



August 21, 2019

Dayal Transport Systems Inc.
12742 King George Blvd.
Surrey, BC V3V 3K5

Commissioner's Decision
Dayal Transport Systems Inc. (CTC Decision No. 08/2019)

Introduction

1. Dayal Transport Systems Inc. ("Dayal") 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 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 October of 2018, the Commissioner directed an auditor to audit Dayal's records to determine if its company drivers and independent operators ("I/Os") were being paid the minimum rates required by the Commissioner. The auditor was directed to audit the periods July 1-31, 2018 and August 1-31, 2018 (together the "Initial Audit Period").

Initial Audit Period

4. The auditor requested the relevant records from Dayal. Dayal met the record request deadline but did not supply all the requested records, specifically Dayal did not supply time sheets for I/Os. When asked to supply the missing records, Dayal advised the auditor that the I/O records requested were held by Aheer Transportation Inc. ("Aheer"). Dayal requested the records from Aheer and subsequently provided them to the auditor.
5. The auditor reports that during the Initial Audit Period and the Expanded Audit Period (defined below), Aheer used Dayal's I/Os to perform container trucking services. Payroll records for Dayal's I/Os had to be provided by Aheer and the cancelled cheques provided

demonstrated that Aheer paid the drivers directly. Aheer also confirmed that it dispatched and paid the Dayal I/Os.

6. The auditor reviewed the records and determined that during the Initial Audit Period, Dayal did not pay the required hourly rate to its one company driver. Specifically, Dayal did not increase the minimum hourly rate paid to its driver by 2% on June 1, 2018 in response to the change in the regulated rate. As such, the auditor found that Dayal underpaid its company driver by \$368.48 during the Initial Audit Period.
7. The auditor also determined that during the Initial Audit Period, Dayal (through Aheer) did not pay one I/O for all trips performed in the period and did not pay the required trip rates on five occasions. Dayal was found to owe the I/O \$862.87 during the Initial Audit Period.

Expanded Audit Period

8. Having established that Dayal did not pay its company driver the correct hourly rate and did not pay one I/O for all trips at the correct trip rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the period from December 1, 2017 to February 28, 2019 (the "Expanded Audit Period").
9. Dayal reviewed its records and concluded that it owed the one company driver \$552.48 during the Expanded Audit Period. Dayal calculated that three I/Os were collectively owed \$5,542.98 (inclusive of the amount found owing by the auditor during the Initial Audit Period). The auditor reviewed Dayal's calculations and performed a spot audit of random months in the Expanded Audit Period to determine their accuracy.
10. The auditor confirmed Dayal's company driver calculation but found one occasion where an I/O was not compensated for a trip and the missing trip was not calculated as outstanding by Dayal. As such, the auditor expanded the spot audit of Dayal's I/O calculations and reviewed three more months of records.
11. During the course of this expanded review, the auditor also identified two additional I/Os who were sponsored by Dayal in October 2018 but were providing container trucking services to Prudential Transport Ltd. ("Prudential") and being paid and dispatched by Prudential. These drivers were paid correctly but Prudential states that it paid Dayal \$6562.50 for three months' worth of "tag costs" as part of an arrangement to use two Dayal I/Os.
12. The auditor also found that one I/O was owed a further \$478.60 as a result of missing trip payments and incorrect trip rate payments made by Aheer in March 2019. This amount was added to the total amount owing to the driver for the Expanded Audit Period. Ultimately,

Dayal was found to be owing three I/Os \$5,542.98 collectively. Dayal has paid out all the required adjustment payments calculated to be owing and has provided copies of records confirming that the adjustment payments were in fact made as represented.

13. The audit report concludes by noting that Dayal has corrected its pay structure and effective September 2018 was paying its company driver the correct hourly rate. The three Dayal I/Os working for Aheer have subsequently resigned from Dayal. The two I/Os sponsored by Dayal but working for Prudential remain. The auditor reports that Dayal was typically cooperative throughout the audit process; however, its failure to read emails carefully resulted in the submission of incomplete records or information on numerous occasions, causing audit delays. In addition, Dayal missed its deadline to provide calculations for the Expanded Audit Period.
14. The auditor will not confirm that Dayal is in compliance with the Act as Dayal continues to sponsor I/Os under its Container Trucking Services Licence who are dispatched and paid by other licensees.
15. Dayal was provided with a copy of the auditor's report on July 17, 2019 for review and was provided an opportunity to respond. Dayal has not responded by the required deadline.

Decision

16. As described above, the circumstances of this case are:
 - a. the Commissioner ordered an audit of Dayal's company drivers and I/Os which disclosed the following:
 - between June 1, 2018 and September 15, 2018, Dayal failed to pay one company driver the correct hourly rate and an adjustment of \$572.60 was calculated to be owing; and
 - between December 1, 2017 and February 28, 2019, Dayal failed to pay three I/Os for all trip performed and at correct trip rates. Adjustments totaling \$5,542.98 were calculated to be owing;
 - b. I/Os sponsored by Dayal were dispatched and paid by other licensees;
 - c. Dayal did not provide information and records requested by the OBCCTC on a timely basis; and
 - d. Dayal has accepted the audit results and paid the amounts determined to be owing.
17. As Dayal 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.
18. 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 *Container Trucking Regulation* (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.

19. In this case it has been determined that between December 1, 2017 and February 28, 2019, Dayal failed to comply with the minimum remuneration requirements under the *Act*. The audit findings indicate that over this period, Dayal owed one company driver and three I/Os adjustments totaling \$6,121.58.
20. Dayal has also been found to be in contravention of section 25 of the *Act* and Appendix D to Schedule 1 of its Licence. Section 25 of the *Act* states that "for each trucker employed or retained to provide container trucking services, the licensee must prepare and keep records as required by the commissioner." The requirement is found in Appendix D to Schedule 1 of its Licence. In this case, Dayal has sponsored or retained I/Os for the purpose of providing container trucking services. Therefore, it is Dayal's responsibility to prepare and keep records and any arrangement whereby another company prepares and retains records for a driver sponsored by a different company is a violation.
21. It is particularly important that pay records are prepared and retained by the sponsoring licensee, as the structure of the regulatory regime is such that the licensee bears responsibility for ensuring correct driver pay. The enforcement of the *Act*, *Regulation* and Licence becomes challenging when a licensee is unable to discharge this responsibility.
22. Further, the dispatching and paying of truckers by other licensees is a violation of section 6.17 of Dayal's Licence. Section 6.17 of the Licence states that a licensee may neither assign nor transfer the Licence or the associated truck tags without the express consent of the Commissioner. I am of the opinion that the arrangements between Dayal, Aheer and Prudential represent an unapproved transfer of truck tags. I reach this conclusion because both Aheer and Prudential have confirmed that they dispatch, pay and maintain Dayal I/O records and that Dayal's sponsored I/Os do not perform container trucking services for Dayal. In addition, Dayal commodified its truck tags by accepting money from Prudential for their use.
23. In Roadstar Transport Company Ltd. (CTC Decision No. 01/2019) I stated that "section 6.17 of the Licence exists because the unapproved transfer of truck tags can result in their commodification and because it is difficult to hold licensees accountable for the remuneration and fair treatment of their drivers..." In this case, Dayal has been held accountable but only after the OBCCTC sought and received records from two other licence holders. Ultimately those records demonstrated that one licensee was not paying the required rates.

24. Finally, I note that Dayal has misrepresented the number of truck tags it requires under its Licence and Dayal has benefitted financially from the truck tag transfer.
25. 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 in this case. As recorded above, Dayal was not always responsive during the audit, resulting in unnecessary delays. Dayal has conceded its failure to pay the required rates but continues to sponsor I/Os who are dispatched and paid by other licensees resulting in Licence violations and a finding of non-compliance by the OBCCTC auditor.
26. As a holder of a Container Trucking Services Licence, Dayal is responsible to know its obligations under the *Act* and to pay its drivers the correct rates. Dayal is also responsible to know its record keeping requirements under the *Act* and Licence. A licensee's requirement to keep and maintain proper records has been address in several decisions¹ and an August 10, 2016 OBCCTC Record Keeping Requirements Bulletin. The onus is on the licensee to ensure drivers are correctly paid and to keep records accordingly. Dayal did neither.
27. The onus is also on the Licensee to seek the Commissioner's consent before assigning or transferring truck tags under section 6.17 of the Licence. This was addressed in Roadstar Transport Company Ltd. (CTC Decision No. 01/2019) and A-Can Transport Ltd. and MDW Express Transport Ltd. (CTC Decision No. 07/2019). Once again, I find that a licensee, in this case Dayal, has transferred its truck tags as well as the responsibility for dispatching and paying the drivers associated with the tags, resulting in the very circumstances that section 6.17 of the Licence seeks to avoid. I recognize that Aheer and Prudential likely had a role to play in this transfer, and certainly benefitted from the transfer, but I remind licence holders that the language of section 6.17 is currently such that the licensee to whom the truck tags are assigned bears the responsibility for the violation.
28. While I will refrain from proposing a penalty against Aheer and Prudential in this case, all licensees should also be advised that the unapproved transfer of truck tags for the purpose of engaging an I/O to carry out container trucking services is a violation of section 6.13 of the Licence and I will not refrain from imposing penalties in the future should the OBCCTC encounter similar arrangements between licence holders.

¹ See for example Olympia Transportation (CTC Decision No. 02/2016), MDW Express Transport Ltd. (CTC Decision No. 01/2017).

29. 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 Dayal Transport Systems Inc. in the amount of \$20,000.00;
- b. Should it wish to do so, Dayal Transport Systems Inc. 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 Dayal Transport Systems Inc. provides a written response in accordance with the above I will consider its response, and I will provide notice to Dayal Transport Systems Inc. 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.

30. This decision will be delivered to Dayal Transport Systems Inc. and may be published on the Commissioner's website (www.obcctc.ca) after Dayal Transport Systems Inc.'s response period has closed.

Dated at Vancouver, B.C., this 21st day of August, 2019.



Michael Crawford, Commissioner