



September 19, 2023

Forfar Enterprises Ltd.
8-15055 20th Avenue
Surrey, BC V4A 9Y2

Commissioner's Decision **Forfar Enterprises Ltd. (CTC Decision No. 10/2023)**

Introduction

1. Forfar Enterprises Ltd. ("Forfar") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. 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 ("Rate Order"). 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.

3. Under s. 6.10 of the Container Trucking Services Licence ("2022 CTS Licence") commencing on December 1, 2022, licensees are required to ensure that payroll and wage statements for drivers are created and maintained electronically.
4. 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.
5. As part of the random audits initiated by the Commissioner, an auditor was to audit Forfar's records to determine if its company drivers were being paid the required minimum rates.
6. Forfar employed only company drivers during the Audit Period.
7. This is Forfar's second audit by the Office of the Container Trucking Commissioner ("OBCCTC"). In OBCCTC Decision-No.20-2016, Forfar was found to be in violation of the *Act*, the *Container Trucking Regulation* (the "*Regulation*") and its Licence. The Commissioner found \$707.64 in amounts outstanding to six (6) company drivers for the periods April 1-30, 2015 and October 1-31, 2015 and an administrative penalty of \$1,500.00 was assessed for failure to pay drivers regulated hourly rates.

Audit Report

8. On March 21, 2023, the auditor requested Forfar to provide payroll records for the Audit Period.

Using a random generator, the auditor requested driver records for the pay periods in May and June of 2019, March and October of 2018, April and August of 2021, May and October 2022 and January 2023 (the "Audit Period").

9. On or around April 4, 2023, Forfar provided either manual timesheets or electronic daily log reports generated from their system depending on the driver and the year the records were generated. The reports included the drivers' time in, time out and number of hours worked each day for each driver. In May 2022, Forfar gradually began implementing a program that would electronically generate payroll records for its drivers. The auditor noted that all but one of the drivers had switched from manually entered time sheets to electronic daily logs by the reporting period of January 2023.
10. Forfar offers extended benefits plan ("Plan") to company drivers and paid half of the driver's premium and the other half was paid by the driver through a payroll deduction. Drivers were not obliged to take part in the program and could opt in or out. Forfar provided benefit statements showing the drivers with the deductions were enrolled in the extended benefits program. The Rate Order is inclusive of benefits and therefore Forfar's contributions to the company drivers who participate in the Plan was considered when determining if it was compliant with the Rate Order.
11. The auditor determined that Forfar paid the minimum rates required by the *Regulation* and Rate Order in the audit periods except for in March 2020. Forfar advised that it had failed to increase the regulated rates in accordance with the July 1, 2019, Rate Order and only paid the regulated rates starting on April 1, 2020. No explanation was provided to the auditor for the delay. For the period of April 2020, the auditor determined six drivers were owed a total of \$522.39.
12. On July 17, 2023 the auditor submitted an audit report ("Audit Report") to the Commissioner which concluded the following:
 - a) Forfar paid its company drivers in accordance with the Rate Order for May & June 2019, October 2020, April & August 2021, May & October 2022 & January 2023.
 - b) Forfar failed to adjust the wages of its drivers in accordance with the Rate Order for the period of July 1, 2019 to March 31, 2020.
 - c) A total of \$522.39 is owing to six (6) drivers for March 2020 of the Audit Period.
 - d) Forfar provided manual records for one driver for the period of January 2023 in violation of s. 6.10 of the 2022 CTS Licence.
13. A copy of the Audit Report was provided to Forfar on July 26, 2023 and Forfar was invited to provide a response.

Licensee Response

14. On August 23, 2023, Forfar provided a response ("Submission") to the Audit Report.
15. Forfar acknowledged that it failed to pay the minimum rate order for the period of July 1, 2019 to March 31, 2020 as a result of not seeing the new Rate Order set out in a June 26, 2019 bulletin produced by the Office of the BC Container Trucking Commissioner ("OBCCTC"). When another

increase in the regulated rates occurred on April 1, 2020, Forfar paid the regulated rates going forward. Based on its review, Forfar states that six (6) drivers in total were affected by the underpayment between July 1, 2019 and March 31, 2020.

16. Forfar agreed that they have been converting drivers to an electronic tracking system to calculate all the hours performed by its drivers but do not dispute that one driver's payroll records were not electronically generated as of January 2023. As of the date of Submission, Forfar says all its driver's payroll records are electronically generated.

Decision

17. I accept the uncontroverted findings of the Audit Report and I find Forfar in violation of the s.23(2) of Act for failing to pay its drivers in accordance with the Rate Order for the period of July 1, 2019 to March 31, 2020 and failing to maintain electronic payroll records in the month of January 2023 in accordance with s. 6.10 of the 2022 CTS Licence.
18. The Rate Order, and statutorily regulated rates before it, set minimum hourly rates for company drivers, independent operators and indirectly employed operators based upon the number of collective hours of container trucking services performed by each driver. This is expressly stated in the Rate Order and was also expressly stated in the statutorily regulated rates. I am not prepared to accept Forfar's explanation that it missed the 2019 change in the Rate Order as justification for failing to pay its drivers the regulated rates. It is incumbent on licensees to know their obligations as licensees including ensuring that it is compliant with the requirements of its license.
19. The introduction of electronic record keeping requirements in the 2022 CTS Licence was intended to increase industry compliance with the rate and record keeping requirements by eliminating the use of paper based/manual trip or hourly tracking and payroll systems which are harder to manage, easier to manipulate and have more potential for error.¹
20. 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.
21. This is Forfar's second audit. Forfar was found to be in violation of the Act in 2016 and was penalized \$1,500.00 for failure to pay the regulated rates. In this case, Forfar failed to pay compliant rates for nine months and - but for this audit - those six (6) drivers may never have been paid the regulated rates. In addition, Forfar failed to maintain electronically generated payroll records for one of its drivers for one month despite the new requirement in the 2022 CTS Licence. For these reasons, I find this in an appropriate case for an administrative penalty.

¹ CTS Licence Amendments: Consultation Report" Office of the BC Container Trucking Commissioner, August 2022, page 30

22. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$3,000.00 is appropriate. In assessing an appropriate penalty, the factors that have been considered is Forfar's similar past conduct, the relatively small amount owed to the drivers, and the relatively short period of time where it failed to maintain electronically generated records. The size of this penalty is consistent with similar escalation of penalties of involving similar case and strikes an appropriate balance between Forfar's actions and the relatively small amount of money found to be owing to its drivers and the relatively short period of time it was not compliant with its electronic record keeping.
23. In the result and in accordance with section 9 and 34(2) of the *Act*, I hereby give notice as follows:
- a. I order Forfar to pay its driver the outstanding amount of \$522.39 for the month of March 2020 as set out in the Audit Report.
 - b. I order Forfar within 30 days of this decision to calculate and pay the difference between the applicable Rate Order and the wages paid to its drivers from July 1, 2019 to March 31, 2020.
 - c. I propose to impose an administrative fine against Forfar in the amount of \$3,000.00.
24. Should it wish to do so, Forfar 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.
25. If Forfar provides a written response in accordance with the above, I will consider its response and I will provide notice to Forfar of my decision to either:
- Refrain from imposing any or all of the penalty; or
 - Impose any or all of the proposed penalty.
26. This decision will be delivered to Forfar and may be published on the Commissioner's website after Forfar's response period has closed (www.obcctc.ca).

Dated at Vancouver, B.C., this 19th day of September, 2023.



Glen MacInnes
Commissioner