



March 11, 2020

Gur-ish Trucking Ltd.  
12837 – 76 Avenue  
Surrey, BC V3W 2V3

**Commissioner's Decision**  
**Gur-ish Trucking Ltd. (CTC Decision No. 04/2020)**

Introduction

1. Gur-ish Trucking Ltd. ("Gur-ish") 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 statutorily established rates. In particular, section 23(2) of the Act 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 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 April of 2019, the Commissioner received a complaint alleging that Gur-ish had not paid a driver for two weeks of training in March of 2019.
4. On April 26, 2019, the Commissioner directed an auditor to audit Gur-ish's records to determine if the Complainant had been paid for his training in March 2019 and if Gur-ish's company drivers were being paid the minimum rates required under the Regulation.
5. The auditor was directed to audit the months of June 2018 and March 2019 (together, the "Initial Audit Period") to determine compliance.

### Initial Audit Period

6. Records for all drivers in the Initial Audit Period were requested on April 27, 2019 for delivery to the OBCCTC by no later than May 10, 2019. Gur-ish supplied all the requested records by the deadline but did not provide updated contact information for drivers as requested.

### ***The Complainant***

7. The auditor reviewed the March 2019 records and determined that the Complainant had been employed at Gur-ish between March 6-15, 2019 and was not paid for the time period when he stated he was training.
8. When asked why the Complainant had not been paid during this period, Gur-ish explained that the Complainant only showed up for one or two days during the period and did not drive a truck. The auditor spoke with the Complainant who stated that he had been on ride-alongs with an experienced driver for two weeks. The auditor spoke with the driver who trained the Complainant and he confirmed the Complainant's version of events.
9. The Complainant supplied the auditor with records he kept of his training hours which the auditor compared to the trainer's records for the same period (the Complainant had stated that he never drove a truck without his trainer). The hours recorded on each set of records were nearly identical. Therefore, the auditor determined that Gur-ish owed the Complainant for the same number of hours as the driver who had trained him during his training period had worked (totaling \$1,179.44).

### ***Company Drivers***

10. The auditor reviewed the records of eleven company drivers who worked for Gur-ish during the Initial Audit Period and determined that the hours worked on ten of the drivers' timesheets matched the driver's paystubs. However, one of the driver's hours on his timesheets did not match his paystubs for the month of June 2018. Further, the auditor found that this driver's cancelled cheque did not match the net pay on his paystub.
11. When questioned, Gur-ish explained to the auditor that the driver uses a company car for personal use, and they had deducted hours from his pay to cover a portion of the car's insurance. Gur-ish was advised that this was not an allowable deduction. The auditor confirmed with the driver that this deduction only occurred in the June 2018 pay period and calculated that \$464.05 was owing.
12. The auditor also determined that during the Initial Audit Period, Gur-ish generally paid its company drivers the correct hourly rate. However, the auditor found that four drivers were being paid the lower of the two regulated rates (\$25.78/hour). To confirm that these drivers had not worked the 2340 hours required to receive the higher rate, the auditor requested driver job applications in order to demonstrate the drivers' prior work history and their start dates at Gur-ish.
13. Three of the four drivers' job applications showed no prior container trucking services ("CTS") work experience and showed that they had started working for Gur-ish only a few months prior to the period that was audited. The auditor called the three drivers and confirmed with them that they had only worked for Gur-ish for a few months and did not have any prior CTS experience.

14. The fourth driver's job application showed that he had started with Gur-ish in October 2018 and that he had no prior CTS work experience. When contacted, however, the fourth driver explained that he had worked with Gur-ish since 2013 but had been on frequent multiple month-long trips to India during his employment. Nevertheless, the auditor determined that during the six-year period of his employment, the driver had accumulated more than 2340 hours of CTS and Gur-ish should have been paying the driver at the higher rate.
15. Gur-ish advised the auditor that they do not track a driver's hours cumulatively and consider a driver's CTS hours to be zero upon return to work after any period of absence longer than three months. This is why they paid the driver in question at the lower of the two regulated hourly rates and why the start date on the driver's job application listed the most recent return to work date after a trip to India.
16. In summary, the auditor determined that during the Initial Audit Period, Gur-ish owed three drivers (including the Complainant) a total of \$1,839.81 for a car insurance deduction, unpaid training and failure to pay one driver the higher of the two regulated hourly rates.
17. The auditor reports that Gur-ish paid the Complainant all money found to be owing and paid the \$464.05 owing for the June 2018 car insurance deduction but had not paid \$660.37 to the driver who was owed the higher of the two regulated hourly rates. This amount was carried forward in the auditor's Expanded Audit Period calculations.
18. Having determined that one driver had worked for Gur-ish since 2013 and had not received a rate increase, the auditor asked Gur-ish to provide records for all its drivers to demonstrate that their pay had been increased to the higher rate when required.
19. Gur-ish advised the auditor that its drivers were hired in different months during 2015 and provided the first paystub issued to each driver in 2015 to establish their date of hire. The auditor then asked Gur-ish to provide paystubs for each driver issued 12 months after the first, as it typically takes at least a year to complete the 2430 hours required to be eligible for the higher rate.
20. Gur-ish provided two payroll print outs. The first was for one driver in the June 1, 2017 – June 30, 2017 pay period which demonstrated that, based upon this driver's date of hire, he should have been paid the higher rate for the pay period. The print out showed that the driver was paid an hourly rate of \$26.95 and had worked 135 hours for gross earnings of \$3,638.25. The driver provided the auditor with his paystub for the same pay period which showed an hourly rate of \$25.13 and 181.30 hours worked for gross earnings of \$4,561.10.
21. The second payroll print out was for another driver in the November 1, 2016 – November 30, 2016 pay period which demonstrated that, based upon this driver's date of hire, he also should have been paid the higher rate for this pay period. The print out showed that the driver was paid an hourly rate of \$26.95 and had worked 115 hours for gross earnings of \$3,099.25. The driver provided the auditor with his paystub for the same pay period which showed an hourly rate of \$25.13 and 206 hours worked for gross earnings of 5,176.78.

22. The auditor questioned Gur-ish about the discrepancies between Gur-ish's records and the drivers' records. Gur-ish claimed that the drivers were given the wrong cheques originally and, when they realized their mistake, Gur-ish asked for the cheques back and then provided the correct cheques. When asked by the auditor for further clarification (i.e. a more fulsome explanation as to why the rates and hours on the pay stubs were different), Gur-ish did not reply.
23. The auditor and OBCCTC were then contacted by one of the two drivers who stated that Gur-ish had asked him why he had provided records to the auditor. That driver also confirmed that he had never received a second, corrected pay cheque for the same pay period.
24. The auditor concluded that five of the eleven drivers under audit had not been paid the correct hourly rate prior to July 1, 2017 (the only date the auditor was able to confirm that Gur-ish was paying the correct rate to one driver). Gur-ish accepted the auditor's conclusion.
25. Having established that Gur-ish did not pay five of its company drivers the correct hourly rates during the Initial Audit Period, the auditor expanded the scope of the audit and sent Gur-ish a letter on September 26, 2019 requiring them to calculate amounts owing to their drivers. For the driver that had worked with them since 2013, Gur-ish was required to calculate money owing from April 3, 2014 – September 30, 2019. For the remaining four drivers, Gur-ish was required to calculate money owing from the time when each driver had reached their 2,340 hours of service to July 1, 2017 (the "Expanded Audit Periods").

#### Expanded Audit Periods

26. Gur-ish's calculations were due on October 10, 2019. Gur-ish did not meet its deadline. At a later date, Gur-ish sent the auditor an email with lists of drivers and amounts written beside them. The drivers listed were not the drivers that Gur-ish had been instructed to review and Gur-ish did not supply any supporting information with respect the amounts written beside the incorrect driver names. Gur-ish then sent the auditor a second email which the auditor describes as "completely illegible" and, once again, listed the wrong drivers.
27. In response, the auditor created a spreadsheet for Gur-ish to fill in the hours of each driver in order to calculate how much they were owed. Gur-ish responded to the auditor advising that all of their records for 2016 and 2017 had been destroyed due to a water leakage in their old office.
28. In response to Gur-ish's missing records, the auditor took the average hours of each driver from the records she had received for the Initial Audit Period and used this average to calculate the total amounts owing for each driver in the Expanded Audit Periods.
29. Gur-ish was sent a copy of the calculations for review and responded with changes, some but not all of which were accepted by the auditor. On December 2, 2019, the auditor sent Gur-ish the revised amounts owing and asked that Gur-ish pay all of the drivers in question a total amount of \$16,355.60 by December 6, 2019.
30. Gur-ish missed this deadline and continued to argue with the auditor about one driver's calculations. On January 22, 2020, Gur-ish advised the OBCCTC that it intended to pay the money owing by March 15, 2020.

## Decision

31. As described above, the circumstances of this case are:

- a. The Commissioner ordered an audit of Gur-ish's company drivers which disclosed the following:
  - Gur-ish failed to pay one driver \$1,179.44 in unpaid training. Gur-ish has paid the money owing;
  - Gur-ish improperly deducted \$464.05 from one driver's pay in June 2018 for car insurance. Gur-ish has paid the money owing;
  - Gur-ish did not increase company driver pay to the higher hourly rate after each of five drivers had reached their 2,340 hours of CTS work;
  - Gur-ish supplied records during a previous OBCCTC audit in order to demonstrate that drivers were being paid the correct hourly rate based upon incorrect driver start dates;
  - Gur-ish was unable to supply records as required by section 25 of the *Act* and Appendix D to Schedule 1 of its Container Trucking Services Licence;
  - The auditor determined that Gur-ish owes \$16,355.60 to five drivers for during the Expanded Audit Period for incorrect hourly rate payments; and
  - In response to the auditor's investigation of whether the company was paying the higher hourly rate where appropriate, Gur-ish supplied November 2016 and June 2017 driver pay stubs that did not match driver cheque stubs for the same period.
- b. Gur-ish did not provide information and records requested by the OBCCTC on a timely basis; and
- c. Gur-ish has reviewed and accepted the auditor's findings but did not respond directly to the auditor's report and has not paid all the amounts determined to be owing.

32. I have considered the auditor's report and for the reasons set out below, I find Gur-ish in violation of the *Act*, the Commissioner's Rate Order and the Licence.

33. Gur-ish has accepted the auditor's findings with respect to payment for driver training and has paid the money found to be owing. On June 20, 2019, the OBCCTC issued a driver training Bulletin establishing that the mandatory minimum rates apply to employees, independent operators and indirectly employed operators while they are in training. I note that the complaint which precipitated this audit was made by a driver who was not paid for training in March 2019, several months before the OBCCTC issued its Bulletin and therefore Gur-ish may not have been aware of its obligation to pay for training.

34. Gur-ish deducted \$464.05 for car insurance from one driver's pay on one occasion in June 2018. The auditor correctly determined that company car insurance payments are business costs to be borne by the licensee and cannot be deducted from a driver's pay. Gur-ish accepted the auditor's findings and has paid the money found to be owing.

35. Had these relatively minor violations been the extent of Gur-ish's non-compliance, I would not have proposed a penalty in this case. However, the audit also revealed violations and behaviors of a more serious nature, specifically Gur-ish's method of calculating cumulative hours of driver service

resulting in rate underpayments, its failure to produce records, its use of unsubstantiated records, its lack of cooperation with an OBCCTC auditor and its questioning of at least one driver who spoke to the OBCCTC.

36. The Commissioner's 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.
37. This is the second audit of Gur-ish. During the first audit, Gur-ish was required to submit driver job applications for the purpose of establishing correct rate payment. Further, the OBCCTC auditor, during the first audit, had several telephone conversations and emails with Gur-ish to explain the collective hours of service requirement for calculating the hourly rate and confirm Gur-ish's drivers' collective hours of service in the industry.
38. At that time, Gur-ish provided a series of explanations which satisfied the OBCCTC auditor that during the audit periods some of the drivers in question were below the 2,340 hour threshold. Gur-ish also provided the auditor with the details of one driver who was on a Labour Market Impact Assessment (LMIA) permit for a foreign worker, could not work during the LMIA renewal period (3-4 months) and therefore took longer to reach the 2,340 hour threshold. Gur-ish was subsequently able to demonstrate that after the audit periods, the drivers had reached the threshold and received a rate increase to \$26.30.
39. Gur-ish was therefore aware of the collective hours of service calculation in the course of the first audit but incorrectly recorded its drivers' hours of service after this point nonetheless, and it was not until the second OBCCTC auditor called drivers to confirm their hours of service that Gur-ish explained its method of calculating its drivers' collective service hours. I find therefore that Gur-ish's miscalculation of drivers' hours of service discovered in this second audit was intentional.
40. Further, Gur-ish was unable or unwilling to provide a sufficient explanation as to why it submitted company pay records that were not consistent with driver pay records for the same period. Gur-ish initially claimed that it had reissued cheques following an issuing error but one of the drivers involved stated that he had not received two cheques for the same pay period. This was put to Gur-ish for explanation, and Gur-ish did not reply. In the absence of a reply, I accept the driver's statement and find that Gur-ish deliberately provided fabricated pay records to the OBCCTC intended to demonstrate that its drivers were being paid the correct rates.
41. Once Gur-ish's non-compliance was identified by the auditor, the company claimed that water damage destroyed the 2016 and 2017 driver records that could have used to determine the level of Gur-ish's non-compliance and monies owing to drivers.<sup>1</sup>

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<sup>1</sup> Gur-ish email to OBCCTC, October 31, 2019.

42. The general importance of proper record keeping has been canvassed extensively in previous audits and communications of the OBCCTC.<sup>2</sup> In Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018), I penalized Hutchison for its failure to produce records which went missing and noted that the purpose of the fine was also one of general deterrence “intended to send a message to licence holders that failure to produce records is not a strategy to be used to mitigate against the amount of money which may be found to be owing under an audit.”<sup>3</sup>
43. I find that the circumstances here are similar to those in Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018) in which Hutchison Cargo Terminal Inc. was penalized \$20,000.00 for failure to produce proper records.
44. As Gur-ish has not paid, to date, the amounts owing to its drivers under the legislation for container trucking services performed between 2014 and 2019, I make the following Order pursuant to section 9 of the Act:
- I hereby order Gur-ish to pay each Gur-ish company driver identified by the auditor the amounts found to be owing for container trucking services, which cumulatively amounts to \$16,355.60, forthwith, and in any event no later than March 15, 2020.
45. 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.
46. Gur-ish purposefully miscalculated its drivers’ collective hours of service resulting in rate underpayments. It also failed to produce records, deliberately provided fabricated company records that were not consistent with driver pay records, failed to adequately explain these discrepancies to the OBCCTC auditor and was generally uncooperative. Gur-ish was found to be owing \$1,179.44 in unpaid training to one driver, \$464.05 in deductions to one driver and \$16,355.60 resulting from incorrect hourly rate payments to five drivers.
47. Gur-ish also questioned a driver about his interactions with the OBCCTC during the course of an audit. Section 28 of the *Act* prohibits a licensee from mistreating a trucker for making a complaint or cooperating in an investigation or audit. It exists to ensure that licensees do not impede in any way a driver’s right to complain or provide information to the OBCCTC. In this case, the details of the conversation between Gur-ish and the driver and the context of the conversation are unclear and are not sufficient to conclude that a breach of section 28 has occurred; however, licensees are cautioned that interaction with drivers regarding complaints to the OBCCTC or inspections or investigations by the OBCCTC could be in breach of the *Act*. Any such breaches will be penalized.

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<sup>2</sup> Olympia Transportation (CTC Decision No. 02/2016), HAP Enterprises Ltd. (CTC Decision No. 17/2016), MDW Express Transport Ltd. (CTC Decision No. 01/2017) and OBCCTC Record Keeping Requirements Bulletin, August 10, 2016.

<sup>3</sup> Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018), paragraph 23.

48. For these reasons, I have concluded that an administrative fine is appropriate here. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$30,000.00 is appropriate when considering Gur-ish's conduct. The size of this penalty is consistent with the size of penalties in similar decisions and strikes an appropriate balance between Gur-ish's actions and the relatively small amount of money found to be owing to its drivers. Gur-ish's drivers were not significantly harmed in this case but had the amount of money owing to the drivers been higher, the proposed penalty would also have been higher given the other violations cited. Further, penalties are proportionate to the company size and the amount of business it performs. In this case, the size of the penalty is proportionate to the size of Gur-ish and its business.

49. 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 Gur-ish Trucking Ltd. in the amount of \$30,000.00;
- b. Should it wish to do so, Gur-ish Trucking 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 Gur-ish Trucking Ltd. provides a written response in accordance with the above, I will consider its response, and I will provide notice to Gur-ish Trucking 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.

50. This decision will be delivered to Gur-ish Trucking Ltd. and may be published on the Commissioner's website ([www.abcctc.ca](http://www.abcctc.ca)) after Gur-ish Trucking Ltd.'s response period has closed.

Dated at Vancouver, B.C., this 11<sup>th</sup> day of March, 2020.



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Michael Crawford, Commissioner