



March 8, 2023

Jete's Lumber Company Ltd.
1877 Upland Drive
Vancouver, BC V5P 2C5

Commissioner's Decision
Jete's Lumber Company Ltd. (CTC Decision No 02/2023)

Introduction

1. Jete's Lumber Company Ltd. ("Jete's") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. Jete's also owns and operates another container trucking services company called MTB Freightways Ltd. ("MTB").
3. Section 16(1)(b) of the *Act* states that a licensee must carry out the container trucking service in compliance with:
 - (i) this Act and the regulations,
 - (ii) the license, and
 - (iii) if applicable, an order issued to the person under the Act.
4. 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 statutorily established rates. 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.
5. Section 24 of the *Act* provides that a licensee must not solicit or receive, directly or indirectly, a financial set-off, commission, or rate deduction or rebate from a trucker.
6. As stated above, Jete's operates under a container trucking services licence ("CTS licence"). Section 1(g) of Appendix A to Schedule 1 states that a license must not "pay Truckers by a method of Compensation that is a hybrid of per trip and hourly." Section 2 of Appendix E to Schedule 1 states that a licensee "must not set off or deduct Business Costs" from monies owed to drivers. Business Costs are defined in section 1 of the CTS licence as "the costs of operating a business for which a licensee is responsible" and are specifically include GPS-related expenses.

7. Under section 31 of the *Act*, the Commissioner may conduct an audit or investigation to ensure compliance with the *Act*, the *Container Trucking Regulation* (the "*Regulation*") or a licence.
8. Jete's has been the subject of one other decision. In 2017, the Commissioner found that it had underpaid drivers by a total of \$16,213.04: Jete's Lumber Company Ltd., CTC Final Decision Notice No. 17/2017 ("Jete's #1"). Jete's was ordered to compensate the drivers and to pay an administrative fine of \$3,000.00.
9. In January of 2022, the Commissioner directed an auditor to audit Jete's payroll records to determine its directly employed operators ("company drivers"), indirectly employed operators ("IEO") and independent operators ("I/O") were being paid at least the regulated minimum rates. The auditor was directed to audit the periods of October 1-31, 2020 and November 1-30, 2021 (together, the "Audit Period").

Audit Findings

10. The auditor requested, obtained, and reviewed relevant records and determined that during the Audit Period Jete's paid its company drivers, IEOs and I/Os the minimum rates required under the *Regulation*.
11. During the audit process, the auditor discovered Jete's had entered an arrangement with one of its I/Os under which the I/O would use Jete's GPS system ("Jete's GPS") for his personal use and in exchange Jete's would deduct the monthly cost from his wages. Although both parties agreed to this arrangement, neither the agreement to use the Jete's GPS or the repayment arrangement was put in writing.
12. Upon further investigation, the auditor found that Jete's requires that all vehicles have a GPS supplied by the Port of Vancouver ("Port GPS") and that Jete's also has a separate GPS system ("Jete's GPS") that it installs in only its company owned vehicles and that is not required in vehicles owned by its IOs. The auditor confirmed with the driver that he did not have a payroll deduction for the Port GPS and that he was not required to install the Jete's GPS in his vehicle but wanted to use it, which came at a discounted price, to track his vehicle and expenses when he was doing work for other employers. The auditor confirmed the only other I/O at Jete's did not have a deduction for any GPS system.
13. The auditor also determined that during the month of November, one I/O who was paid by the trip was paid on an hourly basis while performing container trucking services ("CTS") for a Jete's customer. The auditor determined that the hourly rate paid exceeded the trip rate and no dollar amount was owing.
14. The auditor reports that Jete's records were organized and readily available upon request.

Decision

15. I accept the findings of the auditor.
16. As described above, the circumstances of this case are:
 - a. The Commissioner ordered an audit of Jete's company drivers, IEOs and I/Os.
 - b. The audit process disclosed that Jete's paid its company drivers, IEOs and I/Os rates consistent with the *Regulation*.
 - c. It also disclosed that an I/O had initiated a request to purchase a Jete's owned GPS device and authorized a monthly deduction of the cost of the Jete's GPS from his pay.
 - d. It further disclosed that Jete's paid a hybrid rate to one I/O inconsistent with section 1(g) of Appendix A to Schedule 1 of the CTS License.
 - e. Jete's was co-operative and provided organized records.
17. 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.
18. 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.
19. 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 Jete's paid compliant rates.
20. Regarding the monthly deduction of the Jete's GPS amounts, the object of section 24 of the *Act* and section 2 of Appendix E to Schedule 1 of the CTS license (Appendix E: "Payment of Compensation") is to prevent licensees from seeking contributions from drivers to the licensee's cost of doing business "for which the Licensee is responsible". The experience of the OBCCTC has shown that the ingenuity of some licensees to avoid the prohibition in section 24 justifies a broad and liberal interpretation of this provision. However, in this unique case, I find that Jete's payroll deduction for a Jete's GPS unit did not violate section 24 of the *Act* or section 2 of Appendix E to Schedule 1 of the CTS license. I accept that Jete's does not require its IO to use the Jete's GPS and that one IO entered into the agreement to access Jete's discount to further his own IO business. In the absence

of a licensee requirement to use the Jete's GPS, the deduction cannot be found to be a business cost for which the Licensee is responsible. However, if either of these two facts were to change, such a deduction could violate section 24 of the Act and section 2 of Appendix E to Schedule 1 of the CTS license.

Section 1(g) of Appendix A to Schedule 1 of the licence (Appendix A: "Prohibited Practices") prohibits licensees from paying 'truckers by a method of Compensation that is a hybrid of per trip and hourly". These prohibited practices include temporary changes to the method of compensation, changes in compensation related to specific contracts or customers, and/or meet or exceed compensation schemes. This prohibition ensures that drivers know how they are being compensated and prevents licensees from switching the method of compensation back and forth depending on the day and/or circumstance.

21. Jete's was in violation of section 1(g) of Appendix A to Schedule 1 of the CTS license when it paid one I/O a hybrid rate for the month of November 2021.
22. In these circumstances, while I record the fact of Jete's non-compliant hybrid payroll practice by way of this decision, I note Jete's compliance with the rate requirements of the legislation, its cooperation with the auditor, the fact that its records were organized and readily available, and that there does not appear to be an improper purpose for using the hybrid rate and I decline to exercise my discretion to impose a penalty.
23. This decision will be delivered to the licensee and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C. this 8th day of March, 2023

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is fluid and cursive, with the first name "Glen" being more prominent than the last name "MacInnes".

Glen MacInnes, Commissioner