



July 31, 2018

Roadstar Transport Company Ltd.
PO Box 1090 - 222 Burton Avenue
Princeton, BC V0X 1W0

Commissioner's Decision

Roadstar Transport Company Ltd. (CTC Decision No. 20/2018)

Introduction

1. Roadstar Transport Company Ltd. ("Roadstar") 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 31 of the Act, the Commissioner may initiate an audit or investigation to ensure compliance with the "Act, the regulations and a licence..." whether or not a complaint has been received by the Commissioner.
3. In February of 2018, the Commissioner directed an auditor to audit Roadstar's records to determine if its Independent Operators ("I/Os") were being paid the minimum rates required under the *Container Trucking Regulation* (the "Regulation"). The auditor was directed to audit the periods November 1-30, 2014 and January 1-31, 2018 (together the "Initial Audit Period").
4. The audit scope was later expanded to include the period between February through April 2018 (together the "Expanded Audit Period") following a complaint received by the Office of the BC Container Trucking Commissioner ("OBCCTC") on May 25, 2018 alleging that Roadstar I/Os had not been paid by Roadstar since March 20, 2018.

Initial Audit Period

5. The auditor initially requested and obtained relevant records for November 2014 and January 2018 and determined that during the Initial Audit Period, Roadstar paid its I/Os trip rates consistent with the Act and Regulation. The auditor did, however, note that Roadstar paid its I/Os for the January 16-31, 2018 pay period on March 20, 2018, in contravention of section 24(2) of the Regulation which requires that an I/O must be paid no later than 30 days after the end of the calendar month in which the I/O performed the container trucking services for which the remuneration is owed.

6. To confirm Roadstar's compliance with its record keeping requirements, the auditor also conducted a spot-check of truck activity using Gate Reports and GPS Reports obtained from the Port of Vancouver in order to investigate whether any Roadstar I/Os worked on days where no work was recorded in the records. It was determined that trucks owned by three I/Os were active on six days when Roadstar's records indicated the I/Os were not working. This issue was raised with Roadstar and Roadstar responded that one of the I/Os in question "worked for a broker" on the days identified. This was confirmed by the I/Os in question. Roadstar classified the other two I/Os as being "off" on the days noted; however, given that the two I/Os accessed Port of Vancouver terminals on the days in question, it is the auditor's opinion that the I/Os also worked for brokers on these days.

Expanded Audit Period

7. On May 25, 2018, the OBCCTC received a complaint from a Roadstar I/O alleging that Roadstar I/Os had not been paid by Roadstar since March 20, 2018. As a result, Roadstar was required to submit pay statements and copies of cancelled cheques for all I/Os who performed container trucking services during February and March 2018 as well as pay statements and copies of pay cheques for all I/Os who performed container trucking services during April 2018.
8. The auditor obtained the requested records and determined the following:
 - Roadstar operates with semi-monthly pay periods. Work performed during the first to the 15th of a month is paid by cheques dated the 15th of the following month and work performed during the 16th to the last day of a month is paid by cheques dated the last day of the following month; and
 - Despite Roadstar's ostensibly compliant pay process noted above, I/Os are actually paid five days after the dates on the cheques. Cheques dated the 15th of the month are given to the operators on the 20th of that month and cheques dated the last day of the month are given to the operators on the 5th of the following month. The first cheque given on the 20th of the month does not contravene section 24(2) of the *Regulation*; however, the second cheque given on the 5th of the following month is in contravention of the *Regulation*.
9. The following details the auditor's findings regarding each pay period reviewed:
 - Cheques dated February 15, 2018 representing container trucking services performed during the period January 1-15, 2018 are in compliance with section 24(2) of the *Regulation*;
 - Cheques dated March 20, 2018 representing container trucking services performed during the period January 16-31, 2018 contravene section 24(2) of the *Regulation*;
 - Cheques dated March 31, 2018 representing container trucking services performed during the period February 1-15, 2018 contravene section 24(2) of the *Regulation*;
 - Cheques dated April 5, 2018 representing container trucking services performed during the period February 16-28, 2018 contravene section 24(2) of the *Regulation*;
 - Two sets of cheques were issued on April 30, 2018 for container trucking services performed during the period March 1-15, 2018 and March 16-31, 2018 in contravention of section 24(2) of the *Regulation*;

- Cheques were issued on May 15, 2018 for container trucking services performed during the period April 1-15, 2018 in contravention of section 24(2) of the *Regulation*;
- Roadstar initially provided copies of four cancelled cheques issued on May 31, 2018 for container trucking services performed during the period April 16-30, 2018. An auditor investigation led to confirmation from Roadstar that the four cheques were not available for pick up by drivers until June 20, 2018 in contravention of section 24(2) of the *Regulation*;
- On June 25, 2018, Roadstar provided copies of 11 more cancelled cheques issued on May 31, 2018 for container trucking services performed during the period April 16-30, 2018 indicating that three of the 11 cancelled cheques cleared the bank on June 12, 13 and 14, 2018 and the remainder cleared on June 20, 21 and 22, 2018;
- As of July 6, 2018, Roadstar I/Os had not been remunerated for work performed during May 2018 in contravention of section 24(2) of the *Regulation*.

10. In reviewing the copies of the four cancelled cheques issued on May 31, 2018 for container trucking services performed during the period April 16-30, 2018 (as noted above), the auditor reports that the clearing information stamped by the banks on the backs of the four cheques that had been offered as proof of payment identified the following clearing dates:

Cheque #5232	June 11, 2018
Cheque #5234	June 8, 2018
Cheque #5242	June 9, 2018
Cheque #5237	June 8, 2018

11. After close examination of the clearing information stamped on the backs of the above noted cheques, the auditor determined that the placement of the bank stamps confirming clearance, along with smudges around the bank stamps and the above-noted clearing numbers on the backs of the cheques dated May 31, 2018 appear identical to “partner” cheques dated May 15, 2018. The auditor is of the opinion that Roadstar altered (using a photocopier) copies of the four cancelled cheques issued on May 31, 2018 to make it appear that these cheques had cleared the bank and that its I/Os had been issued payment for the period April 16-30, 2018 in accordance with section 24(2) of the *Regulation*.
12. On June 18, 2018, the auditor questioned Roadstar in writing about her findings and Roadstar replied on June 20, 2018, stating that its accounting staff had made an error and that the cheques in question dated May 31, 2018 were in fact only available for pick up that day (June 20, 2018). Roadstar committed to resending copies of the cancelled cheques once they had cleared the bank. The auditor confirmed with Roadstar I/Os that these cheques were not received until June 20, 2018.
13. On June 25, 2018, Roadstar sent the auditor new copies of the four cancelled cheques. The auditor confirmed that the bank stamps on the back of the cheques were different from the cheques Roadstar sent on June 14, 2018. The new cheques identified the following clearing dates:

Cheque #5232	June 13, 2018
Cheque #5234	June 14, 2018
Cheque #5242	Copy Missing
Cheque #5237	June 12, 2018

14. Again, the auditor questions the veracity of these cheque images supplied by Roadstar and has advised that, in this instance, Roadstar may have once again used a photocopier to make it appear that these cheques cleared on earlier dates. The auditor confirmed with one I/O (Cheque # 5234) that as of June 15, 2018 he had not received his cheque despite Roadstar providing evidence that the cheque cleared the bank on June 13, 2018. In addition, as noted above, Roadstar confirmed in writing that the four cheques in question were, in fact, not made available for pick up until June 20, 2018.
15. The auditor concludes the audit report by noting that as of July 6, 2018, Roadstar I/Os had not been remunerated for work performed during May 2018 in contravention of section 24(2) of the *Regulation*.
16. I accept the findings of the auditor.

Decision

17. As described above, the circumstances of this case are that:
 - a. The Commissioner ordered an audit of Roadstar's I/Os;
 - b. The audit found that Roadstar paid its I/Os rates amounts consistent with the *Act* and *Regulation*;
 - c. On May 25, 2018, the OBCCTC received a complaint from a Roadstar I/O alleging that Roadstar I/Os had not been paid by Roadstar since March 20, 2018;
 - d. Roadstar has been found to be in violation of section 24(2) of the *Regulation*;
 - e. Roadstar has provided falsified records to the Commissioner; and
 - f. As of July 6, 2018 (the date of the auditor's report), Roadstar remained non-compliant as a result of failure to pay its I/Os as per section 24(2) of the *Regulation* for work performed in May, 2018.
18. As Roadstar has not paid the amounts owing to its drivers under the legislation for container trucking services performed in May 2018, I make the following Order pursuant to section 9 of the *Act*.

I hereby order Roadstar to pay each Roadstar I/O owed money for container trucking services performed in May 2018. Money orders (not cheques) are to be made out to each Roadstar I/O owed money for container trucking services performed in May 2018 and are to be delivered forthwith, and in any event no later than August 7, 2018, to the OBCCTC for distribution to Roadstar I/Os.
19. If Roadstar has not complied with my Order by the date specified, then Roadstar will have 7 days from August 7, 2018, to respond to the following proposed penalty under section 34 of the *Act*:

that Roadstar's 2018 Container Trucking Services Licence No. 60088 be suspended effective August 14, 2018 and remain suspended until such time as Roadstar complies with the above Order.

20. 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.
21. 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. The *Act* does not, however, require penalties to be imposed for non-compliance in all cases. Rather, the Commissioner is granted discretion to impose penalties in appropriate cases.
22. In this case, it has been determined that between January 1, 2018 and present, Roadstar violated section 24(2) of the *Regulation* on two occasions and that Roadstar also violated section 24(2) of the *Regulation* on six other occasions (including the issuance of two sets of cheques with the same issuing date). Further, some of records provided to the OBCCTC auditor by Roadstar have been falsified and Roadstar, as of July 6, 2018, remained non-compliant for failure to remunerate its I/Os for container trucking services performed in May 2018.
23. In these circumstances, I have concluded that an administrative fine is appropriate. Regarding the size of the proposed fine, I have applied the relevant penalty quantum factors articulated by Commissioner MacPhail in Smart Choice Transportation Ltd. (CTC Decision No. 21/2016) and decided that an administrative penalty of \$50,000.00 is appropriate in this case. The size of this fine is intended to balance Roadstar's compliance with the rate provisions of the *Regulation* with its ongoing failure to pay its I/Os in a timely manner and its falsification of records provided to the OBCCTC in attempts to demonstrate compliance with section 24(2) of the *Regulation*.
24. In the result and in accordance with section 34(2) of the *Act*, I hereby give notice that, in addition to the proposed suspension of licence contained in paragraph 19 above:
 - a. I propose to impose an administrative fine against Roadstar Transport Company Ltd. in the amount of \$50,000.00;
 - b. Should it wish to do so, Roadstar Transport Company 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 Roadstar Transport Company Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to Roadstar Transport Company 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.

25. This decision will be delivered to the Company and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 31st day of July, 2018.



Michael Crawford, Commissioner