



September 28, 2020

Full Load Transport Services Ltd.
7064 151A Street
Surrey, BC V3S 8A5

Commissioner's Decision
Full Load Transport Services (CTC Decision No. 10/2020)

Introduction

1. Full Load Transport Services Ltd. ("Full Load") 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. The Commissioner received one complaint alleging Full Load was not paying for training, overtime, vacation or statutory holidays. The complainant was concerned about the lack of detail on Full Load's pay statements and alleged that Full Load doesn't allow for proper truck inspection and that Full Load drivers are expected to work overtime on a regular basis (16+ hours/day).
4. In response, in November 2019, the Commissioner directed an auditor to audit Full Load's records. The auditor was directed to audit the months of December 2018, March 2019 and August 2019 (together, the "Initial Audit Period") to determine compliance.

Initial Audit Period

5. Records for all company drivers in the Initial Audit Period were requested on November 29, 2019 for delivery to the OBCCTC by no later than December 13, 2019. Full Load supplied the requested records by the deadline.
6. The auditor reviewed the records and determined that during the Initial Audit Period, Full Load did

not pay its company drivers the correct hourly rates. Specifically, the auditor reports that nine drivers were paid \$0.20 less than the required rate in August 2019 resulting in \$317.05 owed to the nine drivers collectively.

7. Having established that Full Load did not pay nine of its company drivers the correct hourly rate during the Initial Audit Period, the auditor expanded the scope of the audit and required Full Load to calculate amounts owing to their drivers for the period June 1, 2019 (the date an hourly rate increase came into effect) to March 31, 2020 (the "Expanded Audit Period").

Expanded Audit Period

8. In response, Full Load advised the auditor that it was paying the required rate in June 2019 and in February 2020 but that it had mistakenly paid an incorrect rate in the period between July 2019 and January 2020. Full Load stated that it initially changed its rates as required (\$26.30/\$27.50 depending on number of hours of container trucking services performed by the driver) in June 2019, but after speaking with other trucking companies switched to what they believed to be correct rates (\$26.96/\$27.30). Twenty-seven dollars and thirty cents is twenty cents less than the required rate. It was only when the mistake was brought to their attention in February 2020 that Full Load changed back to the correct rate.
9. Nevertheless, the auditor asked Full Load to include June 2019 and February 2020 in the outstanding pay calculations. Full Load submitted the outstanding pay calculations by the deadline set by the auditor. Its calculations indicated that Full Load owed thirteen (13) company drivers a total of \$1,751.63 for the Expanded Audit Period (not including the month of August 2019, which had been included in the Initial Audit Period).
10. The auditor reviewed Full Load's calculations and performed a spot audit of random months in the Expanded Audit Period to determine the accuracy of Full Load's calculations. No major discrepancies were noted. The auditor also determined that Full Load had corrected its pay structure effective March 2020.
11. Full Load was found to be owing \$2,068.68 for the Initial and Expanded Audit periods together. Full Load accepted the auditor's calculations and has paid the money owing.

Additional Audit Procedures

12. The auditor also reviewed Full Load's records to determine whether or not Full Load's drivers had been paid for all hours of work performing container trucking services.
13. The auditor examined the total hours worked, identified on each drivers' timesheets, where tabulated, and then compared the amount the driver should have been paid with the driver's pay stub. The auditor notes that the pay stubs reviewed only showed a lump sum payment with no hours worked or hourly rate recorded.

14. The auditor found immaterial discrepancies and also noted that some drivers were paid for more hours than the total hours recorded on their time sheets. The auditor further noted that one driver's pay was shorted 2.25 hours. Full Load was asked to explain why some drivers were paid more than the corresponding number of hours recorded on their timesheets and was required to provide the auditor information breaking down each lump sum payment recorded on the pay stubs.
15. Full Load provided an Excel spreadsheet breaking down each lump sum payment as requested. The auditor reviewed the information and determined that Full Load had not initially provided timesheets/tripsheets for all drivers during the audit periods, and it was this omission that resulted in the auditor's finding of overpayments.
16. Full Load was asked to supply the missing timesheets and did so. In reviewing the missing time sheets, however, the auditor became concerned that they may have been fabricated, noting, for example, that on one timesheet the date and time-in/out were whited-out and changed, the log sheet number was not in succession and the date entered in the side column was not changed. In another case, a tripsheet for December 2018 was provided that was in fact the December 2019 tripsheet. When asked again for the 2018 tripsheet, Full Load provided the 2019 tripsheet again, this time with the date whited out and changed.
17. In response to the auditor's query regarding the one driver who had been underpaid, Full Load supplied a photocopy of the driver's logbook showing that the driver didn't start until 8:30 am rather than the 6:15 am start time logged on his timesheet. After comparing the logbook and the timesheet, the auditor noted that the locations did not match, and that the date on the logbook had been whited-out and changed. As the records provided were insufficient to demonstrate that the driver did not work the 2.25 hours shown on the timesheet, 2.25 hours were added into the total amount owing.
18. When questioned about the apparent alteration of documents, Full Load stated that they had provided the logbooks and timesheets given to them by the drivers. Full Load also explained that some lump sum amounts included long-haul trips, reimbursement for out of pocket purchases for which Full Load did not have receipts, miscalculations, or advances. Full Load provided a signed document for one driver who had received an advance explaining this. The driver was contacted by phone and he confirmed the advance and his approval of the deduction.
19. Ultimately, the auditor determined that no further audit or investigation was required as all but one of the drivers had been overpaid as a result of Full Load's record keeping practices and the one driver who had been underpaid was reimbursed.
20. The overtime, vacation pay, and statutory holiday pay provisions of the *Employment Standards Act* are outside jurisdiction of the Container Trucking Commissioner and were not investigated by the auditor. Likewise, non-pay related concerns regarding pre and post-trip inspections and hours of service are outside the Commissioner's jurisdiction and were not investigated.
21. The auditor did, however, investigate the allegations that Full Load was not paying for training and was not providing an adequate amount of detail on its pay statements.

Payment for training

22. The auditor spoke with twelve of Full Load's eighteen drivers and queried them about the issues raised by the complainant.¹ Three drivers complained to the auditor that they were not paid for training but were unable to provide timesheets or any other evidence to support their claim.
23. Full Load maintains that its drivers were paid for training, but Full Load's records do not differentiate between payment for training and regular container trucking services. Faced with the absence of records which could be used to determine if Full Load pays its drivers for training, the auditor examined dates for when five Full Load drivers were issued Port Passes to determine if drivers were working before the records indicated. The drivers selected for this review included all those with less than 2340 hours of container trucking experience who were paid the lower of the two required hourly rates during the audit periods and included drivers who had stated they were not paid for training.
24. The auditor compared the dates these five drivers received their Port Passes with the dates Full Load provided as their employment start dates and the dates when applications were filled out by the drivers. The auditor determined that three of the drivers were issued a Port Pass a significant amount of time before Full Load demonstrated that they began employment.

Pay Statements

25. The auditor reports that Full Load's pay stubs show a lump sum payment with no indication of the total number of hours worked or the hourly rate. This was problematic when conducting the audit.
26. For example, the auditor was required to reconcile the drivers' net pay on their pay stubs with their cancelled cheques. In some cases, drivers were found to have been paid more on their cancelled cheques than what was recorded on their pay stubs. When questioned, Full Load stated that this was because the drivers in question were reimbursed for out of pocket expenses for which it does not have receipts.
27. The auditor also noted that Full Load issues monthly pay stubs, but most of their drivers collect an advance mid pay period. Therefore, the final pay cheque is for the remaining amount owed for the period and does not reflect the total amount the driver earned in a month. The auditor advised Full Load that they should be issuing cheques that correspond with pay stubs to avoid their drivers receiving cheques and pay stubs that the drivers cannot reconcile.
28. The auditor also advised Full Load that it would be best to provide its drivers with a more detailed pay stub. On January 23, 2020, the auditor sent Full Load an example of a pay stub with the container trucking services hours and long-haul trips shown separately and with rate of pay, deductions, advances, reimbursements, and bonuses also broken out.

¹ Several drivers required translation to/from Punjabi and the OCCTC's Registrar, Mrs. Jauhal, was present on the call to translate.

Conclusion

29. The auditor concludes by noting that Full Load has brought itself into compliance with its rate payment requirements, was cooperative during the audit and provided information on a timely basis.
30. The auditor also records that many of Full Load's drivers' concerns regarding rates of pay and hours worked appeared to be due to a lack of information provided on their pay stubs.
31. Full Load was provided a copy of the auditor's report on August 25, 2020 for review and was provided an opportunity to respond. Full Load responded by the required deadline. Full Load provided the following explanations/arguments in response to the issues raised in the auditor's report:
 1. Full Load's failure to pay the correct hourly rate was not intentional. Full Load advised the auditor of this mistake and correct the error immediately;
 2. Full Load denies fabricating documents. Full Load states that all documents provided during the audit were sourced directly from drivers and any changes to those documents would have been made by drivers. Full Load notes that in questioning drivers, the auditor failed to ask them about changes made to their records;
 3. Full Load advised the auditor that the pay stubs do not show trip rates and hours worked because some drivers perform other work that does not attract the Commissioner's trip and hourly rates. Full Load also notes that it is not bound by any requirement to issue pay stubs as outlined by the auditor; and
 4. Full Load continues to state that it pays for all training.
32. Full Load was also provided an opportunity to respond to the auditor's findings with respect to training and the evidence gathered regarding Port Pass issuance and hire dates. Full Load responded on September 15, 2020 and continued to maintain that their drivers have been paid for training and that all timesheets were provided. Full Load noted that only drivers with no past driving experience require training (those with experience only get one day of orientation) and that only two of the five drivers audited were new and required training. The other three, Full Load states, were not employees of Full Load during the audit period.
33. In response to the gap in Port Pass issue dates and employment start dates of three of the five drivers audited, Full Load argued that there is not necessarily a correlation between the time a driver gets a Port Pass (with Full Load listed as the employer) and when the driver starts working. Full Load noted several circumstances when an employee could be hired but not start working right away. On this basis, Full Load argued that Port Pass issuance dates are not a reliable method of determining whether or not a driver was performing unpaid container trucking services.
34. Full Load also raised concerns about the validity of the anonymous complaint received by the OBCCTC and requested that the OBCCTC supply evidence that proved that the complaint came from a current or past employee and not possibly a disgruntled competitor.

Decision

35. As described above, the circumstances of this case are:
- a. The Commissioner ordered an audit of Full Load's drivers which disclosed that Full Load was not paying its drivers the correct hourly rate;
 - b. Full Load was found to be owing thirteen company drivers \$2,068.68 collectively for the period June 1, 2019 to March 31, 2020;
 - c. Full Load has paid the money found to be owing;
 - d. Full Load's record keeping practices resulted in some driver overpayments;
 - e. The auditor investigated a complaint regarding payment for training and lack of information on Full Load's pay stubs and determined that:
 - i. No pay or timesheet evidence exists to confirm whether or not drivers were paid for training; and
 - ii. Full Load does not provide detailed pay stubs to its drivers;
 - f. Full Load was cooperative during the audit; and
 - g. Full Load has reviewed the auditor's findings and provided a response.
36. As Full Load 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.
37. I have considered Full Load's response to the auditor's report. Full Load does not dispute the auditor's findings regarding its failure to pay the required rate but has argued that the failure was small, and that, on balance, Full Load is largely compliant and pays its drivers well.
38. Nevertheless, it is likely that the complaint which precipitated the audit could have been avoided if Full Load provided its drivers with more pay information. The lack of detailed pay information on Full Load's driver pay stubs has created confusion amongst its drivers and future complaints could be avoided if Full Load were to provide each driver with a pay statement that details the driver's pay, including hourly rates and the number of container trucking services hours worked within each pay period.
39. Full Load argues that it is not required to adjust its pay stubs. Full Load is correct. Appendix D to Schedule 1 of the Container Trucking Services Licence ("Licence") does not require licensees to issue pay stubs in a particular manner. It does, however, require licensees to retain records with particular information for each driver who performs container trucking services.
40. In response to the auditor's record request, Full Load provided copies of driver time sheets, tripsheets, statements of earnings, pay stubs and copies of cancelled cheques. Full Load states that the driver time sheets/tripsheets it supplied were given to it by the drivers as Full Load did not have originals or copies of the requested records. This supports their assertion that the documents were not altered by Full Load, but it is also an admission of a record keeping violation. Under Appendix D to Schedule 1 of the Licence, Full Load (not its drivers) is required to retain records of hours worked and trips completed each day by each driver performing container trucking services. Schedule 2(g) of the Licence also requires licensees to keep payroll records as defined and required by section 28 of the *Employment Standards Act*. Section 28 of the *Employment Standards Act*, like Appendix D to

Schedule 1, requires records that include, among other things, the rate of remuneration, hours worked, and trips completed, total compensation before deductions, and any deductions made and the reasons for them.

41. Three Full Load drivers complained to the auditor that they were not paid for training but were unable to provide timesheets or any other evidence to support their claim. Full Load maintains that its drivers are paid for training when required but Full Load's records do not differentiate between payment for training and regular container trucking services.
42. The auditor examined dates for when five Full Load drivers were issued Port Passes to determine if drivers were working before Full Load's records indicated. The auditor determined that three of the drivers were issued a Port Pass a significant amount of time before Full Load demonstrated that they began employment, potentially indicating that these drivers were working for Full Load earlier than reported and perhaps training.
43. Full Load responded to the auditor's report noting that only drivers with no past driving experience require training (those with experience only get one day of orientation) and that only two of the five drivers audited were new and required training, for which they were paid. The other three, Full Load states, were not employees of Full Load during the audit period.
44. The auditor has confirmed that one of the two new drivers who required training stated that he wasn't paid while the other confirmed he was. The other three drivers, who, Full Load states, were not employees during the audit period were, in fact, employees during the audit period and two of these drivers state that they were not paid for training.
45. Full Load's drivers were not able to supply evidence that they were not paid for training. Likewise, Full Load was not able to provide evidence that it did pay for training and Full Load was incorrect when it stated that three of the drivers in question did not work for them during the audit period. As such, I cannot determine whether or not Full Load pays its drivers for training or if any money is owed for unpaid training.
46. This issue is symptomatic of the underlying problems identified in this audit. Full Load does not keep proper records and does not provide detailed pay information to its drivers. This has resulted in drivers' confusion about their pay and driver complaints and has impeded the ability of the OBCCTC to determine compliance.
47. I am also concerned about Full Load's request that the OBCCTC supply evidence to prove that the complaint came from a current or past employee and not possibly a disgruntled competitor. Full Load should be aware that under section 27 of the Act, the OBCCTC is obliged to keep a complainant's identity confidential when requested. Maintaining the confidentiality of complainants is paramount. Truckers could be mistreated because of a complaint and I remind Full Load that section 28 of the Act prohibits this.
48. 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.

49. In this case, the auditor has found, and I accept, that between June 1, 2019 and March 31, 2020, Full Load failed to pay the required rate resulting in a small amount of money owing to its drivers (\$2,068.68). The issue of potential record tampering was not pursued by the auditor because the pay calculations resulting from the records in question indicated that Full Load overpaid its drivers in all but one case where the underpayment was found to be very small. Nevertheless, Full Load failed to comply with the records requirement of the *Act* when it did not retain the correct records for each driver performing container trucking services, requiring its drivers instead to keep and maintain the records.
50. The general importance of proper record keeping has been canvassed extensively in previous audits and communications of the OBCCTC.² In Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018), I penalized Hutchison for its failure to produce records and noted that the purpose of the fine was also one of general deterrence.³ In Orca Canadian Transport Ltd. (CTC Decision No. 09/2020), Orca Canadian Transport Ltd. was penalized \$10,000.00 in part for its non-compliant record keeping practices although I note that it was the second time that Orca was found to be non-compliant.
51. For these reasons, I have concluded that an administrative fine in the amount of \$2,500.00 is appropriate here. The size of this fine is consistent those issued in other decisions for first time record keeping offences and minor rate payment issues. I expect the penalty will serve to remind Full Load about the importance of record keeping. As a separate matter, I encourage Full Load to review and amend its pay statements to reduce driver confusion about their pay structure.
52. 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 Full Load Transport Services Ltd. in the amount of \$2,500.00;
 - b. Should it wish to do so, Full Load Transport Services 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 Full Load Transport Services Ltd. provides a written response in accordance with the above, I will consider its response, and I will provide notice to Full Load Transport Services 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.

² 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.

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

53. This decision will be delivered to Full Load Transport Services Ltd. and may be published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 28th day of September, 2020.

A handwritten signature in blue ink, appearing to read "Michael Crawford".

Michael Crawford, Commissioner