



December 14, 2020

Harbour Link Container Services Inc.
7420 Hopcott Road
Delta, BC V4G 1B6

Commissioner's Decision

Harbour Link Container Services Inc. (CTC Decision No. 13/2020)

Introduction

1. Harbour Link Container Services Inc. ("Harbour Link") 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 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. At the request of Harbour Link, the Commissioner directed an auditor in August 2018 to audit Harbour Link's records to determine if its company drivers, independent operators ("I/Os") and indirectly employed operators ("IEOs") were being paid the required minimum rates. The auditor was directed to audit a sample of driver records for the pay periods in the months of June, July and August 2018 (the "Initial Audit Period") to determine compliance.

Initial Audit Period

Company Drivers

4. The auditor requested and obtained relevant records from Harbour Link and determined that during the Initial Audit Period, Harbour Link paid its company drivers hourly rates consistent with the Act and the *Container Trucking Regulation* (the "Regulation").

I/Os

5. The auditor determined that during the Initial Audit Period, Harbour Link did not pay its I/Os for some trips performed and did not pay its I/Os a full trip rate for “dead runs.”¹ In terms of payment for trips performed, the auditor found some instances where trips had been crossed out on the I/O worksheets and the I/O had not been paid for the crossed out trip. Harbour Link was able to provide documentation and explanations for most, but not all, of these instances. In cases where Harbour Link and the I/O involved were unable to explain the crossed-out trip and corresponding lack of payment, the auditor added these trips to the amount outstanding calculation.
6. The auditor also found instances where I/Os performed a trip for which they were paid \$50.00 rather than the regulated trip rate. Similarly, the auditor found instances where two (2) trips were recorded on an I/O worksheet, but only one trip was recorded on the settlement report, and the two trips combined were compensated with a full rate plus an adjustment of an additional \$50.00. As an explanation for both of these scenarios, Harbour Link advised the auditor that it was paying \$50.00 for “dead calls” (also known as “dead runs”) in accordance with its Collective Agreement. In other words, Harbour Link was paying independent trips that qualified as dead runs at \$50.00 per trip rather than at the regulated trip rate and was paying combined trips where one trip included a dead run at one full trip rate plus \$50.00.
7. The auditor calculated that twenty-seven (27) I/Os were owed a total of \$5,088.34 for the Initial Audit Period resulting from a small number of unpaid trips and, more significantly, from incorrect dead run payments. Additionally, the auditor found that Harbour Link underpaid five (5) other I/Os during the Initial Audit Period for work performed by Harbour Link company drivers (paid by the hour) on behalf of the I/Os (these company drivers were treated as IEOs for the purpose of the audit’s calculations). These five (5) I/Os were found to be owed \$783.19 collectively during the Initial Audit Period also for unpaid trips and incorrect dead run payments.

IEOs

8. Harbour Link sponsored four (4) I/Os who employed seven (7) IEOs during the Initial Audit Period. Harbour Link paid the I/Os by the trip, while the IEOs were paid hourly by the sponsored I/Os. The auditor reviewed the available records and determined that during the Initial Audit Period, six (6) IEOs were paid correctly. One IEO was found to be owed \$1,321.43 because their employer (a sponsored I/O) did not pay the IEO for all container trucking services hours performed.

¹ A “dead run” is when a driver is dispatched with a container but cannot deliver that container to its intended destination for one of several reasons outside of the driver’s control (for example, because a container terminal has been closed). An OBCCTC October 2018 Bulletin called “Dead Runs and Pre-pulls” confirms that dead runs are container movements requiring payment of the minimum “per trip” rate.

Expanded Audit

9. Having established that Harbour Link did not pay its I/Os a full trip rate for dead runs and that one Harbour Link I/O did not pay one IEO for all container trucking services hours performed during the Initial Audit Period, the auditor expanded the scope of the I/O and IEO portion of the audit to cover the period between April 2014 and March 2019 in March of 2019 (the “Expanded Audit Period”).²
10. At the same time, in March 2019, the auditor directed Harbour Link to adjust its pay structure and practices immediately in order to bring itself into compliance with the rate requirements (including, in particular, the requirement to pay for dead runs at a full trip rate). The auditor also directed Harbour Link to undertake outstanding pay calculations by no later than April 15, 2019.

IEO

11. Harbour Link requested an extension for the IEO Expanded Audit on the basis that its sponsored I/O was not cooperating in supplying the required records. An extension was granted, which Harbour Link attempted to meet by supplying an electronic spreadsheet but not the balance of the requested records. Harbour Link was unable to meet the record request deadline because the records were not in Harbour Link’s possession and its sponsored I/O would not or could not supply the requested records. In response, the auditor asked for any documents that had been supplied by the sponsored I/O. Harbour Link sent those documents immediately.
12. The auditor reviewed the available records and Harbour Link’s outstanding pay calculations and noted that Harbour Link had utilized an incorrect hourly rate (\$19.50 whereas the CTC rate was at that time \$26.28) when calculating the amounts owed to the IEO for the Expanded Audit Period. When queried, Harbour Link advised the auditor that the \$19.50 hourly rate reflected the rate in its Collective Agreement, for both IEOs and company drivers.
13. Section 23 of the *Act* requires licensees to pay truckers in accordance with the required rates despite any provision of a Collective Agreement to the contrary. As such, the auditor adjusted Harbour Link’s outstanding pay calculations to reflect an hourly rate of \$26.28 and determined that Harbour Link owed one IEO \$40,292.41 for the Expanded Audit Period.
14. Because Harbour Link confirmed that it had not been paying its company drivers and one IEO the correct hourly rate during the Expanded Audit period, the auditor expanded the audit to include all company drivers and IEOs during the Expanded Audit Period. The auditor notes that Harbour Link’s previous (2016) audit did not cover company drivers or IEOs.

Company Drivers and other IEOs

15. The auditor asked Harbour Link to supply pay stubs for two (2) company drivers in four (4) selected pay periods between 2014 and 2017 in order to determine what hourly rate Harbour Link was paying in the period before the Initial Audit Period. Harbour Link advised that it began paying its company drivers the regulated rate on February 1, 2016. The auditor confirmed this and instructed

² The auditor did not consider missing trip payments in the Expanded Audit Period as it was determined the missing trips identified in the Initial Audit Period were immaterial.

Harbour Link to calculate money owing to its company drivers for the period between April 3, 2014 and January 31, 2016. It was determined that Harbour Link owed \$6,430.41 in total to seven (7) company drivers for the period.

16. The auditor also asked Harbour Link to provide records for each of its seven (7) I/Os who employed IEOs between April 3, 2014 and May 31, 2018 to ensure that Harbour Link's I/Os had been paying the regulated hourly rate to their IEOs.
17. Once again, Harbour Link was not able to provide all the documentation required to conduct a fulsome audit. Ultimately, through an analysis of the available records and through contact with IEOs, it was determined that three (3) IEOs were owed a combined total of \$13,532.28 for the period between April 2014 to May 31, 2018. The auditor notes that this amount does not reflect the total amount of money which could be owing, but only the amount which the auditor could confirm based upon the limited records available. Harbour Link was not able to make all records available although it is required under the terms of its licence to retain records of compensation for each trucker performing container trucking services on behalf of Harbour Link.

I/Os and Dead Runs

18. Harbour Link was required to calculate the amounts owing to its I/Os for dead runs during the Expanded Audit Period. Harbour Link provided the requested calculations and, in reviewing the calculations, the auditor noted that Harbour Link had calculated money owing for the period between April 2019 and December 2019, despite having been instructed by the auditor by letter dated March 14, 2019 to immediately amend its payroll practices. When queried by the auditor, Harbour Link advised that it had not changed its payroll practices when instructed to do so and was, in fact, still paying \$50 per dead run. As such, the auditor expanded the audit period to include a calculation of all money owing to its I/Os for dead runs between April 2014 and March 2020 (the "New Expanded Audit Period").
19. The auditor conducted a spot audit (one pay period per year x 6 years x 6 drivers) of Harbour Link's calculations and determined that Harbour Link did not include a fuel surcharge payment ("FSC") in its calculations. As such, the auditor applied the FSC yearly average to each year's outstanding pay calculation.
20. The spot audit also revealed that eight (8) dead runs had been missed, while eight (8) dead runs had been accounted for. As such, Harbour Link's calculations appeared to have a 50% error rate. A second spot audit was completed to ensure accuracy and the 50% error rate was confirmed. Therefore, the auditor increased Harbour Link's calculation of money owing for the Expanded Audit Period by 100%.
21. The auditor also found that Harbour Link did not pay its I/Os for short-haul trips less than 5 km in accordance with its Collective Agreement. Harbour Link agreed to calculate an average of all short-haul trips found during the Initial Audit Period (two at \$103) and extrapolate that amount to all I/Os in the Expanded Audit Period. This resulted in the addition of \$20.60 per I/O being added to the outstanding pay calculations.

22. In conclusion, the auditor determined that Harbour Link owed 84 I/Os a combined total of \$267,540.21 in incorrect dead run payments and missing short-haul trip payments for the New Expanded Audit Period.

Summary

23. As set out above, Harbour Link was found to be owing seven (7) company drivers \$6,430.41, four (4) IEOs \$53,824.69, and eighty-four (84) I/Os (including I/Os who employ IEOs) \$267,540.21, for a combined amount owing of \$327,795.31 for the Initial and New Expanded Audit Periods. The amounts owing to company drivers and IEOs are largely the result of Harbour Link's use of the wrong hourly rate. The amounts owing to I/Os result from Harbour Link's failure to pay its I/Os for all short haul trips and from its failure to pay its I/Os a full trip rate for dead runs.
24. The auditor conducted cut-off audits³ to confirm that Harbour Link has corrected its pay structure and processes. The auditor confirms that Harbour Link has corrected its pay structures and processes and is now paying its drivers compliant rates.
25. The auditor concludes that Harbour Link was helpful during the audit and always responded to emails and phone calls immediately. One deadline was not met because of a delay in receiving I/O documentation for IEOs.
26. Harbour Link has not paid the money found to be owing and has advised the auditor that it will not do so until it had reviewed a copy of the auditor's report and provided the Commissioner with a response. Harbour Link was provided a copy of the auditor's report on October 15, 2020 for review and was provided an opportunity to respond. Harbour Link responded by the required deadline. Harbour Link asks that the amount of money owing be reduced, and that no penalty be imposed.

Harbour Link Submission

27. Harbour Link does not dispute any of the auditor's findings or the auditor's calculations of amounts owing to its company drivers and IEOs. Its submission deals only with the amounts owing for dead runs. Harbour Link makes three main submissions as summarized below.

Reduced Liability Period or Amount for Period Prior to October 2018

28. Harbour Link submits that its liability for money found to be owing for dead runs in the period between April 2014 and October 22, 2018 (the latter the date of the OBCCTC Dead Run Bulletin) ought to be set aside or reduced on the basis that its payment for dead runs in that period met the requirements of its Collective Agreement and it believed it was acting in compliance with the Act. Harbour Link submits that it reasonably relied on the payment requirements for dead runs set out in its Collective Agreement and in a subsequent Letter of Understanding with Unifor, as well as on the results of an OBCCTC audit in 2016, and understood that it was not required to compensate its drivers at a full trip rate for dead runs.

³ A cut off audit is an audit of a pay period immediately following the last pay period under audit to ensure that a licensee has corrected its payment practices.

Reduction Based on “Unblended” Rates

29. Harbour Link submits, in the alternative, that the amount found to be owing should be reduced by \$38,790.00 on the basis that in the period between April 2014 and January 2020 Harbour Link paid its drivers something, if not the full amount, for dead runs and at the same time paid its drivers for bobtail and empty chassis moves despite there being no requirement to pay for bobtail and empty chassis moves. Harbour Link asks that its liability be reduced by \$38,790.00 for this reason. Harbour Link cites Canadian National Transportations Ltd. (Decision No. 02/2019) in support of its argument that its rate payments during this period met or exceeded the regulated rates.

No Imposition of a Penalty

30. Lastly, Harbour Link says that a penalty should not be imposed because there is no basis to impose a penalty. It says that it acted in good faith in its payment practices, had a reasonable belief that it was acting in compliance, cooperated with the auditor and has corrected its non-compliance.

Decision

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

1. In August 2018, the Commissioner ordered an audit of Harbour Link’s company drivers, I/Os and IEOs, at Harbour Link’s request;
2. Seven (7) company drivers were found to be owed \$6,430.41 collectively for the period between April 3, 2014 and January 31, 2016 because they were not paid the correct hourly rate prior to February 1, 2016;
3. Eighty-four (84) I/Os (including I/Os who employ IEOs) were found to be owed \$267,540.21 collectively for the period between April 2014 and March 2020 because they were not paid a regulated trip rate for dead runs or for all short haul trips;
4. One (1) IEO was found to be owed \$40,292.41 for the period between April 2014 and March 2019 and three (3) other IEOs were found to be owed \$13,532.28 collectively for the period between April 2014 to May 31, 2018;
5. Harbour Link is in violation of section 25 of the *Act* and Appendix D to Schedule 1 of its Container Trucking Services Licence for failure to keep proper records for each trucker (in this case IEOs) performing container trucking services;
6. Harbour Link was cooperative during the audit; and
7. Harbour Link has not paid the amounts determined to be owing.

32. I have considered the auditor’s report and Harbour Link’s submission and for the reasons set out below, I find Harbour Link to be in violation of the *Act* and the *Regulation* for failure to pay its company drivers the correct hourly rates, its failure to ensure that IEOs were paid the correct hourly rates and for all container trucking services hours performed, and its failure to pay its I/Os correctly for dead runs and for short haul trips. I also find that Harbour Link has violated section 25 of the *Act* and Appendix D to Schedule 1 of its Container Trucking Services Licence by failing to keep proper records for each trucker (in this case IEOs) performing container trucking services.

Harbour Link's Request for Reduced Liability Period or Amount for Period Prior to October 2018

33. Harbour Link correctly observes that the *Act* and the *Regulation* do not explicitly include dead runs. It then argues that a dead run is not a “trip” as defined under the *Regulation*. It is Harbour Link’s position that a container movement does not clearly meet the definition of an “on-dock trip” or “off-dock trip” in the *Regulation* unless the container has reached its intended destination. In other words, Harbour Link says that on the face of the legislation, a trip must be completed, or a container delivered to its intended destination, before a full trip rate should be paid. I do not accept this argument.
34. The Commissioner’s Rate Order, and the *Regulation* before it, establish minimum “per trip” rates which must be paid for every “trip.” The *Regulation* defines “on-dock” and “off-dock” trips as container movements between two locations (“facility” or “marine terminal”). In the case of a dead run, a container is moved from one location to another location, but the location is not its intended destination. Nevertheless, the container has moved between two locations, which constitutes a “trip” with a corresponding trip rate.
35. This is clear on the language of the legislation and is consistent with my ruling in United Coastal Logistics Ltd. (CTC Decision No. 25/2018) and in the subsequent October 22, 2018 Dead Run Bulletin, in which licence holders were advised that:
- Unpaid container moves or dead runs are also a contravention of the *Act* and *Regulation*. Under the *Regulation*, each movement of a container is treated as a separate trip and consequently each movement of a container requires payment of the minimum “per trip” rate.
36. Further, each trip must be paid in accordance with sections 23 of the *Act* and 24 of the *Regulation*. Harbour Link notes that it may not be paid for trips when a container is not moved to its intended destination. This may be the case, but the requirements set out in s. 23 of the *Act* and s. 24 of the *Regulation* must be followed regardless of whether or not a licensee gets paid by a customer for a container delivery.
37. Harbour Link asks that it not be required to pay a full trip rate for dead runs in the period prior to October 22, 2018 (the date of the Dead Run Bulletin) on the basis that there was no avenue through which Harbour Link could have reasonably informed itself of the law prior to the Dead Run Bulletin’s issuance. I do not agree. Harbour Link could have sought legal advice or a ruling from the Commissioner with respect to dead runs or any other rate in its Collective Agreement prior to October 2018. It did not.
38. I also note that the dead run ruling in the United Coastal Logistics decision and the 2018 Dead Run Bulletin interpret the *Act*; they do not introduce a new rate or new policy. In these circumstances, where a Commissioner’s ruling simply gives effect to legislation, the requirement to pay a rate begins when the *Act* came into force. Only new rates or policies of the Commissioner take effect upon the date of issuance. United Coastal Logistics was required to pay for dead runs from 2014.
39. Harbour Link characterizes Unifor, with whom it negotiated its Collective Agreement, as “well-versed in the content and application of the *Act* and *Regulation* and certainly not inclined to

negotiate provisions in a Collective Agreement that are inferior to the applicable legislation.” Harbour Link notes that Article 20 of the Collective Agreement requires compliance with the *Act* and *Regulation* and that Article 21.01(f) of the Collective Agreement, which governs payment for “dead calls,” provides that dead calls are compensated at a rate of \$50. Harbour Link further points to a Letter of Understanding between itself and Unifor providing for a \$50 rate for dead calls and notes grievances resolved under the Letter of Understanding to suggest that it understood itself to be acting in compliance with the legislation.

40. Harbour Link also relies on a previous decision (Harbour Link Container Services Inc. (CTC Decision No. 04/2016)) to demonstrate that it understood that it was compliant and notes that Harbour Link and Unifor were encouraged in that decision to use alternative proceedings before bringing matters to the Commissioner for resolution.
41. The audit underpinning the 2016 decision only considered the on and off-dock trip rates paid by Harbour Link during the audit period. The audit did not specifically look at Harbour Link’s classification of on and off-dock trips and did not therefore consider whether Harbour Link was properly classifying dead runs as trips. This was one of the first audits conducted by the OBCCTC and the priority of the OBCCTC at that time was to ensure that licensees were paying the rates in the *Regulation*, and, in particular, for the period between April 3, 2014 and January 22, 2016 (per the then Acting Commissioner’s December 11, 2015 bulletin).
42. While the use of alternative dispute resolution methods was encouraged in the 2016 decision,⁴ I note that the Commissioner also cautioned licensees that any awards or decisions arising from an alternate dispute resolution process should result in outcomes that are consistent with the principles expressed or implied in the *Act* and the policies of the OBCCTC.⁵ The dead run payment structure agreed upon between Harbour Link and Unifor is not, in my view, consistent with the principles (or rate structure) expressed in the *Regulation*.
43. Further, it is not appropriate for Harbour Link to rely on a union to inform itself of the requirements of the legislation. Unifor had no better understanding of the legislation than Harbour Link and it is evident that neither party acted to ensure compliance with the *Act* and *Regulation* or Article 20 of their Collective Agreement. This is true of the hourly rate as well as the payment for dead runs. Despite Article 20 of the Collective Agreement, Harbour Link did not pay its company drivers or its IEOs the correct hourly rate and Unifor did not hold Harbour Link to account.

Harbour Link’s Request for Reduction Based on “Unblended” Rates

44. In the alternative, Harbour Link seeks a reduction of \$38,790.00 in the amount owing on the basis that it was paying for bobtail and empty chassis moves between April 2014 and January 2020 despite no legislative requirement to do so and in consideration of the commonly held industry perception that the trip rates are “blended” (such that they include payment for bobtail and empty chassis moves). Harbour Link in effect argues that it paid for bobtail and empty chassis moves twice (once by paying for these moves themselves, and once by paying a “blended” trip rate), and that this offsets its failure to pay a full trip rate for dead runs by \$38,790.00.

⁴ Harbour Link Container Services Inc., (CTC Decision No. 04/2016), p. 4.

⁵ Harbour Link Container Services Inc., (CTC Decision No. 04/2016), p. 4.

45. I do not agree that the trip rates paid by Harbour Link during the audit period in question were “blended” or include an amount for bob tail and empty chassis moves. It has long been the position of Harbour Link and other licensees that the trip rates in the *Regulation* include a price for bob-tail and empty chassis moves. However, it is not clear if this is the case and I am not aware of any documentation that supports this position.⁶ Ultimately, a \$25.00 Positioning Movement Rate was introduced to compensate I/O’s for bob tail and empty chassis moves, effectively putting to rest the argument that the trip rates include a payment for bob tail and empty chassis moves.
46. Harbour Link did not overpay its drivers during the period in question and therefore I do not accept that the remedial goals and substance of the legislation have been fulfilled as Harbour Link has argued. The amount of money paid to Harbour Link’s I/Os during the period in question does not meet or exceed the amount of money they would have been paid had they been properly compensated for dead runs. In short, \$267,540.21 in incorrect dead run payments and missing short trip payments is substantially more than the \$38,790.00 Harbour Link paid for bobtail and empty chassis runs.
47. Additionally, the Canadian National Transportations Ltd. (“CNTL”) decision should not be relied upon by other licensees when making arguments in response to OBCCTC audit results and decisions. I remind Harbour Link that in the OBCCTC’s April 17, 2020 Bulletin (Off-Dock Rates and Truck Tag Requirements) the CNTL decision was discussed and it was noted that “the CNTL decision should only be viewed within the context of that audit and the unique factors and circumstances which were considered for the purpose of that audit only and are not broadly relevant.”

Order

48. As Harbour Link has not paid the amounts outstanding to its company drivers for the period between April 3, 2014 and January 31, 2016, the amounts outstanding for its IEOs for the period between April 2014 and May 31, 2018, or the amounts owing to its I/Os for the period between April 2014 and March 2020, I make the following Order, pursuant to section 9 of the *Act*:

I hereby order Harbour Link to pay the drivers identified by the auditor as follows:

- (a) seven (7) company drivers a total of \$6,430.41 divided between them as directed by the auditor;
 - (b) one (1) IEO \$40,292.41;
 - (c) three (3) other IEOs a total of \$13,532.28 divided between them as directed by the auditor;
- and
- (d) eighty-four (84) I/Os \$267,540.21 divided between them as directed by the auditor.

⁶ This issue was canvassed in the Commissioner’s *Container Trucking Regulation Part 4 (Rates and Remuneration) Recommendation Report*, October 2018, p. 16.

Penalty

49. 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. In this case, Harbour Link was found to be non-compliant for failure to pay the correct hourly rates to its company drivers and IEOs. It was also found non-compliant for its failure to correctly pay its I/Os for dead runs and for some short haul trips.
50. Harbour Link cannot rely on its Collective Agreement to explain its failure to pay its company drivers the correct hourly rate. Neither Harbour Link nor its union acted to ensure compliance with the *Act* and *Regulation* or Article 20 of their Collective Agreement and I remind Harbour Link that section 23 of the *Act* stipulates that the regulated rates apply despite any provision of a Collective Agreement to the contrary. Harbour Link is penalized for its failure to pay the correct hourly rates.
51. The audit has also demonstrated that Harbour Link did not keep records for its IEOs, resulting in under compensation, or ensure that IEOs were paid correctly. Harbour Link has now implemented record keeping and payment practices intended to ensure that IEOs are paid correctly. Past decisions have not penalized licensees for failure to properly account for IEO payment⁷ and in Canada Drayage Inc. (CTC Decision No. 02/2020) I noted that audits had not, to that point, focused extensively on compliance with payment to IEOs and therefore some leniency was appropriate.⁸ The audit for Canada Drayage Inc. (CTC Decision No. 02/2020) commenced after the Harbour Link audit had started and was completed before the Harbour Link audit; therefore, Harbour Link will be afforded the same leniency as Canada Drayage Inc. and will not be penalized for failure to keep proper records and correctly pay IEOs.
52. Harbour Link did not revise its dead run payment practices following the October 2018 Dead Run Bulletin. Nor did it amend them in March 14, 2019, when the OBCCTC auditor instructed it to do so immediately. As Harbour Link notes in its submissions, it only started to pay for dead runs correctly in February 2020.
53. Rather than amend its payment practices following the October 2018 Dead Run Bulletin, Harbour Link continued to rely on its Collective Agreement despite the October 2018 Dead Run Bulletin and despite section 23(3) of the *Act*, which stipulates that the regulated rates apply despite any provision of a Collective Agreement to the contrary.
54. It was incumbent upon Harbour Link to adjust its rate payment practices at least following the October 2018 Dead Run Bulletin and it is not sufficient to argue that its Collective Agreement or dead run grievances filed by its union and resolved under a Letter of Understanding override the requirements of the *Act* or the Commissioner's 2018 Dead Run Bulletin or the directions of an OBCCTC auditor. They do not. Harbour Link knew by October 2018 that dead runs were to be paid at the full trip rate, and Harbour Link knew, per Article 20 of its Collective Agreement, that the regulated rates must be paid.

⁷ Supreme Trucking Ltd. (CTC Decision No. 16/2017); Safeway Trucking Ltd. (CTC Decision No. 05/2018); and Canada Drayage Inc. (CTC Decision No. 02/2020).

⁸ Canada Drayage Inc. (CTC Decision No. 02/2020) para 14.

55. Licensees have been penalized for failure to correct their practices following a decision and/or bulletin of the Commissioner.⁹ Here, Harbour Link failed to pay the required trip rate for dead runs even after the United Coastal Logistics decision and the 2018 Dead Run Bulletin. It subsequently failed to pay the correct dead run rates even after being directed to do so immediately by the OBCCTC auditor in a letter dated March 14, 2019. In Harbour Link Container Services Inc. (CTC Decision No. 04/2016), the Commissioner listed a number of circumstances in which the Commissioner may exercise their discretion to issue a financial penalty. These included circumstances where a licensee does not comply with orders or directions given by an auditor.
56. In these circumstances, I have concluded that an administrative fine is appropriate for failure to pay the correct hourly rates, the correct trip rate for dead runs and failure to correct its pay structure and pay the full trip rate for dead runs after the 2018 Dead Run Bulletin and after the direction of the OBCCTC auditor. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$1,500.00 is appropriate in this case. In most other circumstances, Harbour Link's failure to correct its pay structure twice would attract a significantly higher penalty. Here, the penalty is nevertheless relatively small for a number of reasons, including that Harbour Link was generally cooperative, the audit was initiated at Harbor Link's request, and because Harbour Link was at least paying a partial rate for dead runs before the 2018 Dead Run Bulletin, when others may not have been. The penalty is also smaller than it would be in recognition of the substantial amount of money that Harbour Link will be paying to its drivers in incorrect dead run trip payments.
57. I expect that this decision will sufficiently demonstrate the consequences of assuming without confirming that a collective agreement is necessarily compliant with the *Act* and *Regulation*.
58. 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 Harbour Link Container Services Inc. in the amount of \$1,500.00;
 - b. Should it wish to do so, Harbour Link Container Services 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 Harbour Link Container Services Inc. provides a written response in accordance with the above, I will consider its response and I will provide notice to Harbour Link Container Services 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.

⁹ See for example, Can American Enterprises Ltd. (CTC Decision No. 11/2019); Inter Canadian Trucking Ltd. (CTC Decision No. 06/2019); and Aquatrans Distributors Inc. (CTC Decision No. 06/2018).

59. This decision will be delivered to Harbour Link Container Services Inc. and may be published on the Commissioner's website after Harbour Link Container Services Inc.'s response period has closed (www.obcctc.ca).

Dated at Vancouver, B.C., this 14th day of December, 2020.

A handwritten signature in blue ink, appearing to read "Michael Crawford", written in a cursive style.

Michael Crawford, Commissioner