



September 22, 2021

Olympia Transportation Ltd.
8335 Meadow Avenue.
Burnaby, BC V3N 2W1

Commissioner's Decision

Olympia Transportation Ltd. (CTC Decision No. 10/2021)

Introduction

1. Olympia Transportation Ltd. ("Olympia") 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. The Commissioner directed an auditor in June 2020 to audit Olympia's records to determine if its company drivers and independent operators ("I/Os") were being paid the required minimum rates. The auditor was directed to audit driver records for the pay periods in the months of July, August, and December 2019 to determine compliance.
4. In August 2020, the Office of the BC Container Trucking Commissioner ("OBCCTC") received a complaint alleging that drivers' logbooks at Olympia did not match their timesheets. As such, the OBCCTC auditor expanded the initial record request and also sought logbooks for the initial audit months. In reply, Olympia advised the auditor that per the National Safety Code, Olympia only kept logbooks on file for the previous six months. Olympia was then required to supply logbooks and driver payroll records for the additional month of April 2020 (July, August, and December 2019 and April 2020 together the "Initial Audit Period").

Initial Audit Period

Company Drivers

5. The auditor reviewed the relevant records and determined that during the Initial Audit Period, Olympia paid its company drivers hourly rates consistent with the *Act* and the Commissioner's Rate Order. The hours listed on the company driver logbooks were reconciled with the hours listed on the drivers' timesheets for the month of April 2020. No material discrepancies were noted.

I/Os

6. The auditor reviewed the relevant records and determined that in the months of July and August 2019, Olympia paid its I/Os trip rates with the *Act* and the Commissioner's Rate Order. The trips listed on the I/O's trip sheets matched the monthly trip summaries. A small number of payroll errors (totaling \$425.78) were noted.
7. For the month of December 2019, the auditor calculated \$5,970.60 in unpaid trips (dead runs). The dead runs all occurred on December 18, 2019, when the I/Os travelled to Port of Vancouver container terminals with a container but were turned away due to high winds and returned to Olympia's yard with the container, resulting in two unpaid trips per I/O.
8. The auditor also calculated \$2,022.70 in trip rate errors for the month of December 2019 due to summary errors in Olympia's trip rate summary spreadsheet and an improper deduction. One I/O had \$525.00 deducted from his pay because of a Port of Vancouver violation. The auditor advised Olympia that the deduction was a business expense and should not have been deducted from the I/O's pay. The amount was included in the auditor's calculations.
9. Before submitting the April 2020 payroll records to the OBCCTC, Olympia conducted an undirected self-audit of its April 2020 records and found \$2,368.89 in payroll errors. Olympia advised that the errors were the result of using old trip rates that were in effect before April 2020. Olympia paid the amounts owing to their I/Os and submitted the corresponding cancelled cheques with their April 2020 payroll records.
10. The I/O's monthly trip summary provided by Olympia for the April 2020 period had been updated by Olympia after the self-audit. Therefore, the summary did not show the original trip rate errors found by Olympia in its self-audit and the trip rate errors had been updated to the correct trip rates. The auditor asked Olympia to provide the original I/O monthly trip summary for April 2020 as well as its self-audit calculations, but Olympia was not able to provide either and stated that the files had been copied over.
11. The auditor reviewed the updated monthly trip summary for April 2020 and compared it to the I/O's cancelled cheques that covered the corresponding pay periods. The auditor calculated \$2,816.82 in discrepancies, which was \$447.93 more than the amount Olympia calculated in its self-audit. The discrepancies the auditor calculated were the result of the cancelled cheques not reconciling with the I/O's monthly trip summary, which was expected because the monthly trip summary was updated after Olympia it completed its self-audit.

12. The auditor calculated that 29 I/Os were owed total of \$11,235.89 for the Initial Audit Period resulting from payroll errors, an incorrect deduction, unpaid dead runs and incorrect trip rate payments.
13. The auditor also found instances during the Initial Audit Period of I/Os being paid a hybrid of hourly rates and trip rates. The hourly rates were being paid to I/Os when they performed work for Raymont Logistics. The I/Os were paid the correct hourly rate at the correct number of hours.

Expanded Audit

14. Having established that Olympia did not pay its I/Os for dead runs and/or did not pay the correct trip rates during the Initial Audit Period, the auditor expanded the scope of the I/O portion of the audit as follows:
 1. Dead Runs: April 4, 2014 to February 2021; and
 2. Trip Rate Errors: May 2020 to February 2021.
15. Olympia was first instructed to conduct a second self-audit for the period May to December 2020 to determine when the trip rate errors made in April 2020 stopped. Olympia calculated that it owed its I/Os \$7,686.09 for the period (May to December 2020) but the auditor, when reviewing Olympia's calculations, found that Olympia offset overpayments with underpayments. The auditor calculated that Olympia owed \$13,879.24 for the period. When combined with the money found owing for April 2020, the auditor calculated that Olympia owed 47 I/Os \$21,565.33 for the period between April and December 2020.
16. Olympia was then instructed to perform further outstanding pay calculations for all I/Os in the months of January and February 2021 to determine if Olympia had corrected its rate structure and to confirm if any more money was owed for incorrect rate payments. Olympia performed the calculations, and a spot audit was conducted by the auditor. The auditor confirms that Olympia corrected its rate structure and did not owe any money for incorrect rate payments in January and February 2020.
17. Olympia was also instructed to perform outstanding pay calculations for the period between April 4, 2014 and February 2021 to determine the amounts outstanding in unpaid dead runs. Olympia performed the calculations, and a spot audit was conducted by the auditor. The auditor confirmed that Olympia owed 34 I/Os an additional \$9,916.36 in unpaid dead runs for the period between April 14, 2014 and February 2021 (excluding the Initial Audit Period).

Summary

18. As set out above, Olympia was found to be owing 49 I/Os \$42,291.90 between April 14, 2014 and February 2021. The amounts owing to the I/Os were primarily the result of incorrect trip rate payments and unpaid dead runs. Olympia has paid the money owing and has corrected its pay structure.

19. Olympia was provided a copy of the auditor's report on August 24, 2021 for review and was provided an opportunity to respond. Olympia responded by the required deadline.

Olympia Submission

20. Olympia does not dispute any of the auditor's findings or the auditor's calculations of amounts owing to its drivers. Olympia advises that some of the payroll errors found by the auditor were the result of it transitioning to an electronic record-keeping and payroll system while its staff had to continue some manual data entry from home during the pandemic. In addition, Olympia notes that most of the payroll errors occurred after the April 2020 rate change and were the result of staff failure to account for the rate increase.

21. Olympia concedes that it did not pay for dead runs but states that failure to pay for dead runs has been an industry wide issue. Olympia also notes that hybrid rate payments are an industry wide practice and states that it believed that a combination of hourly and trip rate payments was allowed provided there was no trip splitting. Olympia seeks clarification about the hybrid rate payment prohibition in the Container Trucking Services ("CTS") Licence to ensure it is "not doing something unknowingly."

22. Olympia cites its efforts to comply with the auditor and pay all money found to be owing and notes that it has now transitioned to an electronic pay system with no manual entry required.

Decision

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

1. In June 2020, the Commissioner ordered an audit of Olympia's company drivers and I/Os;
2. Olympia paid its company drivers the correct hourly rate during the Initial Audit Period;
3. Olympia paid its I/Os incorrect trip rates and did not pay I/Os for dead runs;
4. Olympia conducted an undirected self-audit for the month of April 2020, identified I/O trip rate payment errors and paid I/Os the money it found owing;
5. After conducting the I/O self-audit, Olympia copied over its files, impeding the auditor's review of Olympia's calculations;
6. Where I/Os performed work for Raymont Logistics, they were paid a hybrid of trip and hourly rates;
7. Forty-nine I/Os were owed \$42,291.90 collectively for the period between April 14, 2014 and February 2021 because of they were not paid for dead runs and were paid incorrect trip rates; and
8. Olympia has paid the amounts determined to be owing.

24. I have considered the auditor's report and Olympia's submission and for the reasons set out below, I find Olympia to be in violation of the Act for failure to pay its I/Os for dead runs and the correct trip rates. I also find that Olympia violated section 25 of the Act and Appendix D (4) of its CTS Licence when it was unable to provide records requested by the auditor and violated Appendix A 1(g) of its CTS Licence by paying drivers a hybrid of hourly and trip rates.

25. Olympia concedes that it did not pay for dead runs, has corrected its practices and paid its drivers the money owing in unpaid dead runs.
26. The issue of unpaid dead runs was first canvassed in United Coastal Logistics Ltd. (CTC Decision No. 25/2018) and shortly afterwards raised in an October 22, 2018 OBCCTC bulletin which stated that “unpaid container moves or dead runs are also a contravention of the *Act* and *Regulation*.”
27. In Harbour Link Container Services Inc. (CTC Decision No. 13/2020), Harbour Link argued that there was no avenue through which it could have reasonably informed itself of the law prior to the dead run bulletin. I dismissed this argument, noting that Harbour Link could have sought legal advice or a ruling from the Commissioner prior to the bulletin’s issuance.¹
28. Harbour Link was penalized for its failure to pay for dead runs and for its failure to correct its practices following a decision and/or bulletin of the Commissioner. Bulletins are sent to all licensees and posted on the OBCCTC website. All decisions of the Commissioner are also posted on the website and a monthly update is emailed to all licensees, which lists the most recent decision postings.
29. It is the responsibility of the licensee to review bulletins and decisions and ensure its practices are in compliance with the *Act*. This audit demonstrates that Olympia did not amend its practices following the October 2018 dead run bulletin or following the publication of the Harbour Link decision.
30. Olympia also conducted an undirected self-audit which identified incorrect trip rate payments. Olympia stated that these incorrect trip payments were the result of staff error and the challenges resulting from COVID-19 (working from home/manual data entry).
31. While I accept that remote work, as a result of COVID-19, has had an impact, the onus is on Olympia, not its employees, to ensure it pays compliant rates. It was Olympia’s responsibility to ensure that the correct rates were being paid, despite the impacts that COVID-19 may have had on Olympia’s operations.
32. It was also Olympia’s responsibility to ensure that the records it used to conduct its self-audit were retained so that the auditor could review and confirm the calculations. Olympia failed to retain and produce the records upon request in violation of its CTS Licence. This was not the first occasion that Olympia was found to have had record keeping deficiencies. In Olympia Transportation Ltd. (CTC Decision No. 02/2016), the Commissioner noted that Olympia’s record keeping deficiencies were problematic for the auditor and Olympia was penalized, in part, for those deficiencies.²
33. Olympia also paid I/Os a hybrid of trip and hourly rates, which it says that it believed was allowed provided no trip splitting was occurring. Olympia does not provide any explanation as to why it believed trip splitting and hybrid rate payments were related. It is possible Olympia is confusing splitting work amongst drivers with splitting trips. In any event, both trip splitting and hybrid rate payments have been addressed on multiple occasions by the Commissioner.

¹ Harbour Link Container Services Inc. (CTC Decision No. 13/2020), paragraph 37.

² Olympia Transportation Ltd. (CTC Decision No. 02/2016).

34. Trip splitting has been discussed in decisions of the Commissioner and was the topic of a March 21, 2016 bulletin. Hybrid rate payments have also been discussed in decisions of the Commissioner.³ Further, hybrid rate payments are prohibited under the CTS Licence. The history of this prohibition was discussed in Aheer Transportation Ltd. (CTC Decision No. 01/2021):

The hybrid prohibition was introduced in 2015 in response to the *Recommendation Report – British Columbia Lower Mainland Ports* (the “Ready/Bell Report”), which noted that overly complex compensation models led to rate undercutting and created challenges in monitoring and enforcing rate compliance.⁴

It was the recommendation of Ready/Bell that “trucking companies be prohibited from moving drivers from an hourly model to a trip rate model, depending on the day and/or circumstances” on the basis that it is “important that drivers know whether they are employed with a company on a trip rate basis or an hourly rate basis and that such is clearly defined by the company at the outset of the relationship.”⁵ As such, the regulated rates and the rates established by the Commissioner do not allow for alternate payment methods for specific classifications of drivers beyond those established. For example, the only rates to be paid to company drivers are hourly rates. Further, a method of compensation that is a hybrid of per trip and hourly is prohibited under the Licence. This issue has been canvassed in previous decisions and other licensees have been penalized for paying hybrid rates.⁶

35. Olympia concedes that it was paying a hybrid of trip and hourly rates to drivers when they performed work for Raymont Logistics. Aheer Transportation Ltd. was also paying a hybrid of trip and hourly rates to I/Os that performed work for Raymont Logistics.⁷ I am aware that Raymont Logistics pays hourly rates to its drivers and hourly rates are paid to I/Os working for other companies that Raymont Logistics subcontracts with.⁸
36. Olympia’s statement that it thought hybrid rate payments were allowed does not assist the company. As a licensee, Olympia is required to adhere to the terms of its licence and refrain from prohibited practices including making hybrid rate payments. Olympia ought to be aware of the conditions of its licence and, as noted, is responsible for reviewing decisions of the Commissioner to ensure its practices are in compliance with the Act. If Olympia was confused about a requirement, it could have sought clarification, which it did not.

³ See for example: Lower Mainland Fast Freight (CTC Decision No. 07/2018) and Aheer Transportation Ltd. (CTC Decision No. 01/2021).

⁴ Recommendation Report, British Columbia Lower Mainland Ports, Ready/Bell, October 2014, p. 20.

⁵ Recommendation Report, British Columbia Lower Mainland Ports, Ready/Bell, October 2014, p. 31.

⁶ Aheer Transportation Ltd. (CTC Decision No. 01/2021), paragraphs 69 & 70.

⁷ Aheer Transportation Ltd. (CTC Decision No. 01/2021), paragraph 12.

⁸ Orca Canadian Transport Ltd. (CTC Decision No. 09/2020)

37. In these circumstances, I have concluded that an administrative fine is appropriate for Olympia's failure to pay its I/Os for dead runs and its failure to pay the correct trip rates. A penalty is also imposed because Olympia violated section 25 of the *Act* and Appendix D of its CTS Licence when it was unable to provide records requested by the auditor and violated Appendix A 1(g) of its CTS licence by paying drivers a hybrid of hourly and trip rates.
38. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$8,000.00 is appropriate in this case. In assessing an appropriate penalty, the factors which have been taken into account include Olympia's previous compliance history, the harm suffered by its drivers and the degree to which it was enriched, Olympia's cooperation with the audit, its payment of the money found to be owing, the nature of Olympia's non-compliance and penalties levied in similar circumstances.
39. Olympia failed to pay the correct trip rates and owed its I/Os over \$20,000.00 as a result. This is not a substantial amount and, when spread over 49 I/Os, the impact of the non-compliance on individual drivers is low. I accept that Olympia's failure to pay the correct trip rates was unintentional, and Olympia cooperated with the auditor and corrected its practices immediately. Indeed, Olympia was too proactive, conducting an undirected self-audit that resulted in further work for the auditor and a record keeping violation; however, I do not believe the self-audit was a purposeful attempt to complicate the audit.
40. Nevertheless, Olympia is responsible for its failure to pay for dead runs and its failure to correct its pay structure and pay for dead runs after the 2018 dead run bulletin or following the publication of the Harbour Link decision. Olympia did not produce records per the requirements of its licence, and was paying hybrid trip rates, despite hybrid payments being prohibited in its licence, which it ought to have known.
41. These are not Olympia's first violations. In 2016, Olympia was penalized \$4,000.00 for rate and record keeping violations. In 2018, Olympia was found to have committed minor payroll oversights and payment infractions but was not penalized because it was paying its drivers compliant rates and the its non-compliance was sufficiently short enough in duration and small enough in size that, when taking into account Olympia's cooperation and its demonstrated action to correct its mistakes, the imposition of a penalty on Olympia was not warranted.⁹ However, this is Olympia's third decision resulting in findings of non-compliance and in the circumstances of this audit, and in particular considering Olympia's continued record keeping and rate payment infractions and payroll oversights, an escalated penalty is warranted.

⁹ Olympia Transportation Ltd. (CTC Decision No. 16/2018), paragraph 13.

42. 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 Olympia Transportation Ltd. in the amount of \$8,000.00;
 - b. Should it wish to do so, Olympia Transportation Ltd. has 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
 - c. If Olympia Transportation Ltd. provides a written response in accordance with the above, I will consider its response and I will provide notice to Olympia Transportation Ltd. of my decision to either:
 - i. Refrain from imposing any or all of the penalty; or
 - ii. Impose any or all of the proposed penalty.
43. This decision will be delivered to Olympia Transportation Ltd. and may be published on the Commissioner's website after Olympia Transportation Ltd.'s response period has closed (www.obcctc.ca).

Dated at Vancouver, B.C., this 22nd day of September, 2021.



Michael Crawford, Commissioner