



August 24, 2021

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

Commissioner's Supplemental Decision FINAL

**TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd.
(CTC Decision No. 08/2021)**

Introduction

1. In TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. (CTC Supplemental Decision No. 06/2021) (the "Supplemental Decision") I ordered TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. ("the Companies") to:
 - a) comply with the order (a) of the [Original] Decision and either provide documentation establishing that the five drivers listed in Appendix A 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 by no later than July 7, 2021.
2. I declined to exercise my discretion to impose a penalty at that time and reserved my consideration of a penalty until such time as the Companies complied with the Order.
3. The Companies requested and were granted an extension to comply with the Order and replied to the Supplemental Decision on July 21, 2021. The auditor has reviewed the Companies' calculations. This final Supplemental Decision addresses the Companies' calculations and my conclusions.

Auditor's Review

4. The Companies provided pay records (pay record summary, pay stubs and trip reports) for the five drivers listed in Appendix A to the Supplemental Decision for the period between October 1, 2017 and March 31, 2021.
5. The Companies state that all five drivers under review were paid for all container trucking services hours that were *properly recorded* but that two (2) drivers failed to correctly enter their hours into the DriveSmart app, resulting in their not being paid for all hours of container trucking services performed. The Companies advise that they have since made adjustments to their software so that drivers get notified if they mistakenly enter the wrong truck number.
6. The Companies determined that one of the drivers who failed to correctly enter their hours into the DriveSmart app was owed \$646.96 (less appropriate deductions). The Companies confirm that the

amount owing has been paid. The Companies also determined that one other driver was owed \$510.21 (less appropriate deductions), also for failure to correctly enter their hours into the DriveSmart app. That money has also been paid.

7. The auditor reviewed the Companies' records and calculations and confirms that, in her opinion, four of the five drivers have been paid for all hours of container trucking services performed. The auditor believes, however, based upon her review of the records seized on November 15, 2019 (specifically a Pink B Sheet for March 14, 2019), that the Companies failed to account for 3.75 hours worked in excess of the National Safety Code hours of service requirements for one driver.

Conclusion

8. The auditor has calculated 3.75 hours in unpaid container trucking services owing to one driver, an amount that equals approximately \$100.00 before deductions. However, given the extent of the audit (materials, audit hours, decisions, etc.), the Companies' efforts to comply, including the money already paid, and the small amount of additional money potentially owing, I conclude that the Companies have substantially complied with all orders, including order (a) of the Original Decision.
9. Section 34 of the *Container Trucking Act* (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.
10. In this case, the Companies denied that their drivers received training, failed to provide all records requested and owed two drivers a combined total of \$7,961.72 in unpaid training hours for the months of February and March 2019. The Companies' failure to pay for training time is a violation of section 23 of the Act which makes clear that licensees cannot offer or pay any less than the section 22 rates when seeking to employ or retain a trucker. The Companies have accepted the decision respecting payment for driver training and have paid the money found to be owing.
11. On June 20, 2019, the OBCCTC issued a driver training bulletin clarifying that the mandatory minimum rates apply to employees, independent operators and indirectly employed operators while they are in training. I note that Complainant 1 and Complainant 2 were not paid for training in February and March 2019, several months before the OBCCTC issued its bulletin and therefore the Companies may not have been aware of their obligation to pay for training.
12. This is the Companies' second audit. In 2017, Tras BC Freight Ltd. was audited and found to be in compliance. TransBC Freightways Ltd. and Raja Road Rail Services Ltd. were also audited in 2017 and a small penalty (\$500.00) was levied for their failure to pay five drivers the regulated rates, resulting in a finding of \$1,442.71 owing to the drivers.
13. For these reasons, I have concluded that a small administrative fine against the Companies is appropriate. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$1,500.00 is appropriate in this case. The size of this fine is intended to balance the Companies' failure to pay for training time against the fact that the OBCCTC's clarification regarding trainee payment was published after this infraction. The fine reflects a small escalation in penalty quantum following a previous audit of TransBC Freightways Ltd. and Raja Road Rail Services Ltd.

14. The size of the fine does not reflect the importance that I place on licensees providing all requested records and responding to audit questions and requests in an honest, timely and fulsome manner.

15. 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 TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. in the amount of \$1,500.00;
- b) Should it wish to do so, TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. have 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 TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. provide a written response in accordance with the above I will consider its response, and I will provide notice to TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight 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.

16. This decision will be delivered to TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd., and may be published on the Commissioner's website after TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd.'s response period has closed. (www.obcctc.ca)

Dated at Vancouver, B.C., this 24th day of August, 2021.



Michael Crawford, Commissioner