



June 23, 2021

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

Commissioner's Supplemental Decision TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. (CTC Decision No. 06/2021)

Introduction

1. In TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. (CTC Decision No. 04/2021) (the "Decision") I ordered TransBC Freightways Ltd., Raja Road Rail Services Ltd., TrasBC Freight Ltd. ("the Companies") to:
 - 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.
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 replied to the Decision on May 31, 2021. The auditor has reviewed the Companies' calculations and submissions. This Supplemental Decision addresses the Companies' calculations, additional submissions, and my conclusions.

Companies' Response

4. The Companies object to my characterization of their conduct in the Decision. In the Decision, I stated 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.¹
5. The Companies believe that this statement is an “unfair and unsupportable characterization” of their conduct during the audit. The Companies submit that the complexity of their systems understandably resulted in a “piecemeal” approach to the audit and, as a result, the Companies’ responses to the auditor were similar. Nevertheless, the Companies argue that they were transparent and responsive to the auditor’s inquires over a period in which the auditor’s understanding of their systems evolved.
6. Per my Order, the Companies have identified nine drivers who were not paid an incentive in the period between October 1, 2017 and March 31, 2021. For each of these drivers, the Companies have provided a copy of their paystubs and a table which demonstrates that these drivers were paid for all hours of container trucking services performed and no money is owing.
7. The Companies have calculated that every company driver in the period between October 1, 2017 and May 30, 2021 (rather than March 31, 2021 as ordered) is owed a combined amount of \$61,230.00 based upon a calculation that adds nine minutes thirty-six seconds (0.16 hr) to each day a driver worked in the period. The Companies characterize this amount as an approximation assuming “all things being equal.”
8. The Companies also make two additional submissions regarding the end-of-shift time calculation and ask that I reconsider my findings in the Decision respecting this issue. The Companies argue that the auditor made assumptions and errors that resulting in an unreliable and inaccurate finding. The Companies provide further explanation regarding the role of their employee in entering driver end-of-shift time in circumstances where the driver fails to log out of the DriveSmart app.
9. The Companies argue that the auditor should not have assumed that the DriveSmart app logout time must come later than the FleetComplete ignition off-time. The Companies state that there may be times when the DriveSmart app logout time is later than the FleetComplete geo-fence and ignition off-time but that is not usually the case.
10. The Companies explain that the DriveSmart app logout time and the FleetComplete geo-fence time is often “similar or identical” because the truck parking area is close to the geofence (which is located after the train tracks near the Companies’ yard) and drivers either park their trucks or allow yard workers to take control of the trucks soon after crossing the geofence. The Companies provided a map to demonstrate where the geofence is located in relation to the Companies’ yard and the train tracks.

¹ CTC Decision No. 04/2021, paragraph 83.

11. The Companies cite other reasons why the DriveSmart app logout time and the FleetComplete geo-fence time may be the same or identical. These are circumstances when driver or technological error results in a time discrepancy between the FleetComplete and DriveSmart data. Such circumstances include when the geo-fence does not log a driver crossing or when a driver forgets to log out. In these cases, the Companies' employee is responsible for following a process that includes working with the driver to determine correct log out times. The Companies stress that no "unilateral" changes are made to the logout time without first consulting the drivers.
12. The Companies previously stated that "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."²
13. The Companies have corrected this statement and now advise that rather than adding five minutes to the FleetComplete geofence time on each occasion a driver forgets to log-out, its employee takes a more "case specific" approach which involves communicating with the drivers to determine an accurate end-of-shift time.
14. Daily software printouts were supplied by the Companies to demonstrate circumstances when drivers have confirmed (using the software) their logout time and to show how the logout time can come before or after the ignition-off time.
15. It is the Companies' position that FleetComplete data is used to confirm or dispute DriveSmart data recorded by the drivers and geo-fence and log out times are virtually the same when recorded electronically or when the Companies' employee confirms with drivers. The Companies also explain measures taken in 2021 to upgrade the system to better confirm end-of-shift time.
16. The Companies argue that the auditor erred in using a 14-minute disparity found on one driver set of records to demonstrate that all drivers were shorted hours. The Companies have provided a handwritten note by the driver whose records were used by the auditor to support her conclusion that the Companies were shorting drivers an average of 14-minutes per shift. In the note, the driver writes his end-of-shift time which matches the time recorded by the software. The Companies point out that this handwritten note was seized by OBCCTC investigators and assumed to be in the auditor's possession when she reached her conclusions about end-of-shift time. On this basis, the Companies argue that the auditor misread the data, erred in her conclusion that the Companies owed each driver for 0.16 of an hour during the audit period and have, in fact, paid all drivers for all container trucking services performed.

² CTC Decision No. 04/2021, paragraph 76.

17. The Companies have provided pay records for the months of April 2021 and May 2021 and sent Complainant 1 a cheque for unpaid training time as ordered. Respecting my order to identify other unpaid training hours and calculate money owing, the Companies advise that they were unable to identify any such records. The Companies admit that there are limitations to the data and therefore have posted notice to staff asking staff to come forward if they were trained and not paid for the training hours.

Supplemental Decision

18. I do not agree that my depiction of the Companies' conduct during the audit is unfair or unsupportable. The Companies argue that they sought to be transparent and responsive at all times during the audit, but this was not always the case.

19. The Companies responded to the auditor's queries, but the information sought by the auditor was not always accessible and the explanations provided by the Companies were not always complete.

20. The Companies did not provide all records originally requested. The Companies were given several opportunities by the auditor at the outset of the audit to explain their incentive calculation and provide supporting documentation. No documentation was provided, the explanations provided by the Companies were inadequate, and the Companies claimed that their records were fully digital when paper records had been supplied by a complainant. Ultimately, the OBCCTC had to seize records (driver trip sheets, pink B Sheets, cost reports and bonus driver reports) that were not voluntarily provided by the Companies. The records seized were the exact records requested for the audit periods. Had the records been provided when requested, and had fulsome, concise answers been given to the auditor's questions, the audit would not have unfolded in the manner it did.

21. Additionally, the Companies' explanations have evolved over the course of the audit and the Companies continue to provide revised explanations and arguments in defense of their actions.

a) Incentive Pay

22. The Companies were ordered to:

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.

23. The Companies have advised that every driver who was not paid an incentive in the audit period has been identified. The Companies have listed nine drivers who the Companies say were not paid an incentive and, for each of the nine drivers, the Companies have provided a copy of their paystubs and supporting documentation/information demonstrating that the drivers were paid for all container trucking service hours.

24. The evidence provided by the Companies demonstrates that the nine drivers identified were paid correctly. However, the auditor identified six drivers during the audit who had not received an incentive, including the ½ hour incentive (in lieu of breaks). No explanation or calculation has been provided for five of those drivers.³ These drivers have not been listed by the Companies and no documentation for these drivers has been provided. The auditor, therefore, cannot confirm that all drivers have been paid for all container trucking services hours performed.

b) End-of-Shift Time

25. The Companies were ordered to:

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.

26. The Companies have performed the calculation and determined that every company driver in the audit period is owed a combined amount of \$61,230.00. However, the Companies continue to argue that all drivers have been paid for all container trucking services performed, including end-of-shift time.

27. In the Decision, I noted that the auditor reviewed the Companies' electronic records and found that the recorded geo-fence crossing times exactly matched the driver log-out times in the Companies' electronic records.⁴ Drivers should log out of the DriveSmart app after they have crossed the geo-fence and completed all container trucking services, and the Companies never adequately explained why the geo-fence crossing times exactly matched. The Companies have now provided two reasons why the times are "similar" or "identical".

28. The Companies note that their employee checks all data for discrepancies and, if any are found, either makes a note of the discrepancy in the system or contacts the driver, both resulting in the driver being prompted to provide an explanation for the discrepancy. The Companies provide examples where a driver has confirmed a correct log out time which is "similar".

29. The Companies also argue that the two times are often "identical" because the truck parking area, where drivers log out, is very close to the geo-fence (30-50 yards). The Companies provided examples as to why the ignition off-time, which one would assume comes before the log out time (driver parks, then turns off truck and then logs out), actually comes after the log out time. The Companies state that in most cases drivers either park the truck or allow yard workers to take control of the trucks.

30. In other cases, according to the Companies, the geo-fence does not log a driver crossing or a driver forgets to log out. If geo-fence data is missing the log out time is used "as is". If a driver forgets to log out, the Companies' employee uses the system to force the log out which makes a note for the driver and the employee then uses the other available data to determine the log out time. The

³ See Appendix A

⁴ CTC Decision No. 04/2021, paragraph 111.

driver is then advised of this within “a day or two” to allow for an opportunity to contest the log out time. The Companies cite electronic records supplied during the audit to support their arguments.

31. The end of shift portion of the audit came about because 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. Records were provided in support of the driver allegations. One driver provided records demonstrating that the Companies were altering the log out time that he recorded in the Companies’ DriveSmart app.
32. After an exhaustive audit process, and in response to the Decision, the Companies have now provided further explanation respecting their system and the process that is followed by staff when confirming driver end of shift time. The Companies argue that drivers are paid for all container trucking services because they park their trucks very close to the geo-fence, do not perform post-trip inspections and leave the trucks running before logging out of the DriveSmart app. In cases where drivers forget to log out of the system or there is a system failure, the Companies’ employee inputs a log out time and should confirm that time with the drivers.
33. Based upon the records, driver complaints, auditor’s conclusions and the multiple explanations provided by the Companies, I am of the opinion that the Companies were manually adjusting log out times in a number of circumstances and these adjustments were not always communicated to the drivers. This, combined with the drivers not understanding the processes to be followed at the end of shift, resulted in the driver complaints. Drivers did not know the location of the geo-fence and there was confusion about the process to be followed once they returned to the Companies’ yard. It is also likely that the Companies’ employees were not always following process and confirming missed log out times with drivers before the times were inputted into the system.
34. The Companies will not be required to pay \$61,230.00 to its drivers in unpaid container trucking services time for the audit period because I accept their explanations regarding the end of shift times. I find that the Companies’ latest response, which provides further clarification respecting end of shift time, is sufficient to answer the driver’s complaints.
35. I note that the Companies have taken steps to upgrade the DriverSmart app, advising that the app now has a “Driver Violations” section that is filled out when a driver forgets to log out or a time discrepancy occurs. The driver must respond to the comments before they can begin their next shift by accepting or declining the comments regarding end of shift time. This, coupled with an effort by the Companies to better inform their drivers about the end of shift process and educate the drivers how to use the electronic tracking system, should reduce further confusion and limit future driver complaints.
36. Based on the conclusion set out above, the Companies’ argument that the auditor misread the data and erred in her conclusion that the Companies owed each driver for 0.16 of an hour during the audit period is not relevant.

c) Requirement to provide records to demonstrate compliance

37. The Companies were ordered to:

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.

38. The auditor has reviewed the records supplied by the Companies in response to the order and advises that the pay stubs and screen shots of the Companies' updated software confirm that the Companies' drivers are now being paid for all container trucking services performed after their trucks cross the geo-fence.

d) Unpaid training

39. The Companies were ordered to:

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.

40. The Companies have mailed a cheque (less appropriate deductions) to Complainant 1. The Companies have been unable to identify any other unpaid training hours performed by drivers and have issued a company memo asking drivers to contact them if they had concerns with missed training payments. The Companies advise that best efforts are being made to advise all staff about their policy with respect to training.

41. I accept the Companies' submission and note their efforts to deal with unpaid training complaints should they arise. The Companies' drivers are advised to contact the OBCCTC in the event any possible complaints cannot be resolved.

Order

42. The Companies have complied with all but one of my orders. The Companies failed to identify six drivers who were not paid an incentive and have not provided evidence to establish that five of these drivers were paid for all hours of container trucking services or calculated amounts owing. The Companies have failed to comply with the full terms of the order made in the Decision. I therefore make the following order pursuant to Section 9 of the Act.

I hereby order the Companies to:

- a) comply with the order (a) of the 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.
43. I once again 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.
44. 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 23rd day of June, 2021.



Michael Crawford, Commissioner



Appendix A

The auditor identified the following drivers during the audit who did not receive an incentive. These drivers have not been identified by the Companies when following the Commissioner's Order to 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 driver:

1. Gurpreet Sokhi
2. Harsimran Chabra
3. Jatinder Singh
4. Balwinder Singh
5. Rajinder Kumar