



July 4, 2019

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

Commissioner's Decision
Inter Canadian Trucking Ltd. (CTC Decision No. 06/2019)

Introduction

1. Inter Canadian Trucking Ltd. ("ICTL") 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 regulation, 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 British Columbia Container Trucking 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 July of 2018, the Commissioner received a complaint alleging that ICTL had not paid an independent operator ("I/O") for all container trucking services performed on behalf of ICTL and was requiring that the I/O (the "Complainant") pay for container and chassis damage. As such, an Office of the BC Container Trucking Commissioner ("OBCCTC") auditor was directed to audit ICTL's records to determine if its I/Os, indirectly employed operators ("IEOs") and company drivers were being paid the minimum rates required under the Regulation. The auditor was also instructed to ensure that ICTL had not been deducting "Business Costs" from its drivers in violation of Appendix E to Schedule 1 of the Container Trucking Services Licence (the "Licence"). The Commissioner directed the auditor to audit the months of December 2015, March, April and June 2017 and June 2018 (the "Audit Periods").

Audit Findings

4. In August 2018, the OBCCTC made two record requests (August 18 and 27) to be met by no later than September 4, 2018. ICTL supplied some, but not all, of the records requested by the deadline. On September 10, 2018, the auditor made a further record request which was followed by others on October 10 and November 7, 2018 and January 10 and April 15, 2019.
5. ICTL often supplied records after a record request was made but was never able to supply all the records required. Following the last record request on April 15, 2019, ICTL's owner called the OBCCTC¹ and advised that he could not meet the auditor's request as the documents in question were in the possession of a Mr. Gurpreet Shoker who "was running the company" during the Audit Periods. ICTL's owner claims that he is an I/O who drives for a living and does not actually manage or control the company.
6. ICTL's business practices as described herein are important to note in this case as they have had a direct impact on the circumstances which led to the complaint, the conduct of the audit, and, ultimately, this decision. ICTL's owner not only ceded control of ICTL's records to a third party, he also, as set out below, allowed another licensee to directly pay an ICTL sponsored I/O to perform container trucking services and improperly characterized a truck owned by the Complainant as owned by ICTL in ICTL's licence application. ICTL allowed the Complainant (and his IEOs) to work for other companies while the Complainant's trucks were under ICTL's insurance, sponsorship and/or possibly under ICTL's National Safety Code certification.
7. 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.
8. The auditor reports the following:

Company Drivers

9. During the Audit Periods ICTL did not pay its company drivers the minimum rates required under the *Regulation*. Specifically, the auditor determined that ICTL incorrectly paid three company drivers the lower of the two prescribed rates and did not pay two other company drivers for all hours worked. In addition, ICTL included vacation pay in its hourly rate

¹ Sarbjit Grewal, call to OBCCTC, April 29, 2019.

calculation, resulting in driver underpayment, and contravened section 24(1) of the *Regulation* on many occasions by failing to pay remuneration at least semi-monthly and no later than 8 days after the end of a pay period.

10. ICTL was found to owe six company drivers \$3,767.68 collectively for the Audit Periods. ICTL has not conducted a self-audit for the un-audited months between April 2014 and October 2018 despite being directed to do so. This may be due to the unavailability of the required records.

Independent Operators

11. The auditor reviewed the available records and determined that during the Audit Periods, ICTL paid the correct trip rates and fuel surcharge payments to its I/Os. ICTL did not, however, remunerate its drivers in accordance with section 24(2) of the *Regulation*. The auditor identified eight instances during the Audit Periods where payments were made more than 30 days after the month in which the work was performed.
12. The auditor also found that ICTL was trip splitting in instances where an ICTL I/O dropped a container at the company yard and then delivered the container the next day but was only paid for one trip. ICTL also failed to pay the minimum call-out rate required under the *Regulation* on four occasions during the Audit Periods and was found to be paying the \$50 short haul rate in March 2017 despite the repeal of that rate in May 2015. On December 4, 2015, ICTL paid I/Os hourly rates and trip rates for different work in contravention of Appendix A to Schedule 1 of the Licence.
13. ICTL contravened section 24(2) of the *Regulation* by failing to pay its I/Os no later than 30 days after the end of the calendar month in which the I/Os performed container trucking services. The auditor also found evidence that I/Os were paid with cheques that, when cashed, were returned NSF (ICTL later reimbursed the I/Os).
14. On November 21, 2018, the auditor provided ICTL with audit calculations for the Audit Periods indicating that eight ICTL I/Os were owed a total of \$6,252.03 collectively. On November 30, 2018, ICTL advised the auditor that it didn't "owe any money to any driver" but that based on the auditor's findings it would nevertheless issue cheques payable to seven I/Os in the total amount of \$4,781.10 (\$6,252.03 - \$1,470.93 found to be owing to the Complainant). Copies of the cheques dated November 30, 2018 were sent to the auditor.
15. The auditor asked to see copies of the cancelled cheques in order to demonstrate that the payments were made but ICTL has not yet provided this evidence. On June 7, 2019, ICTL wrote to the auditor and re-committed to making the payments, effectively admitting that the payments required by the auditor in November 2018 had not been made. ICTL has not to date provided copies of cancelled cheques.

16. In response, the auditor sought, on two occasions, copies of the cancelled cheques in order to confirm payment. To date the auditor has not received copies of these cancelled cheques and drivers have confirmed with the OBCCTC that they did not receive the cheques. Additionally, ICTL has not conducted a self-audit for the un-audited months between April 2014 and October 2018 to determine the full amount owing to its I/Os as required by the auditor.

The Complaint

17. The Complainant alleges that he was not paid for containers moved on behalf of ICTL on five days (March 10, 22, and 23, April 12, and June 20, 2017). He further claims to have paid business expenses on behalf of ICTL for which he has not been reimbursed.

18. The Complainant owned two trucks during the Audit Periods (Truck #1 and #2). The auditor has reviewed documentation which demonstrates that both trucks were purchased and owned by the Complainant. Truck #1 was listed under ICTL's licence as an I/O truck and was driven by the Complainant. However, Truck #2 was listed by ICTL under its licence as being owned by ICTL but driven by two IEOs employed by the Complainant.

19. The Complainant acknowledges that the insurance documentation for Truck #2 shows ICTL as the registered owner but states that this was done for "insurance purposes only" and maintains through ownership documents provided to the auditor that he is the owner of Truck #2.

20. In reviewing the available records for the Audit Periods, the auditor found that the Complainant was paid by the hour as a company driver between July and December 2015. The Complainant also indicates that in late 2015 or early 2016, ICTL undertook a series of calculations (calculation documents provided to auditor by Complainant) and made payments to the Complainant which were intended to adjust the Complainant's pay to reflect I/O trip rate payment and the Complainant's actual status as an I/O under their licence.

21. Having reviewed the matter, the auditor determined that the Complainant was the owner of both trucks and therefore should be treated as an I/O for the purpose of audit calculations. Despite the pay adjustment made by the company and noted above, the auditor calculates that ICTL owes the Complainant a pay adjustment (for both trucks) in the amount of \$6,838.78 for the period July 9 to December 19, 2015. This amount is the difference between the hourly remuneration paid to the Complainant and the amount that he should have been paid as a trip rate I/O for trips performed.

22. With regard to the alleged missed payments on March 10, 22, and 23, April 12, and June 20,

2017, the auditor reviewed the Complainant's trip sheets and the records ICTL was able to provide. The auditor has determined that the Complainant is owed a pay adjustment of \$1,785.43 for the Audit Periods, which include the five days highlighted by the Complainant, with respect to work performed by Truck #1.

23. ICTL refuses to pay the Complainant the money found to be owed to him. ICTL argues that there were occasions where the Complainant received payments from another licensee as well as from ICTL for the same work. ICTL states that it told the Complainant to stop working directly for the other licensee and to ensure that all work performed for the other licensee was invoiced to ICTL but the Complainant disobeyed this instruction. The Complainant counters, stating that ICTL was fully aware that he was moving some containers for another licensee when work was slow at ICTL and that ICTL never told him to cease doing so. He denies receiving any double payments and ICTL has not been able to supply any documentation which sufficiently demonstrates either that it directed him to stop working directly for the other licensee or that double payments occurred.
24. The Complainant has also submitted documentation in support of his claim that ICTL owes him \$10,820.13 for chassis towing and container crane services which were required after Truck #2 was involved in an accident while moving a loaded container in late 2015. The Complainant states that he paid for services provided by Mega Cranes Ltd. and Rusty's Towing Ltd. with his Visa card with the promise that ICTL would reimburse him when it received an insurance payment. Truck #2 was written off in the accident. The Complainant states that he received approximately \$7,000.00 from ICBC for the truck following the accident.
25. In July 2018, the Complainant allegedly received \$1,500.00 from ICTL to compensate for the Mega Cranes Ltd. and Rusty's Towing Ltd. payments but has not received the balance of the money he claims is owed to him. The Complainant has provided a series of emails between the owners of ICTL, their insurance broker and Transportation Fleet Services dated June, August and December 2016 which indicate that Transportation Fleet Services distributed a \$11,282.22 insurance payment in December 2016 to ICTL to cover the cost of the accident (not the cost of truck replacement).
26. The auditor calculates that ICTL owes the Complainant \$10,820.13 (accident costs of \$12,320.13 - \$1,500.00 payout). ICTL argues that they do not owe the Complainant any money for the chassis towing and container crane services costs incurred by the Complainant. ICTL makes the following arguments:
 - The Complainant paid for the costs without ICTL's permission;
 - An indirectly employed operator was driving Truck #2 at the time of the accident without a valid driver's licence and with the Complainant's but not ICTL's consent/knowledge/direction (this is why the Complainant paid for the costs without seeking ICTL's permission); and

- Truck #2 was performing container trucking services for another licensee at the time of the accident.

Indirectly Employed Operators

27. As noted, the Complainant and/or ICTL utilized two IEOs who were subject to the audit. The IEOs were paid directly by ICTL. The auditor reviewed pay statements and pay cheque stubs prepared by ICTL and concluded that the IEOs were not paid the correct hourly rate and are owed a combined total of \$189.96 for the months of September, October and November 2015.

Decision

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

- a. the Commissioner ordered an audit of ICTL's company drivers, I/Os and IEOs which disclosed the following:
 - 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; and
 - ICTL has not made pay adjustments as directed by the auditor.
- b. ICTL is in a dispute with the Complainant regarding money for chassis towing and container crane services the Complainant paid for;
- c. The auditor reports that ICTL owes \$27,993.12 total to its company drivers and I/Os

- (including the Complainant) for violations of the *Act, Regulation* and Licence noted above. This amount includes the money for the chassis towing and container crane services which the Complainant paid for and for which the auditor believes ICTL owes the Complainant; and
- d. ICTL has reviewed the auditor's findings and report and has provided a response to the OBCCTC for consideration.
 - e. Additionally, on June 4, 2019 ICTL's Access Agreement was cancelled by the Vancouver Fraser Port Authority following a request by ICTL with an admission that its Truck Licensing System fees would not be paid. On June 5, 2019, the OBCCTC advised ICTL that it is a condition of the Container Trucking Services Licence (Section 6.4) that ICTL be party to a valid Access Agreement. As ICTL's Access Agreement was cancelled, ICTL's licence was also cancelled.
29. I have considered the auditor's report and ICTL's submissions (provided on November 11, 2018, January 11, 2019, April 29, 2019 and June 7, 2019) and for the reasons set out below, I find ICTL to be in violation of the *Act, Regulation* and the Licence for failure to pay its drivers the regulated rates, to pay its drivers within the regulated timeframes, to keep records pursuant to the Licence and to submit to the requirements of the OBCCTC's audit process.
30. ICTL has not, to date, provided copies of the cancelled cheques it said were issued to drivers and subsequently recommitted to issuing to drivers. Therefore, I find that the auditor was initially sent copies of cheques that were not distributed (a practice the OBCCTC has experienced in previous audits that involved Mr. Gurpreet Shoker).
31. As noted, ICTL disputes the auditor's finding that it owes the Complainant \$19,444.34 for failure to pay remuneration owed and for payment made by the Complainant to a towing and crane company. ICTL incorrectly paid the Complainant as an hourly company driver resulting in non-compliant rate payments and has not made a submission on this issue. It has, however, argued that it doesn't owe the Complainant money in unpaid remuneration because the Complainant received payments from another licensee as well as ICTL for the same work.
32. 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.

33. ICTL is required to pay the Complainant \$8,624.26 for unpaid and incorrectly paid rates as calculated by the auditor. ICTL is also required to pay the Complainant's IEOs \$189.96.
34. With respect to the dispute over payment made by the Complainant to a towing and crane company, I observe that this dispute arises because the Complainant operated a two-truck business under ICTL's sponsorship. Had ICTL and the Complainant treated his sponsorship in the manner in which it was intended (as a sponsored I/O and his IEOs as employees of the I/O rather than employees of the licensee), any towing and chassis/container repair costs incurred while the Complainant or his IEOs were performing container trucking services for ICTL would have been a business cost and should have been paid by ICTL rather than the Complainant. In this case, the Complainant assumed the business costs in recognition of the actual business relationship that existed between ICTL and the Complainant. Accordingly, I do not accept that ICTL owes the Complainant for the accident costs.
35. In the result and as ICTL has not paid the amounts found to be owing to its drivers under the legislation for container trucking services performed during the Audit Periods, I make the following Order pursuant to section 9 of the *Act*.

I hereby order ICTL to pay total adjustments in the amount of \$17,363.00 as detailed by the auditor to ICTL in the auditor's report and summarized as follows:

- | | |
|--------------------------------|------------|
| • As between 6 Company Drivers | \$3,767.68 |
| • As between 7 I/Os | \$4,781.10 |
| • As between 2 IEOs | \$189.96 |
| • The Complainant | \$8,624.26 |

Money orders (not cheques) are to be made out to each driver owed money and are to be delivered forthwith, and in any event no later than August 6, 2019, to the OBCCTC for distribution.

36. 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.

37. 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. 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.
38. In this case, it has been determined that ICTL failed to comply with the *Act*, *Regulation*, and Licence when it did not pay the correct rates required under the *Regulation* or pay the regulated rates within the required time periods. The audit findings indicate that over this period ICTL owed six company drivers, eight I/Os and two IEOs adjustments totaling \$17,363.00.
39. ICTL did not list and maintain proper driver records under the Licence and has also admitted that it cannot supply all the records required to conduct a full audit. This is a violation of its Licence and section 25 of the *Act* and ICTL is responsible to know and abide by its record keeping requirements under the *Act* and Licence. A licensee's obligation to keep and maintain proper records under Appendix D to Schedule 1 of the Container Trucking Services Licence was addressed in Olympia Transportation (CTC Decision No. 02/2016), MDW Express Transport Ltd. (CTC Decision No. 01/2017), and an August 10, 2016 OBCCTC Record Keeping Requirements Bulletin.
40. In Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018), the licensee was penalized, in part, for failure to produce records and it was noted 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." In this case, ICTL's inability to produce records has resulted in a failure to ascertain the full amount of money which may be owing to ICTL drivers, thereby potentially enriching ICTL at the drivers' expense.
41. 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.
42. 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 \$20,000.00 is appropriate. The size of this fine is intended to balance the number of violations with the quantum of the money owed to ICTL's drivers.

43. 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 Inter Canadian Trucking Ltd. in the amount of \$20,000.00;
- b. Should it wish to do so, Inter Canadian 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 Inter Canadian Trucking Ltd. provides a written response in accordance with the above I will consider its response, and I will provide notice to Inter Canadian 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.

44. This decision will be delivered to Inter Canadian Trucking Ltd. and may be published on the Commissioner's website (www.obcctc.ca) after Inter Canadian Trucking Ltd.'s response period has closed.

Dated at Vancouver, B.C., this 4th day of July, 2019.



Michael Crawford, Commissioner