



## The Office of the BC Container Trucking Commissioner

### A History of Blatant Legislative Circumvention of Off-Dock Pay Rates

- 1) The simplest comparison to the current situation regarding off-dock work in the local drayage industry is as follows:

Unionized companies blatantly using scab labour to get around the pay parameters in their binding labour agreement, and as a result, depriving unionized workers of legitimate work they are entitled to receive.

- 2) The 2014 Ready-Bell Recommendation Report (<https://www.tc.gc.ca/eng/policy/acf-acfp-menu-3138.html>) was written following the 2014 Independent Operator (“IO”) labour disruption to offer analysis on “the issues that are creating conflict in the industry and problems at the port.”
- 3) The report outlines the inflammatory issues surrounding the pay rates for off-dock trips, and subsequently the role these practices played in prompting the strike:

*“Currently, off-dock trips are not regulated. The issues arising from off-dock terminal operations, such as appropriate rate of pay for off-dock moves, communication barriers, dry runs, and increased costs, raise the further question of whether it is appropriate to bring off-dock trips into full alignment with the rate regulations and the TLS.*

*It is apparent from conversations with stakeholders that several container movements take place outside the ports. There is considerable variation in these off-dock trip rates, and it appears that off-dock rates are much lower than the MOA rates. It was reported to us countless times in the course of our discussions with drivers and the union representatives that off-dock trip rates may be at least 50% lower than average trip rates, with some rates as low as \$50.00 per container, and even as low as \$15.00-\$20.00 per container. It is also reported that rampant undercutting of rates occurs for off-dock container movements.*



*Simply put, the current off dock rates do not have any industry benchmarks. These off-dock rates are not economical and are often below cost. Without adequate compensation this is a significant concern as it directly impacts independent owner-operators, especially those who spend considerable time moving containers at off dock facilities.”*

4) As a result, the report advised that:

*“...the best means of capturing off dock trips would be through a time/distance benchmark matrix for both empty and loaded containers.”*

Such a matrix was included in the report as the model for **the off-dock pay rates originally contained in Table 2 of Schedule 1 of the BC Container Trucking Regulation** (the “Regulation”) ([http://www.bclaws.ca/civix/document/id/complete/statreg/248\\_2014](http://www.bclaws.ca/civix/document/id/complete/statreg/248_2014)), which received assent in November, 2014.

5) Associated with this Table was Section 12 (3) of the *Regulation*, which stated that:

*“For an off-dock trip, a licensee to whom this section applies must pay an independent operator no less that the following amounts as set out in Table 2 of Schedule 1:*

*(a)if the independent operator moves one container, the amount set out in the applicable destination area sub-column in column 2 opposite the applicable origin area in column 1;*

*(b)if the independent operator moves 2 containers, 1.5 times the amount set out in the applicable destination area sub-column in column 2 opposite the applicable origin area in column 1.”*

6) The off-dock & on-dock matrices, as well as Section 12 (3), were all repealed from the *Regulation* on July 1, 2019. However, there are **three critical points to note:**

- i. The OBCCTC’s *Container Trucking Regulation Part 4 (Rates and Remuneration) Recommendation Report* released in October 2018



(<https://www2.gov.bc.ca/assets/gov/driving-and-transportation/reports-and-reference/reports-and-studies/planning-strategy-economy/container-trucking-act-and-regulation-report.pdf>) suggests amending the *Regulation* to:

*“...clearly capture those companies that are affiliated with licensees and are hauling containers from point to point within the Lower Mainland but are not paying the regulated off-dock rates.”*

**THIS IS A RED HERRING.**

Since the introduction of the legislation, there are numerous and continuous examples of **licensed companies using these unlicensed affiliated companies to avoid paying the legislated rates for off-dock work. This is due to the fact that the licence is only required to work at one of the marine terminals, whereas companies performing off-dock work do not require it.**

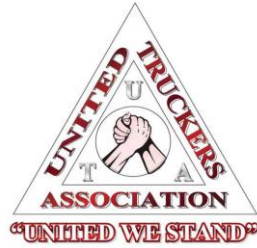
**Since 2016, the UTA has notified the Commissioner about dozens of specific cases where these kinds of practices are occurring.**

- ii. The OBCCTC’s auditing process only applies to the tagged trucks sponsored by a licensee.

**As a result, these affiliated companies that do not have to adhere to the *Regulation*, are receiving pay from the licensee that are not in line with legislated rates. While licence holders’ sponsored IOs with tags do receive some situational off-dock work, a significant percentage is being directed to companies operating off the grid and away from scrutiny.**

**This is why no decision issued by the OBCCTC has ever identified a failure to pay off-dock regulated rates as an issue.**

- iii. In spite of being repealed, the off-dock matrix is still **posted on the OBCCTC website:** (<http://obcctc.ca/wp-content/uploads/2016/11/Off-Dock-Rate->



[Schedule.pdf](#)) and continues to stand as the basis for regulated trip rates.

- 7) The May 7, 2019 Bulletin from the OBCCTC (<http://obcctc.ca/wp-content/uploads/2019/05/2019-05-07-OBCCTC-Bulletin-Off-Dock-Regulation-and-Tag-Management-Policy-Review-FINAL.pdf>) states that:

*“The Government has asked the Commissioner to provide advice on how an expansion of the Regulation would be enforced by the OBCCTC and whether the OBCCTC has sufficient resources to support an expansion of the Regulation.”*

**ONCE AGAIN, THIS IS A RED HERRING.**

Before considering the expansion of the *Regulation*, **the Commissioner must find a way to prevent licensed companies from avoidance of regulated pay for off-dock work. This does not require expansion – it requires enforcement of the existing legislation.**

- 8) Further, **this bulletin completely contradicts the aforementioned recommendation report:**

The report suggests legislative amendments to:

***“...capture those companies that are currently affiliated with licensees and are hauling containers from point to point within the Lower Mainland but are not paying the regulated off-dock rates.”***

However, the Commissioner’s bulletin identifies how this type of activity would be in contravention of the rights of licence holders according to the BC *Container Trucking Act* (the “Act”):

***“...licensees can only perform container trucking services using a tagged truck allocated by the Commissioner.”***

The Act defines “container trucking services” as:



**“...the transportation of a container by means of a truck.”**

In conclusion:

- i. The **recommendation report identified rampant off-dock activity by unlicensed companies that are affiliated with licence holders** but not covered by the *Act* and *Regulation*;
  - ii. The Commissioner states that **licensees can only perform container trucking services with tagged trucks (and the aforementioned companies as outlined in the report, do not qualify as tagged trucks)**;
  - iii. Thus, **not only is the payment of non-regulated off-dock rates to these companies completely in contravention of the intent of the legislation, but so is the use of such companies to perform off-dock work, which is not allowed as per the position of the Commissioner.**
- 9) Given that off-dock includes large facilities as well as customers’ private yards and locations, there is only one solution to solve this blatant disregard for the *Act* and *Regulation*:
- i. **Change the parameters of the licence** so that the practice of contracting unlicensed companies is banned;
- 10) **The licence application period is currently being designed** by the Commissioner, and **now is the time to finally correct this glaring loophole.**