



October 11, 2018

United Coastal Logistics Ltd.
Box 97068, 7101C – 120 Street
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Commissioner's Decision
United Coastal Logistics Ltd. (CTC Decision No. 25/2018)

Introduction

1. United Coastal Logistics Ltd. ("UCL") 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 26 of the *Act*, any person may make a complaint to the British Columbia Container Trucking Commissioner that a licensee has contravened a provision of the *Act*. Under section 29, the Commissioner reviews such complaints and, under section 31, may conduct an audit or investigation to ensure compliance with the *Act*, the *Container Trucking Regulation* (the "Regulation") or a licence. The Commissioner may also initiate an audit or investigation under section 31 whether or not a complaint has been received.
3. In February of 2018, the Commissioner received a complaint alleging that drivers at UCL had their pay cheques reduced in December 2016 and that UCL was engaged in trip splitting and was not paying its independent operators ("I/Os") for certain moves. As such, an Office of the BC Container Trucking Commissioner ("OBCCTC") auditor was directed to audit UCL's records to determine if its I/Os were being paid the minimum rates required under the *Regulation* and investigate potential instances of trip splitting. The auditor was directed to audit and investigate the period December 1-31, 2016 (the "Initial Audit Period").

Initial Audit Period

4. The auditor requested and reviewed relevant records and determined that during the Initial Audit Period, UCL reduced the remuneration of ten of its I/Os by a combined total of \$23,589.29 in order to "claw back" money previously paid to its I/Os by UCL following a UCL

self-audit in which UCL independently determined that it had overpaid its I/Os between April 2014 and May 2015.

5. On April 11, 2018, the Commissioner wrote to UCL and advised that:

Section 24 of the *Container Trucking Act* states that a licensee must not solicit or receive, directly or indirectly, a financial set-off...from a trucker. I consider UCL's claw-backs of previous payments, made in error or otherwise, as a "financial set-off" in this case. Therefore, by this letter, I am directing UCL to issue payment to the drivers...by no later than April 23, 2018 and provide evidence to the OBCCTC auditor by that date, that the payments have been made.

6. The auditor confirmed that UCL paid the total amount of \$23,589.29 to ten drivers as directed. The auditor then reviewed UCL's December 2016 records to determine if UCL was trip splitting and not paying its I/Os for certain moves. It was determined that in December 2016, UCL did not pay its I/Os trip rates as required under the *Regulation* and owed five I/Os together the total amount of \$1,563.33 for that month.

7. Specifically, the auditor found instances on I/O timesheets where trips had been crossed out and the I/O was not paid for the crossed-out trip. The auditor advised that:

The crossed-out trips typically had explanations below explaining why the trip was crossed out. Of the explanations provided, some were valid, but others were not... [UCL] was failing to pay for trips referred to as dead runs and pre-pulls.

8. The auditor defines dead runs as trips where a driver has been dispatched but the container cannot be picked up or delivered. I/Os are only entitled to trip rate payments under the *Regulation* if the trip involves moving a container. Therefore, if an I/O performs a bob-tail or empty chassis move to a terminal to pick up a container, but is turned away, no trip rate payment is required. If, however, an I/O is dispatched to deliver a container to a port terminal but is turned away at the terminal, the I/O is entitled to payment for two trips - one to the terminal with a container and one return trip with a container.
9. The auditor defines pre-pulls as container moves from a port terminal to a location that is not the delivery location. For example, there are instances when a driver will move a container off a port terminal which cannot be delivered to the customer at that time. The driver then takes the container back to a yard where the driver picks it up the next day for delivery to the customer. The trip from the terminal to the yard is considered the pre-pull and attracts a regulated trip rate.

Expanded Audit Period

10. Having established that UCL did not pay its I/Os for dead runs involving containers or for pre-pulls during the Initial Audit Period, the auditor expanded the scope of the audit to cover the period from April 3, 2014 to June 30, 2018 (the “Expanded Audit Period”).
11. Under the direction of the auditor, UCL reviewed its records and concluded that 20 I/Os were collectively owed \$18,708.40 (inclusive of the amount found owing by the auditor for December 2016). The auditor reviewed and confirmed UCL’s calculations. UCL has paid out all the required adjustment payments calculated to be owing and has provided copies of records confirming that the adjustment payments were in fact made as represented.
12. The audit report concludes by noting that effective July 1, 2018, UCL has corrected its pay structure and is paying its I/Os for container related dead runs and pre-pulls. The auditor reports that UCL was cooperative and helpful throughout the audit process and responded to emails, record requests and enquiries in a timely fashion.

Decision

13. As described above, the circumstances of this case are that:
 - a. the Commissioner ordered an audit of UCL’s I/Os following a complaint;
 - b. the audit process disclosed that in December 2016, UCL reduced the remuneration of ten of its I/Os by a combined total of \$23,589.29 in order to “claw back” money previously paid to its I/Os by UCL;
 - c. the audit process also disclosed that between April 3, 2014 and June 30, 2018, UCL failed to pay 20 of its I/Os the correct trip rates required under the *Act* and *Regulation* and that adjustments totaling \$18,708.40 were owed to I/Os;
 - d. UCL has accepted the audit results and has paid the amounts determined to be owing;
 - e. UCL was co-operative and helpful during the audit process; and
 - f. UCL is now substantially compliant with the legislation.
14. As UCL 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.
15. 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.

16. 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.
17. In this case it has been determined that between April 3, 2014 and June 30, 2018 UCL reduced the remuneration of ten of its I/Os in order to “claw back” money previously paid to its I/Os by UCL and failed to comply with the minimum remuneration requirements under the *Act* and *Regulation* as a result of non-payment for dead runs with containers and pre-pulls. The audit findings indicate that over this period, UCL owed ten I/Os \$23,589.29 collectively for impermissible set-offs and 20 I/Os \$18,708.40 collectively for failure to compensate for dead runs with containers and pre-pulls.
18. As recorded above, UCL was cooperative during the audit and conceded their non-compliant behaviors and their failure to pay the required rates. UCL is now paying compliant rates and has paid out the adjustment amounts calculated by the auditor to be owing.
19. With regards to UCL’s claw backs in December 2016, I also note that UCL would not have been aware of their non-compliant behavior as it was not until after December 2016 that the OBCCTC published Sunlover Holdings Co. Ltd. (CTC Decision No. 10/2017) discussing the Commissioner’s position regarding set-offs (which was reconfirmed in (Lower Mainland Fast Freight Inc. (CTC Decision No. 07/2018) – Decision Notice).
20. Nevertheless, as a holder of a Container Trucking Services Licence, UCL is responsible to know its obligations under the *Act* and to pay its drivers compliant rates. This audit makes clear that UCL failed to fulfill this obligation. For this reason, I have concluded that an administrative fine is appropriate here.
21. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$5,000.00 is appropriate in this case. The size of this fine is intended to strike a balance between UCL’s non-compliant behavior while recognizing its cooperation and efforts during the audit process, its acceptance of its non-compliant behaviors, and its efforts to bring itself into substantial compliance.
22. On March 21, 2016, the Commissioner and Deputy Commissioner issued an industry Bulletin which addressed the practice of trip splitting and, by implication, dead runs and pre-pulls. The type of trip splitting dealt with in that Bulletin was the splitting of the movement between the starting point of container trucking services and the end point of

container trucking services between one or more truckers and the corresponding splitting of remuneration payable under the Regulation for a single trip.

23. The Bulletin stated that:

The *Regulation* establishes minimum rates which must be paid to truckers who provide specified container trucking services. The minimum “per trip” rates established by the *Regulation* must be paid for every “trip”.

A container movement between its starting point and an intermediary point within the Lower Mainland is a “trip” and therefore the established minimum “per trip” rate applies to this movement. A further movement of the same container(s) from the intermediary point to its end point within the Lower Mainland is a separate “trip” and as such also requires payment of the minimum “per trip” rate. Put simply, under the *Regulation*, each movement is treated as a separate trip and consequently each movement requires payment of the minimum “per trip” rate.

Section 23(2) of the *Act* states that “[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.”

The OBCCTC considers the practice of trip splitting to be a contravention of the *Act* and the *Regulation*.

24. Pre-pulls where a driver is remunerated for only one move of a container when two moves of a container occur is a form of trip splitting and is a contravention of the *Act* and *Regulation*. Similarly, unpaid container moves or dead runs are also a contravention of the *Act* and *Regulation*.

25. This audit demonstrates that UCL failed to consider the March 21, 2016 Bulletin and failed to correct its non-compliant behavior based on a consideration of that Bulletin. Rather, UCL waited until it was audited to comply.

26. 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 United Coastal Logistics Ltd. in the amount of \$5,000.00;
- b. Should it wish to do so, United Coastal Logistics 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 United Coastal Logistics Ltd. provides a written response in accordance with

the above I will consider its response and I will provide notice to United Coastal Logistics 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.

27. With this decision I remind licensees that, under the *Regulation*, each movement of a container is treated as a separate trip and consequently each movement of a container requires payment of the minimum “per trip” rate.

28. This decision will be delivered to United Coastal Logistics Ltd. and published on the Commissioner’s website (www.obcctc.ca).

Dated at Vancouver, B.C., this 11th day of October, 2018.



Michael Crawford, Commissioner