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October 30, 2020

Via email
Registrar@obcctc.ca

Michael Crawford
B.C. Container Trucking Commissioner
1085 Cambie Street
Vancouver, BC V6B 5L7

Dear Mr. Crawford:

Re: Unifor Response to Off-Dock Drayage Insights Report

We write to respond to the recently published BC Ministry of Transportation & Infrastructure Off-Dock Drayage Insights Report following your invitation on September 23, 2020 for a submission from Unifor.

As you are aware, Unifor represents the largest number of unionized container truckers operating in the lower mainland with certifications under both the BC *Labour Relations Code* and the *Canada Labour Code*.

We have appreciated the measures toward port stability that this government has taken but we have also been clear that more work needs to be done. We have continued to engage with the Office of the Container Truck Commissioner and many other stakeholders in the industry to try to have these issues resolved but unfortunately the situation worsens each day; the pandemic has dramatically affected the drayage industry also.

Prior to the release of this shocking report, the situation was so urgent that we wrote to BC Labour Minister Harry Bains on August 27, 2020 outlining our urgent concerns and sent copies to your office and to Claire Trevena, the Minister of Transportation and Infrastructure.

All of the problems noted in the Off-Dock Drayage Insights Report have been consistently raised by Unifor with your office from the date of your appointment and with government including through our submission "Fixing Vancouver's Container Trucking Industry" dated June 29, 2018.

The report is shocking in that it details the large growth of a shadow market at grossly reduced rates and the complicity of a significant number of current licensees in a manner that the Office of the BC Container Trucking Commissioner has completely failed to deal with. The report is blunt and confirms what we have been stating for years:

- Trip rates for licensed TLS companies completing short off-dock loops are \$50-75 higher than the rates paid to drivers working for unlicensed companies or hourly drivers for the same loop...
- In recent years, a substantial portion of off-dock drayage activity has shifted to unlicensed companies. **Several TLS license holders have set up unlicensed companies or partnered with an unlicensed company to complete off-dock drayage activities less expensively.**
- Two tiers of drayage providers are emerging in the Lower Mainland—those that are licensed and therefore must pay OBCCTC rates and those that are not licensed and have flexibility to pay drivers according to an agreed upon amount (sometimes set through collective bargaining), creating an “uneven playing field” for TLS operators.

Even if it could be claimed that unrelated and unlicensed companies presented difficult policy challenges, all the authority needed to deal with the now-admitted behavior of current licensees rested with your office.

Instead of using the tools at hand to clamp down on the behavior that led to port instability, your office dithered and focused on tag policy and number of tags and other important but ultimately futile activities in relation to policing licensees who have shown how unscrupulous they are.

Essentially, given the breadth of findings against so many licensees and shocking admissions of still more illegal behavior despite direction to the contrary, the industry has collectively thumbed its nose at your office and its authority. The report is blunt on what has happened and how your office has been routinely ignored:

- The TLS system has created two tiers of drayage providers—those that are licensed to access the Port and those that are not licensed to access the Port. All drivers operating under a TLS licensed company must be paid the regulated rates for both on-dock and off-dock container trucking moves. **Many companies that have TLS licenses are currently operating both tagged and untagged trucks—most TLS companies interviewed noted that they have at least a couple long haul or untagged trucks in their fleet that they use as back-ups. In addition, 45% of survey respondents that opted to answer questions about unlicensed trucks notes that they are operating non-TLS trucks.** In some cases, companies use untagged trucks as “back-ups” for when a tagged truck is out of commission for servicing; in other cases, untagged trucks are used for a combination of intermodal / local trucking. Untagged trucks are sometimes used by companies to complete off-dock container moves at times of peak demand.

- Other companies have generated additional operational flexibility by setting up, or having a relationship with, a company that does not have a TLS license. These companies have been operating outside the jurisdiction of the OBCCTC and therefore have not been required to pay the regulated rates for off-dock container trucking....
- According to numerous communications from the OBCCTC, including the March 2018 bulletin titled “Off Dock Rate Payments & Use of Tagged Trucks”, all container trucking services licence holders that are participating in off-dock movement of containers (as defined in the Container Trucking Regulation) attract a regulated off-dock rate which must be paid by all licence holders. Licence holders must also use tagged trucks for all on & off-dock work.

Lack of proper monitoring and enforcement of “off-dock” trucking shipments threatens the livelihoods of all law-abiding Port Metro Vancouver container truckers and demands action. When there’s no enforcement, unscrupulous businesses will and have created a black market. Under illegal markets legitimate businesses suffer, workers lose their jobs, and government quickly loses control. Truckers are demanding justice.

It is beyond clear in the report that unlicensed companies and truckers are moving marine containers off-dock within the Lower Mainland at steeply discounted prices and undermining licensees and that a dangerous shadow market exists:

- OBCCTC regulations have only been applied to TLS license holders, so unlicensed companies have been free to set their own trip rates and hourly rates through collective bargaining with their drivers. These rates are often substantially lower than the TLS off-dock trip rates. Many companies in the TLS system see these affiliated companies as “shadow companies” that are exploiting a loophole in the container trucking regulation.

Unifor is calling for the provincial government to give the Office of the Container Truck Commissioner more tools to properly monitor the off-dock shipments and levy fines.

Although we believe that the fleet size should accurately reflect the work requirements, it is impossible to accurately gauge these requirements while more and more work continues to move toward this category of off dock moves that is being performed by non-licensed companies. Discussions and decisions about increasing or decreasing the fleet size are important but moving ahead based on incomplete data will only make a bad situation worse.

Issuing or removing licenses when there is a thriving black market makes no sense. We liken it to taking a head count on a sinking boat with a large hole in the hull. The most urgent problem must be dealt with first. We demand that any action on number of licensees be paused until this problem is conclusively dealt with once and for all.

Your letter dated September 23, 2020 asks for submissions additionally on the following points:

What container movements should be regulated?

We have been clear that all movements of defined marine containers within the prescribed area of the lower mainland as already defined in the legislation should be regulated as that was the intent of the 2014 Joint Action Plan.

Prior to the 2014 Joint Action Plan, only on-dock movements were regulated and rates were only set for owner operators. Following the signing of the plan, subsequent legislation was enacted to cover these gaping holes. Cascadia Partners provided a detailed study just prior to the 2014 dispute which outlined low hourly trucker wage rates and many problems in the sector.

Truckers were completely denied action on items in the Joint Action Plan that were plain on their face – payment on a round trip basis and improvements to all rates including CN and CP rail moves are just some examples.

What rates should apply to those container movements?

Once it is crystal clear that any movement of marine containers within a prescribed area of the lower mainland is regulated and enforced, these off-dock movements should only be performed by licensed companies and truckers should be paid based on the off-dock rate chart already in existence which already covers the lower mainland zones.

Non-licensed companies and/or truckers found performing this regulated work should be severely punished, fined, and shut down.

We completely reject the notion once again advanced by various employers for a lower rate for short trip moves under 5km between facilities. This rate was first introduced into Vince Ready's report following the 2014 dispute and then removed following unanimous opposition by truckers. This rate was again brought forward by your office as Recommendation #4 for the introduction of a \$50 short trip rate for off-dock container moves less than 5km between facilities. This recommendation was ultimately rejected by government, again after unanimous opposition from truckers. Introducing new, lower rates for certain types of moves will only complicate an already complicated system.

The type of container is already defined, the area is defined, the zones are defined, and the rates are already defined. It is up to the companies to find efficiencies within those regulated parameters to compete and grow, not to government or your office to take funds away from truckers.

Options for enforcement

We have already maintained that immediate action should be taken against any licensed company cooperating directly or indirectly with the growth and/or usage of the unregulated off-dock container movements in the lower mainland. If there was any doubt remaining, this enforcement activity should have occurred immediately upon publication of this report as it is consistent with numerous directives issued by the OBCCTC, including the March 2018 bulletin titled "OffDock Rate Payments & Use of Tagged Trucks". You have failed to enforce your own directives.

Furthermore, it is up to government to enforce penalties for those who break the law, not the victims who are somehow asked to come up with the perfect system. We believe government did provide for such a system already in the legislation. Section 42 of the *Container Trucking Act* makes it an offence with fines up to \$10,000 for a person to hold themselves out as a licensee or a trucker authorized to carry out container trucking services to or on behalf of a licensee. Once it is clear that any movement of defined containers within the prescribed area is covered under this section, enforcement can begin.

We compare this scenario to regulation of the taxi industry. Licenses are issued, obligations are commensurate for those licensees within a regulated market, and unregulated activity will be shut down. There is a reason why Uber and Lyft and other ride-sharing companies recently went through a process to become regulated, and that is because the drivers and the companies would have been shut down immediately if they persisted in offering an unregulated service in a regulated industry.

Government already has many tools at its disposal to regulate unauthorized activity but the first step is to make it clear that the activity is clearly prohibited and it will be severely and swiftly punished. Licensees who are found to be complicit in this activity should be even more severely dealt with as they are undermining the entire sector and other licensees.

There are many other varying obligations which could be enacted to help stamp out illegal behaviour including logging and reporting requirements by drivers and companies, check in points for decals or other methods as major off-dock facilities, ability for CVSE to issue tickets on the spot, and so on. We are available for further consultation on the efficacy of any proposed system but it must send a message that this behaviour will not be tolerated and consequences will be swift and severe.

Finally, as we stated in our letter to Minister Bains on August 27, 2020:

- In the event that further legal changes are needed and enforcement it is not simply a matter of discretion for the Container Trucking Commissioner, as we stated in our submission to the Commissioner in June 2018 titled “Fixing Vancouver’s Container Trucking Industry”:
- **We recommend that the *Container Trucking Act* and *Regulation* should be amended as required to stipulate that any company that provides container trucking services within the Lower Mainland, must be a *licensee* under the Act. Alternatively or in addition, the CTA should stipulate that all movements of a container within the Lower Mainland, are regulated under the CTA, that minimum standards applying to such work are enforceable through the Commissioner’s complaint and audit processes, and that the Commissioner has the power to enforce violations of the CTA directly against companies providing container trucking services, regardless of whether they hold an authorization to provide such services in and out of a Port terminal.**

- More than two years have passed since we made these important recommendations and the situation has unfolded exactly as we predicted if unresolved. We are urgently calling on this government to intervene to ensure that the problem of unlicensed off dock moves within the lower mainland is resolved immediately and therefore also ask that the relicensing process underway by the Office of the Container Trucking Commissioner be paused until we better understand the total number of trucks actually needed if all unlicensed movements are captured.

The report is clear, the facts are obvious, and regardless of whether it is government or your office which has to act, the shadow market must be stamped out immediately.

We look forward to continuing a discussion on this issue and the many other serious issues facing container truckers.

Please contact us if you require any further information or have any questions or concerns.

Sincerely,



Gavin McGarrigle
Western Regional Director

GM/ja:cope343

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