



April 12, 2021

TransBC Freightways Ltd.
Raja Road Rail Services Ltd.
TrasBC Freight Ltd.
400 Ewen Ave.
New Westminster, BC
V3M 5B5

Commissioner's Decision

TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. (CTC Decision No. 04/2021)

Introduction

1. TransBC Freightways Ltd. ("TransBC") and Raja Road Rail Services Ltd. ("Raja") were joint 2018 CTS Licence holders and are now separate 2020 CTS Licence holders within the meaning of the *Container Trucking Act* (the "Act"). TrasBC Freight Ltd. ("TrasBC") is a separate licence holder. TrasBC held a 2018 CTC Licence and now holds a 2020 CTC Licence. TransBC, Raja, and TrasBC are hereinafter referred to together as "the Companies."
2. TransBC and Raja had 9 truck tags allocated to their joint 2018 CTS Licence. TransBC now has 3 truck tags and Raja has 9 truck tags allocated to their respective 2020 CTS Licences, which are assigned to trucks driven by directly employed operators ("company drivers"). TrasBC has 15 truck tags under its 2020 CTC Licence, which are assigned to trucks driven by its one independent operator ("I/O") and its company drivers.
3. The Companies are owned by the same person and operated jointly. Drivers at the Companies work interchangeably for all Companies and are paid by either Raja or TrasBC. The Companies perform container trucking services ("CTS") and non-CTS.
4. Under sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide CTS 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.
5. 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.

6. On April 1, 2019, the Office of the BC Container Trucking Commissioner (“OBCCTC”) received a complaint from a driver (“Complainant 1”) alleging that the Companies were deducting from his pay 30 minutes for a break when he worked up to ten (10) hours and one (1) hour for a break when he worked in excess of ten (10) hours. The driver alleged that he was not allowed to take the breaks, and that, following a complaint to the Companies about the deductions, the Companies changed the deductions to take effect after twelve (12) hours of work. The driver also complained that he was not being paid for overtime, vacation pay or statutory holiday pay and raised concern that any complaints made to the Companies about overtime, vacation or statutory holiday pay would result in a reduction of shifts and hours.
7. On May 17, 2019, the OBCCTC received another complaint from a driver (“Complainant 2”) alleging that the Companies were paying him \$20.00 per hour instead of required hourly rate and that he was not paid for any overtime or for any hours while he was training. The driver also stated that he did not get paid for post-trip inspections or parking time, that he had been in an accident as a result of which the Companies were withholding his last pay cheques and asking him to pay \$25,000.00 in order to return to work.
8. On May 29, 2019, the Commissioner directed an auditor to audit the Companies’ records to determine if their company drivers and the one I/O at TrasBC were being paid the minimum rates required under the *Container Trucking Regulation* (the “*Regulation*”). The auditor was directed to audit all company driver records at the Companies as well as a the I/O’s records for the pay periods in the months of October 2018 and March 2019 (the “Initial Audit Period”) to determine compliance.

Initial Audit Period

9. The auditor requested documents/records which could establish whether all company drivers and the I/O had been paid in accordance with the *Regulation*. The Companies sought an extension to the auditor’s record request deadline, which was granted, and the Companies then provided some but not all of the requested records. Specifically, the Companies did not supply paper copies of daily trip sheets or timesheets completed by the drivers or summary reports showing all driver pay with explanations. Some Daily Software Printouts, cancelled cheques, and various supporting documentation and explanations were also missing for some drivers.
10. The auditor reviewed the documents provided and noted that the hours recorded on the Daily Software Printouts supplied by the Companies did not match with either the Driver Hours Report supplied by the Companies or the hours paid on the drivers’ pay stubs. The auditor also noted that the paystubs submitted included an incentive calculation.
11. Between August 27, 2019 and November 6, 2019, the auditor made 12 inquiries (emails and phone calls) to the Companies regarding her initial review of the records. When asked why paper copies of daily driver trip sheets and timesheets were not provided, the Companies stated that they did not have paper records and were fully digital. The Companies were also asked to provide explanations for the auditor’s initial findings around the discrepancies between some of the documents and explain the incentive calculation.

12. The auditor reports that the Companies did not supply sufficient explanations or any documentation relating to the incentive calculation despite the series of email and phone call exchanges between the Companies and the auditor.

Record Seizure

13. The auditor contacted drivers on the list of drivers that the Companies had provided as part of the initial audit record request. Twenty-nine drivers were contacted. Between them, they advised the auditor as follows:
- Lunch breaks were being deducted by the Companies despite drivers not stopping for lunch;
 - Drivers were not being paid for pre-trip inspections;
 - Drivers were being paid for pre-trip inspections but only 15 minutes of pre-trip inspection time was being paid (Note: pre-trip inspection is often but not always 15 minutes and can be longer if truck repairs are required);
 - Drivers were not being paid for post-trip inspections;
 - Drivers were not being paid for all hours worked performing container trucking services; and
 - Drivers had not been paid for training.
14. Four drivers provided electronic documentation and six other drivers provided original paper documents or copies of paper documents and records to the OBCCTC in support of their complaints. Three other drivers provided statements to the OBCCTC regarding their complaints.
15. The information provided by the drivers appeared to indicate that the Companies had not been paying drivers for all hours of CTS performed and had not supplied all records required to determine compliance. As such, the Commissioner directed an OBCCTC investigator to enter the Companies' office and seize records pursuant to s. 32 of the *Act*.
16. On November 15, 2019, Xpera Investigative Services entered the Companies' office and removed records. The records obtained were photocopied and provided to the auditor and the originals were returned to the Companies. The seized records included documents for March 2019 referred to as follows:
- Pink B Sheets;
 - Driver Trip Sheets;
 - Cost Reports; and
 - Bonus Driver Reports.
17. These documents were not provided by the Companies in the original package of records or subsequently when the auditor asked for any trip sheets or explanations regarding incentive calculations. Other documentation was also seized but was not utilized in auditing the Initial Audit Period.

Company Drivers

Incentive Pay

18. The auditor reviewed the October 2018 records obtained from the Companies following the initial record request and noted that the number of hours paid for and recorded on the driver pay stubs was higher than the number of hours listed on the Driver Hours Report and Company Summary Report provided by the Companies. When questioned, the Companies advised that drivers were paid an incentive in various circumstances, which the auditor accepted. The Companies also advised that after January 1, 2019, the incentive payment was recorded as a separate item on the Company Summary Report and on the pay stubs because the Companies went 100% digital in January 2019.
19. The auditor reviewed the March 2019 digital records supplied by the Companies and determined that the hours worked, as shown on the drivers' hours reports, corresponded with the hours paid shown on the pay stubs.
20. The auditor also reviewed the March 2019 records seized by the OBCCTC investigators. The seized documentation contained driver trip sheets and Pink B Sheets that covered the first pay period in March 2019. Pink B Sheets are driver trip sheets that include a driver's start time and finish time as well as the container numbers and origin/destination of the containers moved by the driver. The auditor notes that on days when a Pink B Sheet was filled in by a driver, the information on the Pink B Sheet did not match the information on the Companies' digital records. Specifically, the Pink B Sheets recorded hours that were not recorded in the Companies' digital records.
21. Other records seized included documents called Bonus Driver Reports and Cost Reports. The Bonus Driver Reports listed hours that were titled "correct hours" (these hours matched the hours recorded on the records supplied by the Companies) and also showed "P hours" or "Bonus" hours, depending on the pay period. It also appeared that the half hour that was deducted daily for a lunch break was included in the "P hours" or "Bonus Hours" and comprised the first part of the incentive calculation.
22. The Cost Report listed all container moves and also included a column titled "cost," which identified a dollar amount for each container move. The sum of this column was multiplied by 2.57% and was shown on the Bonus Driver Report as "system paid."
23. The auditor initially considered whether the CTS hours recorded on the Pink B Sheets were being compensated by the incentive payment. The auditor tabulated the hours recorded on the Pink B Sheets and compared the totals to the drivers' incentive pay amounts recorded on drivers' pay stubs to determine if this was the case. However, the hours recorded on driver Pink B Sheets, multiplied by the hourly rate, did not equal the incentive pay amount recorded for each driver.
24. The auditor then reviewed the Bonus Driver Report and the Cost Report and was able to determine that it was the information contained in these reports that was used for the incentive payment calculation.

25. When questioned about the incentive payments, the Companies stated that they were not for lunch break deductions and explained that the drivers were compensated for all CTS hours through their incentive calculation, part of which included a reconciliation of the total number of hours worked by each driver (which includes driving and non-driving time) with the truck hours logged by the Companies' automated DriveSmart app system.
26. The auditor remained concerned that all drivers may not have been paid for all CTS hours because not all drivers received an incentive payment. The auditor therefore instructed the Companies to calculate any amounts owing to drivers based upon any additional CTS hours that were not accounted for by the Companies' digital records.
27. In reviewing the records, the auditor also determined that during the Initial Audit Period, the Companies were deducting lunch breaks from the drivers' timesheets (and corresponding pay) despite the drivers' alleging they were not taking lunch breaks. The auditor also found that the Companies were not paying for post-trip inspection time, time at the end of a shift, or training time.

Lunch Breaks

28. The auditor determined that the Companies were deducting half an hour from each driver per shift. When asked about the deduction, the Companies stated that 30 minute deductions were made for a lunch break when a driver worked a shift of between 4 and 12 hours and one hour deductions were made when a driver worked more than 12 hours.
29. The auditor asked the Companies' drivers about the deduction and was advised by 20 drivers that they do not stop for lunch despite having time deducted from their pay for breaks. Some drivers further explained that they eat their lunch when in line at the Port or whenever they can and that if they were to stop working and take a lunch break, they would be penalized by Dispatch (by not being dispatched) and asked by Dispatch why they were stopping. However, four drivers claimed that they were paid for lunch or that they always/sometimes stopped for lunch.
30. The auditor conducted further investigations to determine whether or not drivers were taking lunch breaks. The auditor reviewed GPS data from the Companies' FleetComplete app and video footage supplied by the Companies to determine if drivers were taking breaks when in the Companies' yard. The Companies advised the auditor that when a driver enters their yard, the driver exits the cab, and the yard workers do all the required loading and unloading while the driver takes a break. The Companies highlighted portions of the GPS data where they believed drivers had taken breaks. The auditor discounted some of the highlighted GPS data provided by the Companies on the basis that those highlighted times were at the start and end of shifts and therefore not times during which a lunch break would normally be taken.
31. Other highlighted data was discounted by the auditor because she determined that trucks were in the Companies' yard for approximately 15 minutes, but often moved during that time. Drivers told the auditor that the drivers themselves, and not the yard workers, are responsible for driving and moving their trucks while in the yard. One driver was adamant that he did not take breaks when in the yard. The Companies stated that drivers often remained in their cabs when in the yard rather

than exit the cab (for example because of weather) but maintained that drivers were not working at that time.

32. The video footage provided by the Companies was intended to show that drivers leave their cabs when in the yard to take breaks. The video footage showed one occasion where a driver arrived at the yard, exited a truck cab, walked away from the cab, returned, and drove away 16 minutes later. This evidence was discounted by the auditor because drivers had advised that they often get out of their cabs to print documents, locate crane operators, load and secure containers and to use washrooms and the Companies were not able to provide similar footage for other drivers on other days to establish that the footage was not of a “one-off” occasion. The auditor also noted that the Companies were not able to provide footage from any periods prior to their becoming aware of the lunch break issue. The Companies attributed their inability to produce additional, historic footage to their practice of recording over footage each week.
33. The auditor ultimately concluded that the drivers were not taking lunch breaks, noting that a driver must stop, exit the truck’s cab, and not be working for 30 minutes in order for a lunch break to be deducted. The auditor did not consider waiting in a line up or at a site while a container is being loaded/unloaded to be a lunch break.
34. The Companies maintain that their drivers are required to take either one 30 minute or two 15-minute breaks during their shift and at times of their own choosing. The Companies state that there is an understanding between employer and employee that drivers take their break (eating, drinking, napping, etc.) during the time that they spend at the Companies’ yard.

Post-Trip Inspections

35. Complainant 1 alleged that the Companies had not paid him for post-trip inspections. The auditor spoke with other drivers, 15 of whom stated that they conducted post-trip inspections and were not paid for them. Others stated that they did not perform post-trip inspections because the Companies did not pay them for the inspection time.
36. When questioned about pay for post-trip inspection time, the Companies advised the auditor that they do not pay their drivers for post-trip inspection time. During a series of written and verbal exchanges, the Companies provided the following explanations for why they do not pay for post-trip inspection time:
 - Drivers are not required to perform post-trip inspections per section 37.22 (6) of the National Safety Code (“NSC”) and section 37.22 of the BC *Motor Vehicle Act* (“MVA”);
 - Subsequent drivers perform pre-trip inspections on the trucks during the subsequent shift, which makes post-trip inspections redundant;
 - A post-trip inspection report does not need to be completed if no defects are found but the Companies “do pay drivers for post-trip inspection reports if and only if there is a defect to report which compels them, as per BC statute to complete an inspection report”; and
 - The Companies’ software has a maintenance section that tracks maintenance and can be filled out at any time that ensures safety measures are taken by directly submitting information to the mechanic for urgent attention.

37. During an exchange between the Companies and the auditor, the auditor cited an August 19, 2015 NSC Bulletin (#02-15). The Bulletin stipulates that someone, either a driver or a “person,” must perform a post-trip inspection. After this Bulletin was referenced, the Companies added an additional explanation for why their drivers were not paid for post-trip inspections. The Companies advised that they use their own mechanics or “persons” to perform post-trip inspections and do not pay their drivers for post-trip inspection time for this reason. The Companies did not provide any evidence to support this claim but reiterated that drivers are only required to complete a post-trip inspection report if a defect in the truck is found.
38. The auditor considered the Companies’ submissions and questioned how a driver was paid for time filling out post-trip inspection reports, when required, if the Companies’ mechanics perform the post-trip inspection. The Companies did not explain the process followed when a driver stops being paid for work but has to wait at the end of their shift until a mechanic checks the truck in the event a post-trip inspection report has to be filled out by the driver (they are presumably paid for the time it takes to fill out the post-trip inspection report). The auditor was also concerned that the Companies had not stated that their mechanics performed post-trip inspections until after the auditor had advised the Companies of NSC Bulletin (#02-15) and a similar ruling in another OBCCTC decision.¹

End of Shift Time

39. Drivers complained that they were not being paid for the time required at the end of their shifts to park and secure their trucks and hand in paperwork at the office. Evidence was provided by Complainant 2 to demonstrate that the Companies were adjusting the end of shift log out time that he recorded using the Companies’ DriveSmart app.
40. Driver shift time (start & finish) is recorded by the Companies’ software. The Companies provided the auditor with Daily Software Printouts for each driver that worked during the audit periods. The Daily Software Printouts were based on the information generated by the software. The Daily Software Printouts are broken into two sections because the Companies’ software is based on two apps – the DriveSmart app and the FleetComplete app.
41. The first section of the Daily Software Printouts contains DriveSmart app information which shows the hours a driver performs CTS by identifying pre-time and post-time as well as the drivers’ pre-inspection reports. The drivers log into the app on their personal cell phones to access the software and are required by the Companies to use the app to log in and out at the beginning and end of their shift. The second section of the Daily Software Printouts contains FleetComplete app information which shows information recorded by the truck’s GPS system including the truck’s ignition on and off-time and the time a truck arrived at a point of interest (“POI”) (including the time the driver arrived at the entrance to the Companies’ yard).
42. The auditor examined the Daily Software Printouts and determined that almost all the post-shift times recorded by the drivers in the DriveSmart app exactly matched the times drivers crossed the

¹ Hap Enterprises Ltd. (CTC Decision No. 08/2020).

geo-fence, not the ignition-off times. The auditor was expecting to see a time differential because it was assumed that a driver would park a truck, turn off the ignition, then log out of the DriveSmart app, triggering the end of shift time recorded by the Companies' software.

43. The auditor also reviewed paper driver logbooks and trip inspection reports that had been provided by drivers or collected in the document seizure. The auditor compared the shift start and end times recorded in the logbooks and trip inspection reports to the shift start and end times recorded on the Daily Software Printouts and determined that the shift end time logged on the driver's trip sheets was later than the time logged by the Companies' software.
44. The Companies argued that their drivers were not entitled to payment for any time after their trucks cross the geo-fence at the edge of their yard because after a truck crosses the geo-fence a driver parks the truck and walks away, effectively ending his shift. Any truck activity in the yard, the Companies explained, was conducted by yard workers or mechanics and all paperwork filed by the drivers is done the next day and/or uploaded directly to the DriveSmart app, thereby eliminating any additional time the driver is required to be paid at the end of their shift. However, evidence was provided by drivers demonstrating that, on occasion, they were required to submit paperwork at the end of their shift, suggesting that they sometimes worked after their truck crossed the Companies' yard's geo-fence.
45. The Companies also cited one example in the records reviewed by the auditor where the end of shift time recorded on the driver's log sheet matched the time logged in the DriveSmart app and the Arrive POI time (time truck crossed the geo-fence) as evidence that the drivers were not shorted time at the end of their shifts. However, this was only one example. The auditor noted that generally, the end of shift time recorded on driver logs did not match the end of shift times recorded by the Companies' software. Further, the Companies' example did not explain how it was that a driver could log out of the DriveSmart app at the same time that his truck crossed the geo-fence.
46. The auditor continued to search for a logical explanation and asked the Companies if the software was automatically using the Arrive POI time (time truck crossed the geo-fence) to mark the end of a driver's shift instead of using the post-time in the DriveSmart app (the time a driver logs out). The Companies did not answer her question directly; rather, they responded by confirming that the time logged by the DriveSmart app is the time that the truck crosses the geo-fence at the edge of the yard.
47. The Companies did offer additional information, stating that an employee will occasionally adjust a driver's end of shift time if he has forgotten to log out of the DriveSmart app at the end of his shift and, if he does, the time is logged by using the time that the truck crossed the geo-fence. This information, however, does not explain why, in almost all the records reviewed, the driver's post-time exactly matched the Arrive POI time. The auditor did not consider it likely that almost every driver listed in the audit records had forgot to log out or that the records provided by the complainant to demonstrate that the Companies were altering his log out times all represented occasions where he had forgotten to log out.
48. The auditor also remained concerned about the difference in the shift end times recorded on paper records and the shift end times recorded by the Companies' software. In the absence of a

reasonable explanation from the Companies and in consideration of the recorded information, the auditor concluded that the Companies were manually changing the driver's log out times and matching those times to the Arrive POI time, resulting in underpayment for time performing CTS at the end of their shifts.

Training

49. Complainants 1 and 2 both stated that they had not been paid for training and had raised the issue with the Companies. Complainant 2 advised the OBCCTC that he had made a complaint under the *Employment Standards Act ("ESA")* respecting the matter. When other drivers were contacted by the auditor during the course of the audit, some also stated that they had not been paid for training.
50. The auditor asked the Companies if they train their drivers and was advised that their drivers do not receive training because the Companies only hire drivers who already have a trucking license and that any driver the Companies hires who does not have experience container trucking at port terminals is required to talk to other company drivers on the phone for instruction and is paid for the time spent on the phone. The auditor asked the Companies for any documentation to support their claim but was advised that no such documentation existed because their drivers "do not receive training."
51. The auditor reviewed the trip sheets of the two complainants who stated that they were not paid for training. The dates logged on the trip sheets provided by the two complainants predated the dates upon which the Companies had stated the drivers were hired.
52. The auditor then reviewed the pay records provided by the Companies to determine which drivers had been paid the hourly rate for drivers with less than 2340 hours of experience in the industry. The Port Pass issue dates for those drivers were then compared to the hire dates listed by the Companies and the training dates provided by the complainants. In each case, the auditor determined that the drivers' Port Passes were issued before the training dates provided by the complainants and, in all but one case, before the hire dates listed by the Companies.
53. The auditor also examined dates when the complainants' Port Passes were swiped at Port of Vancouver terminal gates and noted that four drivers swiped their Port Passes before the hire dates listed by the Companies. Some drivers had stated that their trainer had swiped their Port Pass while they were in the passenger seat of the truck. On the basis of this information, the auditor concluded that drivers were being trained and not paid for the training.
54. Complainants 1 and 2 provided documentation which the auditor reviewed and based upon which the auditor calculated that they were owed a combined total of \$7,961.64 in unpaid training hours. No documentary evidence was provided by the other seven drivers who stated they were not paid for training.
55. In response to the auditor's requests to calculate money owing to drivers for unpaid training, the Companies stated that they have always paid drivers for training, including while the driver is sitting in the passenger seat of a cab, and noted that there was no evidence to the contrary and they had no knowledge of any drivers not being paid for training.

I/O

56. The auditor reviewed the relevant records and determined that during the Initial Audit Period, the Companies paid their I/O in compliance with the regulated rates.

Summary

57. The auditor determined that the Companies owed 34 company drivers a total of \$33,065.76 for the Initial Audit Period for deducting lunch breaks which were not taken, for failure to pay for post-trip inspections and time at the end of shift, and for failure to pay for all container trucking services hours worked.

58. Additionally, the auditor calculated that Complainants 1 and 2 were owed a combined total of \$7,961.72 in unpaid training hours during the months of February and March 2019.

59. In total, the Companies were found to be owing \$41,027.40 for the Initial Audit Period.

60. The Companies were sent three letters by the auditor, on July 14, 2020, August 25, 2020 and October 15, 2020, outlining the auditor's findings and requiring the Companies to undertake outstanding pay calculations for expanded audit periods. The Companies responded to each letter by the required deadline but did not perform the pay calculations as requested. Rather, the Companies disputed the auditor's calculations and provided further information in response. To date, the Companies have not performed the outstanding pay calculations as required by the auditor.

61. The auditor concludes her report by noting that the Companies always responded to emails, letters and phone calls during the course of the audit; however, the audit was significantly delayed by the Companies' unwillingness to perform outstanding pay calculations on three occasions. The auditor also notes that the initial package of records supplied by the Companies in response to the audit did not have sufficient documentation to explain how the drivers were being paid, ultimately requiring a records seizure. Additionally, auditor direction to provide supporting documentation was not followed in two instances, which further delayed the audit process.

62. The Companies were provided a copy of the auditor's report on February 10, 2021 and an opportunity to respond. Counsel for the Companies responded by the required deadline and provided the following explanations and submissions in response to the audit report.

Companies' Submission

63. In November 9, 2020 and March 10, 2021 letters to the OBCCTC, the Companies expressed frustration that the auditor did not understand their electronic systems or their payroll processes and maintained that the Companies were being unfairly treated because of their choice to use an electronic system which the auditor had not audited before. The Companies stated that they were being held to a higher standard of audit than other, non-electronic systems-based licensees.

64. The Companies dispute the auditor's findings and/or the auditor's calculations of amounts owing to company drivers. In their final submission to the OBCCTC (in response to the audit report), the Companies raised concern about the conduct of the auditor and what they suggest was a mindset that she would "accept the driver's complaints as presumably proven." The Companies' specific submissions are summarized below under the relevant topic/issue heading.

Company Records

65. The Companies are of the opinion that the auditor does not fully understand their software applications. More specifically, they say that the auditor does not understand the DriveSmart app, which is used to monitor driver behaviour, and the FleetComplete app, which is used to monitor truck activity. The Companies describe the FleetComplete data as "backup" or a "redundant set of data" which can be used to confirm, or dispute, data recorded in the DriveSmart app. The Companies also note that the geofence around their yard was installed so that they "had an accurate recording of when a particular truck returned to the yard, should [a] driver fail to log out of the DriveSmart [app]."

66. The Companies state that their transition to a fully digital record keeping system was almost complete leading up to January 2019 but the Companies were still making limited use of paper logbooks in 2018. In the period between October 2018 and December 2018, the Companies were only keeping paper logbooks for regulatory compliance purposes (to track shifts where a driver had worked for more than 13 hours but had driven for fewer).

67. The Companies say that the OBCCTC investigators were only able to seize 15 days of paper log sheets because these were the only paper records left in the office by November 2019 and that these records existed because the Companies had a limited number of records on hand that had been kept by drivers after the Companies told them that they were welcome to fill out their own paper logs as a manual form of backup if they felt uneasy about the accuracy of the Companies' electronic system.

68. The Companies further state that no paper payroll data was in the Companies' possession when the OBCCTC investigators seized records because both the Companies and their drivers were satisfied with the accuracy of the electronic payroll data and were not keeping backup paper records. The Companies note that no driver brought a discrepancy from the paper logs to the Companies' attention.

69. With respect to the Pink B Sheets, the Companies state that they were only used for regulatory safety compliance (to provide details in the event a driver's shift went over 13 hours) and are not relevant to driver remuneration.

Incentive Pay

70. The Companies provided an explanation for how they calculated incentive pay. The Companies advise that they use historical data to assign a notional cost value to the work performed by their drivers and compare the notional cost value of a driver's work to the number of hours the driver spent performing the work (as tracked by their DriveSmart app). If the driver was efficient, and

performed the work in less time, the Companies share the savings with the driver in the form of an incentive payment.

71. The Companies state that the auditor's calculations were made in error because the auditor did not offset incentive payments against the lunch break time deductions. On this basis, the Companies argue that the auditor's calculations respecting lunch breaks cannot be accepted. The Companies provided a spreadsheet comparing driver log sheets to DriveSmart app data to illustrate their argument.

Lunch Breaks

72. The Companies also argue that their drivers were required to take breaks at whichever point in their shifts was most convenient and if they did not take a break, their decision was voluntarily. The Companies point to information they provided the auditor to demonstrate that drivers were taking breaks in the Companies' yard and argue that the auditor did not adequately articulate why she discounted this evidence or what other evidence would have been required to support the Companies' position.
73. The Companies cite the results of a previous audit (see CTC Decision No. 09/2017) and the conclusions of the auditor at that time, noting that the current auditor reached a different conclusion respecting lunch breaks but had not articulated why the Companies should be effectively penalized for relying on the outcome of the previous audit.

Post-Trip Inspections

74. The Companies dispute the auditor's conclusion that drivers, not the Companies, were performing post-trip inspections on their trucks. The Companies provide evidence to support their claim that their mechanics, not their drivers, perform post trip inspections.
75. The Companies state that, in the event a driver notices a problem with a vehicle during his shift and takes action himself after the shift, the DriveSmart app allows the driver to make a note so that the Companies are aware of the problem and the driver is paid for that time.

End of Shift Time

76. The Companies state that they pay their drivers "until the point they log out of the DriveSmart app" and if a driver forgets to log out of the app at the end of his shift, a company employee adds five minutes to the time the driver crossed the geo-fence (called the grace period) and manually edits the driver's log out time in the DriveSmart app to include the extra five minutes. It is only when a driver forgets to log out of the DriveSmart app that a company employee manually edits the DriveSmart app data.
77. In general, the Companies raise concern that the auditor has placed an unreasonable burden of proof on them to disprove what they describe as supported driver complaints/claims and that the auditor has failed to properly consider the drivers' self-interest in making the claims.

Training

78. The Companies state that the auditor did not raise the training issues covered in the audit report with them during the audit or given the opportunity to respond to records provided to the auditor by Complainant 1 respecting unpaid training time during the audit, despite the Companies asking the auditor to see any evidence provided by the complainant.
79. The Companies were aware that Complainant 2 had made a complaint under the *ESA* and note that the matter was resolved through the tribunal process, money was paid to the complainant and the issues addressed under that process ought not to have been raised in this audit.² The Companies suggest that the auditor's decision to note the *ESA* complaint in the audit report "demonstrates a form of "audit-creep" that suggests a less-than-objective approach" to the audit and is demonstrative of the auditor's "lack of appreciation of the proper bounds of her inquiry."

Decision

80. As described above, the circumstances of this case are that:
1. In May 2019, the Commissioner ordered an audit of the Companies' company drivers and I/O in response to driver complaints;
 2. The Companies provided an incomplete set of records in response to the audit record request, specifically some Daily Software Printouts, cancelled cheques, supporting documentation and explanations were missing;
 3. Records supplied by the Companies listed driver hours that did not match the corresponding driver remuneration information and listed incentive payments made to drivers;
 4. The Companies did not provide driver (paper) copies of daily trip sheets or paper timesheets completed by drivers. When asked why driver (paper) copies were not provided, the Companies stated that they do not have paper records and are fully digital;
 5. Drivers supplied the OBCCTC with records that were not provided to the OBCCTC by the Companies and, in response, OBCCTC investigators seized records from the Companies;
 6. The auditor reviewed the records provided by the Companies and drivers as well as the records seized by the OBCCTC investigators and after an extensive series of written and verbal exchanges with the Companies determined that the Companies owed 34 company drivers a total of \$33,065.76 for the Initial Audit Period for deducting lunch breaks which were not taken, for failure to pay for post-trip inspections and for time at the end of shift, and for failure to pay for all container trucking services hours worked in excess of the NSC allowable hours;
 7. The auditor also found that the Companies owed two drivers a combined total of \$7,961.72 in unpaid training hours during the months of February and March 2019;
 8. The Companies were directed by the auditor to perform outstanding pay calculations for expanded audit periods on three occasions; and
 9. The Companies have not performed the calculations as directed and dispute the auditor's findings and calculations and have not paid any amounts determined to be owing.

² The Companies also state that they were not aware that Complainant 1 had filed a complaint respecting unpaid training with the Employment Standards Tribunal. Complainant 1 did not in fact file an *ESA* complaint.

81. I have considered the auditor's report and the Companies' submissions and for the reasons set out below, I find the Companies to be in violation of the *Act* and the *Regulation* for failure to pay their company drivers for all hours performing container trucking services, time at the end of shift and training time.
82. Before addressing the various issues identified in this audit, I make the following, general observations. This audit has been underway for almost two years and is not yet completed. I share the Companies' frustration about the length of time this audit has taken but I do not believe that it has taken this long and or has been complicated simply because the Companies employ an electronic truck tracking and payroll system or because the auditor has never audited such a system, doesn't understand the system, or is holding the Companies to a higher standard than other licensees. In fact, the issues canvassed during this audit are not actually that complex and the audit ought not to have taken as long as it has.
83. I am of the opinion that the Companies offered the auditor partial information and explanations that were intended to show compliance rather than offering comprehensive explanations and information that may have demonstrated some compliant and some non-compliant activity.
84. As addressed in more detail below, the Companies did not always provide complete explanations, and their final submission responds to the audit report by raising doubt about the auditor's ability, motives and the audit process while offering revised explanations and arguments in defense of their actions without directly responding to the crux of the auditor's conclusions or the drivers' statements.

Incentive Pay

85. An incentive payment was recorded on some of the driver pay stubs provided by the Companies. The auditor sought to determine what the incentive payment was for and how it was calculated. The Companies provided the auditor an "Incentive Computation" spreadsheet for each driver which indicated that the incentive payment is comprised of three elements:
1. A "half hour incentive" calculation;
 2. An "extra hour per GPS" calculation; and
 3. A "system differential" calculation.
86. The auditor determined that the incentive calculation was reached by combining a driver efficiency calculation ("system differential") with a reconciliation of the total number of hours worked by each driver as recorded by the DriveSmart App and combined with extra working hours recorded on the Pink B Sheets ("extra hour per GPS") and a discretionary 30 minute bonus incentive ("half hour incentive").
87. The auditor accepted the Companies' use of an efficiency calculation to make incentive payments and elected to handle the matter of breaks separately after the Companies stated that the 30 minute bonus incentive was not for lunch breaks. However, the auditor remained concerned that part of the incentive calculation included a reconciliation of the total amount of hours worked by each driver recorded by the DriveSmart App with extra working hours recorded on the

Pink B Sheets. In other words, the auditor remained concerned that the incentive payments represented partial compensation for CTS, and, since not all drivers were paid an incentive, the auditor asked the Companies to calculate any money owing to drivers for CTS recorded on the Pink B Sheets.

88. The Companies never addressed the purpose of the Pink B Sheets with the auditor but described how they performed their “extra hour per GPS” calculation. The Companies told the auditor that they used their DriveSmart app to track on-duty **driving time** and on-duty **non-driving time** to ensure NSC compliance and stated that any on-duty, non-driving time was accounted for in the Companies’ incentive calculation. The Companies did not, however, address the auditor’s concern that some drivers who were not paid an incentive had hours listed on Pink B Sheets.
89. On this basis, the auditor concluded that the Companies were not paying some drivers for all CTS hours and once again asked the Companies to calculate any amounts owing to drivers in unpaid CTS hours. The Companies did not perform the calculation as required.
90. In response to the audit report, the Companies provided a new explanation for the incentive payment, stating that it is based on a driver efficiency calculation that tracks DriveSmart app data (time it takes to complete specific tasks) and assigns a notional cost value to the various tasks to determine if a driver has performed them efficiently. A driver is then paid a share of the windfall which results from their efficiency. Regarding the Pink B Sheets, the Companies state that they are used to provide “details” if a driver’s shift goes beyond 13 hours and are not relevant to driver remuneration.
91. The auditor states that the Pink B Sheets are driver trip sheets that include a driver’s start time and finish time, container numbers and the origin/destination of the containers. These are the “details” referred to by the Companies. The Companies have provided two explanations for their incentive calculation. Their first explanation detailed three components of the calculation while their last explanation only accounts for an efficiency calculation.
92. The auditor has concluded, and I accept, that the efficiency calculation component of the Companies’ incentive payment is appropriate. The part of the incentive calculation which accounts for both driving and non-driving hours (all CTS performed), while confusing, would be compliant provided that all drivers either receive an incentive payment or, where a driver does not receive an incentive payment, that driver is compensated for all CTS performed. This, however, is not the case.
93. I find that the Companies first explanation of their incentive calculation is most likely. The Companies track CTS hours in excess of 13 hours per shift on the Pink B Sheets then use their electronic records to perform a three-part incentive calculation that pays some, but not all, drivers for all CTS hours performed as well as other incentives.
94. The Companies argue that the auditor should have offset the incentive payments against any break time that a driver elected to forego and that, had she done so, she would have found that the drivers were paid more than what they were owed in a shift. The Companies suggest that the auditor’s failure to offset incentive payments with unpaid lunch break time represents a fundamental flaw in the audit which “renders it impossible for [me] to rely on [the auditor’s]

conclusion for lunch breaks.”

95. I will address the auditor’s conclusions about lunch breaks separately, but this audit was not flawed because the auditor failed to perform an offset calculation. Several decisions issued by the OBCCTC have expressly prohibited the practice of using overpayments as an offset or set-off against remuneration owed to drivers. Rates of pay are minimum rates which must be paid and cannot be reduced by alleged overpayments in other areas and, as such, the auditor was correct not to offset incentive payments against unpaid break time.³

Lunch Breaks

96. The Companies have consistently maintained throughout the audit that their drivers are required to take breaks and they are not required to pay for them. The Companies provided the auditor with evidence intended to demonstrate that the drivers do, in fact, take breaks, particularly when in the Companies’ yard, and have cited a October 13, 2017 conclusion of a different OBCCTC auditor who accepted the Companies’ position that drivers received a one-half hour unpaid break after five hours of work.
97. In two previous decisions (CTD Decision No. 10/2017 & CTC Decision No. 27/2017) it was accepted that the Companies’ drivers took meal breaks and the Companies were correctly deducting one-half hour for the meal breaks. The auditor in this case re-examined the Companies’ practice of deducting 30 minutes for meal breaks because drivers had complained that they did not get the breaks and would be punished in some way by Dispatch if they took breaks. While the auditor’s investigation was appropriate given the complaints, the driver’s allegations are unsupported by evidence and, while not definitive, the Companies have supplied video footage and GPS data (with explanations) to support the validity of the deductions. Given the OBCCTC’s previous decisions regarding the lunch break deductions and the evidence supplied by the Companies, I will not require the Companies to calculate any money owing in unpaid breaks at this time.
98. I also note that the Companies have upgraded their software to make it possible for drivers to record their break times and that the Companies have instructed their drivers to do so. I encourage drivers to take and record their breaks. If in future drivers provide evidence that they are being punished by the Companies for taking their breaks, I will investigate further.

Post-Trip Inspection

99. It is a requirement that a post-trip inspection be performed on a truck by a “person” (a driver or a mechanic employed by a company). When a driver performs post-trip inspections, the OBCCTC considers this time to be CTS and expects that licensees compensate drivers properly for the time.
100. In this case, the auditor investigated a complaint that the Companies did not pay for post-trip inspection time. When questioned about post-trip inspection time payment, the Companies told the auditor that they did not pay drivers for the time and that drivers were not required to perform post-trip inspections.

³ See Sunlover Holdings Co. Ltd. (CTC Decision No. 10/2017) and Lower Mainland Fast Freight Inc. (CTC Decision No. 07/2018) – Decision Notice

101. Some drivers, however, told the auditor that they performed post-trip inspections; others stated that they did not. The auditor asked the Companies for further explanations and in response to the third outstanding pay calculation letter, the Companies referenced a previous decision of the Commissioner and advised that their mechanics, not their drivers, performed post-trip inspections. The Companies did not supply any evidence to support this claim at the time but now state in their response to the audit report that they were never asked to provide any such evidence. The Companies have now provided a spreadsheet showing one of their mechanic's work on trucks in the yard.
102. Regarding the instances where a driver filled out a post-trip inspection report (and was paid for the time), the Companies state that there are rare instances where a driver will take action post-shift rather than leaving the job to a mechanic, indicating that drivers do not wait for mechanics to conclude an inspection before filling out a report.
103. I am faced with conflicting driver statements with no supporting evidence and evolving explanations from the Companies who have only now supplied evidence to support their most recent explanation. It is not clear why the Companies did not simply tell the auditor at the outset that their mechanics performed post-trip inspections and provide supporting documentation. Their failure to do so prolonged the audit by raising reasonable doubt about the Companies' practices and certainly justified the auditor's ongoing investigation. Nevertheless, the Companies have now provided evidence to support their claims and there is insufficient evidence to refute them. Therefore, I will not require the Companies to calculate money owing to drivers for unpaid, post-trip inspection time. I remind the Companies' drivers that they should not be performing any post-trip inspection for which they are not paid.

End-of-Shift Time

104. Drivers complained that they were not being paid for the time required at the end of their shifts to park and secure their trucks and hand in paperwork at the office. They provided driver logs that included post-trip inspection reports in support of their allegations. Complainant 2 provided a statement and evidence to support his allegation that the Companies were altering the log out time that he recorded in the Companies' DriveSmart app.
105. The auditor reviewed the records provided by Complainant 2 and the other drivers, as well as the Companies' records, and compared the daily shift times recorded by the drivers to the daily shift times recorded by the Companies' DriveSmart app. The auditor concluded that the Companies' software was recording a driver's end of shift time when a driver crossed the geo-fence at the entrance to the Companies' yard.
106. In response, the Companies maintained that their drivers were not entitled to payment for any time after their trucks cross the geo-fence into the yard and that any truck activity within the yard that occurs after a truck crosses the geo-fence is conducted by other employees. The Companies also told the auditor that the total shift time recorded by the DriveSmart app, used to calculate driver remuneration, is based on the times drivers signed in and out of the DriveSmart app, not when the drivers crossed the geo-fence. The Companies initially stated that these times could not

be adjusted.

107. However, evidence provided by drivers and notes made on software printouts provided by the Companies indicated that there were instances where drivers were working after their truck crossed the geo-fence and that the Companies were manually adjusting the shift end times logged by the software in these instances.
108. The Companies then confirmed that there were times when drivers forgot to log out of the DriveSmart app and, on those occasions, the Companies adjusted the driver's log out time in the DriveSmart app by adding five minutes to the time when the truck crossed the geo-fence. The Companies state that it is only when a driver forgets to log out of the DriveSmart app that the Companies manually edit the DriveSmart app data based on the geo-fence crossing time.
109. I accept that the drivers may, on occasion, and particularly when first using the software, forget to log out of the DriveSmart app. It is reasonable that the Companies manually input a log out time into their electronic records when that occurs. However, those should be the only times when the electronic data is manually entered or adjusted.
110. If driver pay is based on the DriveSmart log in and log out times, the electronic records should show a time difference between when a truck crosses the geo-fence and when a driver logs out of the DriveSmart app. However, that is not the case. The two times always matched in the Companies' electronic records. The auditor asked the Companies, on several occasions, to explain why the two times matched. The Companies never directly answered her question but seem to suggest, in their response to the audit report, that the matching times are the result of occasions where a driver forgot to log out and the Companies manually adjusted their time based upon the geo-fence crossing time. This explanation, however, does not account for the five minutes the Companies say that they add to the geo-fence crossing time when they manually input a driver's log out time. If the Companies are adding five minutes to geo-fence crossing times when drivers forget to log out, the times should not match in the electronic records.
111. The Companies have provided conflicting submissions which have justifiably resulted in an increased burden on the Companies to demonstrate that they are paying their drivers for all CTS performed at the end of a shift. The Companies told the auditor that the electronic data cannot be adjusted but later stated that the data was adjusted on certain occasions. The Companies have said that their drivers are not entitled to be paid for time after their trucks cross the geo-fence yet the auditor found records demonstrating that the Companies paid drivers for time after their trucks had crossed the geo-fence. Further, it is the Companies' policy that drivers log out using the DriveSmart app and the Companies state that the DriveSmart app data is used to calculate driver pay but the Companies have not adequately explained why the geo-fence crossing times exactly match the driver log-out times in the Companies' electronic records. Nor have they adequately explained why the times recorded on the paper logs examined by the auditor do not closely match the shift times logged by the Companies' electronic system.
112. Complainant 2 alleged that the Companies regulatory manually adjusted his log out time. This allegation is not unsupported as the Companies suggest. The complainant provided screenshots of the DriveSmart app showing that his log out time was earlier than times on interchanges and bills of

lading demonstrating that he was performing CTS after the log out time listed in the Companies records. The Companies were provided Complainant 2's statement and supporting documentation for comment and, in response, the Companies only addressed his allegations when discussing unpaid training, not end of shift time.

113. The Companies have not provided direct answers to the auditor's questions and, based on the information set out above, I find that the Companies are adjusting driver log out times to match the time a driver crosses their geo-fence, resulting in unpaid CTS time.
114. The Companies state that no drivers raised the discrepancy between paper logs and electronic logs and that they are satisfied that the digital data is accurate and sufficient in determining driver remuneration. The onus is on the Companies, not the drivers, to ensure that their drivers are properly remunerated, and it is clear from driver complaints that they are not satisfied with the accuracy of the digital data. Nor am I. Drivers should log out of the DriveSmart app after they have crossed the geo-fence and completed all CTS, and it is the DriveSmart log out time, not the FleetComplete geo-fence crossing time, which should be used to determine remuneration. It is evident that this has not occurred.
115. The auditor first compared records supplied by drivers to the Companies' records and calculated that drivers were being shorted 0.24 hours per day worked. The auditor then compared the Companies' March 2019 electronic and paper records (the most complete month of records available) and calculated that the drivers were being shorted 0.16 hours per day worked. The auditor concluded that the average time of 0.16 hours was a more accurate calculation because it included data for all drivers. I agree and therefore I will require the Companies to pay their drivers (0.16 hr) for each day a driver worked during the audit period for unpaid, end-of-shift time.
116. I will also require the Companies to provide the auditor with electronic pay records for the month of May 2021 which demonstrate that the drivers are now being paid for the time between crossing the Companies' geo-fence and logging out of the DriveSmart app.

Training

117. Following complaints from drivers that the Companies had not paid them for training, the auditor asked the Companies if they provided training to their drivers and, if so, to provide supporting documentation. The Companies initially advised the auditor that they do not train their drivers and therefore had no documentation to provide.
118. The auditor conducted an investigation which included an examination of driver trip sheets, rates of pay, hire dates, Port Pass issue dates and terminal gate information and determined that the Companies were training drivers without paying them for training.
119. The auditor advised the Companies of the requirement to pay for training and instructed the Companies to calculate unpaid driver training hours. In response to the auditor's instructions, the Companies advised that they do, in fact, train drivers and that their drivers are paid for training. The Companies further asserted that there was no evidence to the contrary and that they had no knowledge of drivers not being paid for training.

120. In their response to the audit report, the Companies state that the auditor did not raise the training issues covered in the audit report with them during the audit and that they were not given the opportunity to review or respond to records provided to the auditor by Complainant 1, despite asking for records.
121. I do not accept the Companies' submissions in response to the audit report on training. The Companies were in fact aware that training time was being audited because they discussed training with the auditor and responded to three outstanding pay calculation letters with arguments about why they were not required to calculate unpaid driver training hours. In response to the Companies' suggestion that the auditor's conclusions are not valid because the Companies were not provided copies of the trip sheets supplied by Complainant 1 for review when the auditor sent outstanding pay calculation letters, while the Companies were not initially provided copies of Complainant 1's trip sheets, they were sent copies of the trip sheets with the audit report package and have not now provided any response to those records.
122. The audit report outlines the matters considered by the auditor which led to her conclusions respecting unpaid training time, but the Companies do not respond directly to these. They provide no comment on why new drivers were issued Port Passes before they were hired or, more importantly, why their driver Port Passes were swiped at container terminals before they were hired. Nor do they explain why they initially stated that they do not train their drivers then later stated that they do in fact pay drivers for training.
123. The Companies state that they had no knowledge of drivers not being paid for training but Complainant 1 states that he spoke to the Companies' accountant about unpaid training and was directed to the Companies' owner who advised him that he would not be paid for training and that if he didn't like it he could find work somewhere else. I prefer Complainant 1's evidence, which is supported by paper records, over the Companies' contradictory assertions and in light of the fact that they have not responded directly to the matters set out above.
124. The Companies in their March 2021 submissions note that Complainant 2's *ESA* complaint and was resolved through the *ESA* process and that money was paid to the complainant. They say that the issues addressed by another administrative body ought not to have been raised in this audit. The Companies suggest that the auditor's decision to consider training issues "demonstrates a form of "audit-creep" that suggests a less-than-objective approach" to the audit and is demonstrative of the auditor's "lack of appreciation of the proper bounds of her inquiry." The Companies appear to be suggesting that payment for CTS training time falls under the *ESA* and not the *CTA*. I do not agree.
125. Like end-of-shift time, training time qualifies as CTS and ensuring payment of minimum hourly rates for all CTS, including training, is squarely within the exclusive jurisdiction of the Commissioner and entirely within the bounds of an audit. Section 37.31 of the *Employment Standards Regulation* says that Parts 10-13 of the *ESA* do not apply to container truckers in relation to "remuneration" ("money owed to a trucker under an order made under section 22 of the *Act*"). Section 23(1) of the *Act* says that licensees cannot offer or pay any less than the section 22 rates when "seeking to employ or retain a trucker" (when training a trucker), while s. 23(2) says that a licensee cannot offer

or pay anything less when employing a trucker (post-training employment). The requirement to pay for training time was specifically canvassed in the OBCCTC's June 20, 2019 "Payment for Driver Training" Bulletin.

126. The Companies state that the auditor should not have pursued the training issue because Complainant 2 was engaged in an *ESA* proceeding. However, the CTC auditor was concerned with determining if all drivers at the Companies were being paid for training. I also note that Complainant 2's *ESA* claim was decided July 3, 2020 but it was not until the Companies responded to the audit report in March 2021 that they advised the auditor of this. The Companies cannot argue after the fact that the auditor incorrectly expanded the scope of the audit to include Complainant 2 when the Companies failed to advise her that the matter had been decided. Had the Companies advised the auditor that Complainant 2 had received compensation for training via the *ESA* proceeding, the auditor would not have concluded in the audit report that money was owed to Complainant 2 for training.
127. I also find that the Companies misled the auditor. A written determination was issued by a delegate of the Director of Employment Standards to Trans BC Freightways Ltd. on July 7, 2020. Among other things, the delegate found that that Complainant 2 had not been paid for training. After receiving this determination the Companies nevertheless argued in response to a July 14, 2020 auditor letter that there was no evidence to prove that they do not pay for training, when there was in fact evidence upon which the *ESA* delegate had found that they failed to pay for training. The Companies also argued in response to an August 25, 2020 auditor letter that they had no knowledge of any driver not being paid for training, when they knew the *ESA* delegate had found that Complainant 2 had not been paid for training.
128. This, coupled with the Companies' conflicting statements on the matter, the driver statements and supporting documentation and the Port Pass and terminal security data gathered by the auditor, lead me to conclude that the Companies are not paying their drivers for training. Therefore, I will require the Companies to pay Complainant 1 the amount of \$4,861.59 in unpaid training time and to identify any other unpaid training hours performed by drivers in the period between October 1, 2017 and March 31, 2021 and calculate any money owing. The Companies are not required to calculate unpaid training hours relating to Complainant 2.

Order

129. As the Companies have not conducted any calculations to date, I make the following Order, pursuant to section 9 of the *Act*:

I hereby order the Companies to take the following action and provide the following materials to the auditor for review by no later than May 31, 2021:

- a) Identify every company driver who was not paid an incentive in the period between October 1, 2017 and March 31, 2021 and either provide documentation establishing that these drivers have been paid for all hours of container trucking services performed (specifically for any hours worked in excess of the National Safety Code hours of service requirements as detailed on the Companies' Pink B Sheets), or calculate the amounts determined to be owing to the drivers;
- b) Calculate the amount of money owing to every company driver in the period between October 1, 2017 and March 31, 2021 based upon an addition of nine minutes thirty-six seconds (0.16 hr) to each day a driver worked;
- c) Produce pay records for the month of May 2021 which demonstrate that all drivers are now being paid for the time between crossing the Companies' geo-fence and logging out of the DriveSmart app; and
- d) Pay Complainant 1 the amount of \$4,861.59 in unpaid training time and identify any other unpaid training hours performed by drivers in the period between October 1, 2017 and March 31, 2021 and calculate any money owing for same.

130. I decline to exercise my discretion to impose a penalty on the Companies at this time and will reserve my consideration of a penalty until such time as the Companies have complied with the above Order.

131. This decision will be delivered to the Companies and may be published on the Commissioner's website after the Companies have complied with the above Order and a supplemental decision issued.

Dated at Vancouver, B.C., this 12th day of April 2021.



Michael Crawford, Commissioner