



July 17, 2019

Inter Canadian Trucking Ltd.
12212 68th Avenue
Surrey, B.C. V3W 0Z4

Inter Canadian Trucking Ltd. (CTC Decision No. 06/2019) – Decision Notice

A. Overview

In Inter Canadian Trucking Ltd. (CTC Decision No. 06/2019) (the “Original Decision”), I determined that Inter Canadian Trucking Ltd. (“ICTL”) failed to comply with the *Container Trucking Act* (the “Act”), *Container Trucking Regulation* (the “Regulation”), and its Container Trucking Services Licence. ICTL did not pay the rates required under the *Regulation* or pay the regulated rates within the required time periods. Additionally, ICTL did not list and maintain proper driver records under the Licence and was not able to supply all the records required to conduct a full audit. This is a violation of its Licence and section 25 of the *Act*. An administrative fine of \$20,000.00 was proposed and, consistent with s. 34(2) of the *Act*, ICTL was given 7 days to provide a written response setting out why the proposed penalty should not be imposed.

ICTL provided a written argument in response to the proposed penalty within the specified timeframe. I have considered ICTL’s submission and provide the following Decision Notice.

B. ICTL’s Response

ICTL argues that the proposed penalty should not be imposed. ICTL states that it did not follow the direction of the auditor with respect to the Complainant and pay him for costs incurred following an accident because there would have been no way to recoup the payments in the event the Commissioner ruled in ICTL’s favour. ICTL suggests that the Office of the BC Container Trucking Commissioner (“OBCCTC”) “sided” with the Complainant to the detriment of ICTL. ICTL reiterates that it is unable to provide any documentation regarding unpaid container trucking services performed by the Complainant and continues to suggest that the Complainant should be paid for these services by the company for which he was performing the services. ICTL accuses the auditor and the Commissioner of delaying and prolonging the audit and thereby “driving ICTL out of business.” ICTL also questions why the penalty was proposed now that it is no longer in business and does not have a Licence.

C. Consideration of ICTL’s Response

The order to pay and the proposed penalty in the Original Decision resulted from the following findings:

- ICTL failed to maintain and/or produce complete records for audit purposes;
- ICTL failed to pay two company drivers for eight days of work during the Audit Periods;
- ICTL failed to pay company drivers and IEOs the minimum hourly rate as required by the *Regulation* due to its inclusion of vacation pay in the hourly rate calculation;

- ICTL failed to pay the higher of the two legislated hourly rates to three company drivers and two IEOs without sufficient evidence to support payment of the lower rate;
- Remuneration was paid to company drivers and IEOs more than eight days after each semi-monthly pay period;
- Remuneration was paid to I/Os more than 30 days after the month in which work was performed;
- ICTL issued NSF cheques to independent operators;
- ICTL was trip splitting;
- ICTL failed to pay the minimum call-out rates to I/Os;
- ICTL made hybrid payments (hourly/trip rates) to one I/O;
- ICTL paid an I/O directly employed operator hourly rates;
- ICTL paid the \$50 short-trip rate after its repeal;
- ICTL has not made pay adjustments as directed by the auditor; and
- ICTL owes the Complainant specifically for non-compliant rate payments but does not owe the Complainant for payment made by the Complainant to a towing and crane company as the result of an accident.

ICTL has chosen to focus its arguments on the circumstances regarding the Complainant while ignoring the other findings in the Original Decision. However, the order and proposed penalty were in response to all the findings not just those relating to the Complainant.

I do not accept that the OBCCTC “sided” with anyone in this case. The OBCCTC auditor advised ICTL to make payments based upon previous rulings of the Commissioner but ICTL was entitled to seek a ruling from the Commissioner on the matter relating to the Complainant despite the auditor’s initial view, which it did. Ultimately, I did not find against ICTL for the costs of chassis towing and container trucking services associated with the complaint, to ICTL’s benefit.

ICTL was advised by the auditor that it owed its other drivers money, and was ordered in the Original Decision to make those payments. It has yet to demonstrate that payments were made to any of its drivers (other than the Complainant) who were found to be owed money. If ICTL’s only motivation for not making payment as required by the auditor was truly driven by concerns about recouping funds from the Complainant following a decision, then it would have paid all the other money found to be owing and awaited a ruling with respect to the Complainant. That is not the case.

ICTL continues to argue that it should not have to bear any responsibility for work the Complainant performed on behalf of other companies. This was addressed in paragraph 32 of the Original Decision:

The onus is on the licensee to ensure drivers are correctly paid and to keep records accordingly. Licensees must also ensure that the information provided through the licensing process is accurate. ICTL violated the record-keeping requirements of the Act and Licence. It also made inaccurate representations in its licence application when it suggested that it owned a truck (and listed it as a company truck) that was in fact owned by the Complainant. ICTL is therefore unable to substantiate its version of events and bears the responsibility it has under the licence for its company trucks and sponsored I/Os. For these reasons, I find that ICTL is responsible for payment to the Complainant for the performance of container trucking services.

There is nothing new in ICTL's submissions to change my conclusion on this point.

Further, I do not accept that the OBCCTC delayed the audit to ICTL's detriment. In the Original Decision, it was noted in paragraph 4 that the auditor had to make seven record requests of ICTL during the audit and ultimately it was concluded that:

The falsification of ICTL's licence application, combined with missing records, made it very difficult for the auditor to assess ICTL's compliance. Ultimately the auditor used a combination of pay statements, cancelled cheques, bank statements and trip sheets provided by ICTL and the Complainant to conduct the audit. However, the exact amount of money owed to each driver during the Audit Periods could not be determined due to the lack of complete records and ICTL's refusal to conduct a self-audit based upon the auditor's findings during the Audit Periods.

It was, in part, these challenges, resulting from ICTL's conduct, that aided in prolonging the audit. Nor has ICTL established that the length of the audit caused it any loss or damage.

On its last submission, I direct ICTL to paragraph 41 of the Original Decision where the absence of a Licence in relation to orders and penalties of the Commissioner is addressed:

As a licence holder, ICTL's demonstrated non-compliance would certainly attract a penalty and while I recognize that ICTL's licence has already been cancelled, I do not accept that government intended for the requirements of the *Act*, and any associated penalties for non-compliance, to be avoided by surrendering a Vancouver Fraser Port Authority Access Agreement or Licence.

Again, ICTL has not offered anything that causes me to change my mind on this.

D. Conclusion

Having carefully considered ICTL's submission, and for the reasons outlined above and in my Original Decision, I will not refrain from imposing a monetary penalty. In the result, I hereby order Inter Canadian Trucking Ltd. to pay an administrative fine in the amount of \$20,000.00. Section 35(2) of the *Act* requires that this fine be paid within 30 days of the issuance of this Notice. Payment should be made by delivering to the Office of the BC Container Trucking Commissioner a cheque in the amount of \$20,000.00 payable to the Minister of Finance.

ICTL is also required to abide by the compensation order in paragraph 35 of my Original Decision.

Finally, I note that Inter Canadian Trucking Ltd. may request a reconsideration of the Commissioner's Decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after the company's receipt of this Decision Notice. A Notice of Reconsideration must be:

- a. made in writing;
- b. identify the decision for which a reconsideration is requested;
- c. state why the decision should be changed;
- d. state the outcome requested;
- e. include the name, an address for delivery, and telephone number of the applicant and, if the applicant is represented by counsel, include the full name, address for delivery and telephone number of the applicant's counsel; and
- f. signed by the applicant or the applicant's counsel.

Despite the filing of a Notice of Reconsideration, the above order remains in effect until the reconsideration application is determined. This order will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 17th day of July, 2019.



Michael Crawford, Commissioner