



May 26, 2022

Best Can Trucking Ltd.  
8230 152A Street  
Surrey, BC V3S 8N2

**Commissioner's Decision**  
**Best Can Trucking Ltd. (CTC Decision No. 03/2022)**

**Introduction**

1. Best Can Trucking Ltd. ("Best Can") 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. On August 21, 2021, the Commissioner directed an auditor to audit Best Can's records to determine if its company drivers were being paid the required minimum rates. The auditor was directed to audit driver records for the pay periods in the months of July 2017, August 2018 and November 2020 (the "Initial Audit Period") to determine compliance.

**Initial Audit Period**

4. The auditor requested records for the Initial Audit Period and was advised by Best Can that timesheets for the Initial Audit Period could not be supplied because the BC Commercial Vehicle and Safety and Enforcement Branch had advised them that they only had to keep their records for six months.
5. The auditor then requested records for the month of May 2021.
6. The auditor reviewed the available Initial Audit Period records and determined that during the Initial Audit Period, Best Can paid its drivers compliant rates. The auditor was unable to determine if Best Can paid its drivers for all container trucking services during the Initial Audit Period because no timesheets were available.

7. In May 2021, the records demonstrated that Best Can paid compliant rates and paid its drivers for all container trucking services.

### **Summary**

8. Best Can paid its drivers compliant rates during the Initial Audit Period and in May 2021 but the auditor could not confirm that Best Can had paid its drivers for all container trucking services during the Initial Audit Period because Best Can destroyed its timesheets after six months.
9. Best Can was provided a copy of the auditor's report on April 28, 2022 for review and was provided an opportunity to respond. Best Can responded via email, noting that it would ensure that its records were kept "for longer" in the future and that all records would be available for future audits. Best Can noted that its drivers could confirm that they were paid correctly for the Initial Audit Period.

### **Decision**

10. I have considered the auditor's report and for the reasons set out below, I find Best Can in violation of the *Act* for failure to keep records as required by Appendix D section 4(f) of the CTS Licence.
11. Best Can admits to destroying timesheets after six months and states that it was following the requirements of the National Safety Code.
12. In a April 1, 2016 decision, the then-Commissioner highlighted the record keeping requirements of the CTS Licence and stated that a licensee's records must be "complete, accurate and up to date."<sup>1</sup> An industry wide bulletin was subsequently issued by the OBCCTC in which a licensee's record keeping requirements under the CTS Licence were discussed and licensees were warned that failure to maintain records "will almost certainly result in a penalty."<sup>2</sup> Later that year, the Commissioner reiterated the importance of record keeping, noting that:

The requirement to keep complete, accurate and up-to-date records is a fundamentally important obligation flowing from the legislation and the Container Trucking Services Licence (the "licence"). The maintenance of complete, accurate and up-to-date records by licensees is absolutely essential to the OBCCTC's fulfillment of its rate compliance mandate and its ability to properly perform audits in a timely and fulsome way. Failure to keep proper records...will not be tolerated, and will be regarded as a serious violation of licensees' obligations under the legislation and their licence.<sup>3</sup>

---

<sup>1</sup> Olympia Transportation Ltd. (CTC Decision No. 02/2016), paragraph 10.

<sup>2</sup> OBCCTC Bulletin, "*Container Trucking Services Licence Record Keeping Requirements*," August 10, 2016.

<sup>3</sup> HAP Enterprises Ltd. (CTC Decision No. 17/2016), paragraph 22.

13. In CTC Decision No. 01/2021, the length of time licensees are required to keep records was discussed:

...Per the Container Trucking Services Licence, licensees are required to keep payroll records as defined and required by section 28 of the ESA. Section 28 of the ESA requires employers to retain specific records for each employee for four years after the date on which the payroll records were created.<sup>4</sup>

14. For clarity, licensees are required to keep the records identified in Appendix D section 4(f) of the CTS Licence for each employee for **four years** after the date on which the records were created (per section 28 of the *Employment Standards Act*). The record keeping requirements of the National Safety Code do not supersede the requirements of the CTS Licence.

15. Many audits over the last six years have identified failures to keep records pursuant to the CTS Licence and penalties have been levied for these failures.<sup>5</sup> Of particular relevance to this case is the audit of Olympia Transport Ltd. (“Olympia”) in 2021 where Olympia was penalized for failure to keep records despite arguing that it was only required to keep log books for six months per the National Safety Code.<sup>6</sup>

16. Best Can ought to have been aware of its record keeping requirements and it was Best Can’s responsibility to ensure that it retained its records in the event of an audit. In particular, Best Can ought to have been aware that the record keeping requirements of the National Safety Code do not supersede the record keeping requirements under the CTS Licence following Olympia’s audit in 2021. Best Can did not keep timesheets as required and therefore I have concluded that an administrative fine is appropriate.

17. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$1,500.00 is appropriate in this case. In assessing an appropriate penalty, the factors that have been taken into account include Best Can’s failure to keep records, its previous compliance history and the consequences of Best Can’s non-compliance.

18. This is Best Can’s second audit. Best Can was found to be in violation of the *Act* in 2017 and was penalized \$1,500.00 for failure to pay the regulated rates. In this case, Best Can paid compliant rates and paid its drivers for all hours of container trucking services in the month where records were available. The auditor spoke with Best Can drivers during the audit, all of whom indicated that they had been paid correctly. There is no evidence to suggest that Best Can has enriched itself by not keeping its records or that its drivers suffered any harm as a result of its infraction. Nevertheless, Best Can violated the record keeping requirements of the *Act* and its Licence and the importance of keeping records per the CTS Licence and the seriousness of violating the record keeping requirements has been well established.

---

<sup>4</sup> Aheer Transportation Ltd. (CTC Decision No. 01/2021), paragraph 65.

<sup>5</sup> See for example MDW Express Transport Ltd. (CTC Decision No. 01/2017) and Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018).

<sup>6</sup> Olympia Transportation Ltd. (CTC Decision No. 10/2021), paragraph 4.

19. 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 Best Can Trucking Ltd. in the amount of \$1,500.00;
  - b. Should it wish to do so, Best Can Trucking 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 Best Can Trucking Ltd. provides a written response in accordance with the above, I will consider its response and I will provide notice to Best Can Trucking 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.

20. This decision will be delivered to Best Can Trucking Ltd. and may be published on the Commissioner's website after Best Can Trucking Ltd.'s response period has closed ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 26<sup>th</sup> day of May, 2022.



---

Michael Crawford, Commissioner