor then considered several relevant factors in responding to PTG's extension request, including the time which had elapsed between March 26, 2021 and May 7, 2021, the degree of difficulty in complying with the outstanding pay calculation request, the logistics of accessing the onsite record storage location as well as the impact of Covid-19. The auditor determined that this was a suitable case to grant a time extension and provided PTG with the option of either submitting the requested calculations by June 23, 2021 or submitting calculations for 2019 only, for the auditor to extrapolate the amounts owing for the balance of the Expanded Audit Period.
12. PTG elected to only calculate the amounts owing for 2019 and submitted its calculations by the revised deadline. PTG determined that it owed \$3,417.28 to its I/Os in 2019. The auditor reviewed PTG's calculations and noted that PTG had not supplied all the requested documents/information in support of its calculations. Specifically, PTG's calculations did not illustrate how the amounts were calculated and the auditor could not reconcile the total amounts outstanding with the numbers provided. The auditor advised PTG of her review and, in response, PTG provided a revised set of calculations showing \$3,388.66 in amounts outstanding to drivers in 2019.
13. The auditor conducted a further review and determined that PTG had offset overpayments from underpayments in its outstanding pay calculations. As this is not permitted, the auditor conducted her own calculations and determined that an additional \$4,299.90 was owed in 2019 resulting in a total amount owing to 25 I/Os of \$7,688.56 in 2019.

14. The auditor then conducted the extrapolation calculation and determined that PTG owed its I/Os a total of \$31,446.54 for the Expanded Audit Period. The auditor subtracted the amount PTG had already paid its I/Os following its indirect self-audit and concluded that PTG owed 30 I/Os a combined balance of \$27,491.35 for the Expanded Audit Period.
15. The auditor advised PTG of her calculations on July 20, 2021 and asked that PTG pay its drivers the money owing and demonstrate that payment had been made. In response, PTG advised the auditor that all the drivers had already been paid despite the auditor not having provided PTG with payment instructions.
16. This delayed the conclusion of the audit, and five weeks later, PTG provided the auditor with copies of 15 cancelled cheques totaling \$16,950.65 to demonstrate payment. The auditor reconciled the cancelled cheques with the amounts outstanding and found no discrepancies. However, the auditor determined that 13 other I/Os had either not received their outstanding pay cheques or had not deposited them. The auditor contacted six drivers who confirmed that they had not received a cheque from PTG.
17. The auditor asked PTG for an explanation and was advised by PTG that three cheques had been “inadvertently held” but were being released and the remaining cheques had been distributed but not cashed. PTG was instructed to contact the drivers who had not cashed their cheques and tell them to do so, and then send the auditor the additional cancelled cheques once they had been cashed.
18. PTG provided the auditor with copies of eight additional cancelled cheques and the auditor has confirmed that as of September 21, 2021, 24 of the 30 cheques issued by PTG have been deposited by drivers, representing \$22,902.56 of the \$27,491.34 amount owing. I find that PTG has made the necessary efforts to ensure payment.

### **Payroll Delays**

19. It was an anonymous complainant who alleged that PTG was experiencing payroll delays. The auditor asked PTG about the delays and was advised that because of COVID-19 and bank error, there had been occasions when some cheques had bounced but that all cheques that had bounced had been re-issued. PTG noted, and the OBCCTC confirms, that it had contacted the OBCCTC to advise of the payroll delays.
20. The auditor audited PTG’s May 2020 and September 2020 payroll records to determine if its payroll delays had been isolated instances. The auditor determined that in both pay periods, PTG paid its I/Os no later than 30 days after the end of the calendar month in which the I/O performed the CTS.

### **Summary**

21. As set out above, PTG was found to be owing 30 I/Os \$31,446.54 for the period between April 1, 2017 and February 28, 2021. The amounts owing to the I/Os were primarily the result of missed trip and PMR payments, trip rate payment errors and incorrect benefit deductions. The auditor notes that PTG had various staffing issues throughout the audit that resulted in extensions and delays during the audit process.
22. Due to several factors, the auditor allowed PTG to provide only its 2019 documents. The auditor then performed a calculation which extrapolated the amount PTG was found to be owing in 2019 and applied that amount to the Expanded Audit Period to determine a final amount owing. PTG has paid the money owing and has corrected its pay structure.
23. PTG was provided a copy of the auditor's report on October 5, 2021 for review and was provided an opportunity to respond. PTG responded by the required deadline.

### **PTG Submission**

24. PTG does not dispute any of the auditor's findings or the auditor's calculations of amounts owing to its drivers. PTG explains that it conducted an undirected self-audit when it became aware of mistakes made by its accountant relating to customer billing and accounts payable and began to worry that these mistakes may have also impacted payroll.
25. PTG also provided further detail about the payroll delays, noting that in addition to contacting the OBCCTC when the delays occurred, PTG also contacted its union (Teamsters Union Local 31) about the delay, demonstrating its efforts to keep its drivers and the relevant authorities apprised of the payroll issues.

### **Decision**

26. As described above, the circumstances of this case are that:
  1. In November 2020, the Commissioner ordered an audit of PTG's I/Os following a complaint that PTG had missed payroll and was not paying its I/Os for all trips performed;
  2. PTG missed some trip and PMR payments, made trip rate payment errors and incorrect benefit deductions;
  3. PTG conducted an undirected self-audit for the months of May and September 2020, identified \$3,955.19 in payroll errors and paid I/Os the money it found owing;
  4. The auditor reviewed and corrected PTG's self-audit calculations;
  5. Delays in the audit resulted in a calculation of amounts owing for the period between April 1, 2017 and February 28, 2021 based upon PTG's 2019 records;
  6. Thirty I/Os were owed \$31,446.54 collectively for the Expanded Audit Period; and
  7. PTG has paid the amounts determined to be owing.
27. I have considered the auditor's report and PTG's submission and for the reasons set out below, I find PTG to be in violation of the *Act* for failure to pay its I/Os for all trips performed, missed PMR

payments, and trip rate payment errors. PTG concedes its non-compliance, has corrected its practices and paid its drivers the money owing.

28. PTG states that its non-compliance was the result of a staff member's health issues that resulted in accounting errors. PTG has provided a reasonable explanation for the employee error which I have intentionally not cited in detail here. I accept PTG's explanation and that PTG's non-compliance was unintentional.
29. While I accept that PTG's employee issues resulted in its non-compliance, the onus is on PTG, not its employees, to ensure it pays compliant rates. PTG was found to be owing its I/Os over \$30,000.00 over a 47-month period because of its non-compliance. This is not a substantial amount and, when spread over 30 I/Os, the impact of the non-compliance on individual drivers is low. Nevertheless, it was PTG's responsibility to ensure that the correct rates were being paid, despite its staffing challenges. PTG could have, but did not, employ temporary staff or monitor closely its accounts department when employee health issues arose.
30. PTG's staffing issues also impacted the audit process, resulting in the prolongment of what should have been a straightforward audit.
31. PTG missed payroll on three occasions, two because of Covid-19 cash flow problems and one as a result of a bank error. PTG's explanations are reasonable. Covid-19 has impacted licensee operations in a number of ways and bank errors occur. I note the efforts PTG made on all three occasions to keep its drivers and the relevant authorities apprised of the payroll issues. The auditor has determined that the payroll delays were not ongoing occurrences and PTG is currently in compliance with its requirements under section 24 of the *Regulation*.
32. This is PTG's second audit. In 2017, PTG was found to have paid non-compliant rates (round trip payments) in 2014. PTG was penalized \$1,500.00 for its failure to pay compliant rates. The size of the penalty reflected PTG's cooperation and efforts during the audit process, its immediate and unequivocal acceptance of its non-compliant behaviors and its immediate efforts to bring itself into substantial compliance.<sup>1</sup>
33. In these circumstances, I have concluded that an administrative fine is appropriate for PTG's non-compliant rate payments and its conduct impacting the audit process. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$2,000.00 is appropriate. In assessing an appropriate penalty, the factors which have been considered include the relatively small amount of money involved, PTG's conduct during the audit which led to its prolongment and its payment of the money found to be owing. I see Covid-19 and other employee health issues as factors that mitigate the seriousness of PTG's contraventions.
34. This is PTG's second decision resulting in a penalty for relatively minor rate payment errors. For this reason, I find that a small escalation in penalty quantum is warranted and should be sufficient to deter PTG from making other rate payment errors in the future.

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<sup>1</sup> PTG Transport Services Ltd. (CTC Decision No. 28/2017), paragraph 19.

35. 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 PTG Transport Ltd. in the amount of \$2,000.00;
- b. Should it wish to do so, PTG 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 PTG Transport Ltd. provides a written response in accordance with the above, I will consider its response and I will provide notice to PTG 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.

36. This decision will be delivered to PTG Transport Ltd. and may be published on the Commissioner's website after PTG Transport Ltd.'s response period has closed ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 14<sup>th</sup> day of October, 2021.



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Michael Crawford, Commissioner