



January 20, 2023

United Coastal Logistics Ltd.  
3-8333 130<sup>th</sup> Street  
Surrey, BC V3W 7X4

**Commissioner's Decision**  
**United Coastal Logistics Ltd. (CTC Decision No. 01/2023)**

**Introduction**

1. United Coastal Trucking Ltd. (“UCL”) is a CTS licenced company within the meaning of the Container Trucking Act (the “Act”). UCL’s licence is assigned forty-seven (47) truck tags and UCL currently employs company drivers (27 tags) and independent operators (“IOs”) (20 tags) to perform container trucking services (“CTS”).
2. Section 16(1)(b) of the Act states that a licensee must carry out the container trucking service in compliance with:
  - i. this Act and the regulations,
  - ii. the license, and
  - iii. if applicable, an order issued to the person under the Act.
3. 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 (“Rate Order”), and a licensee must comply with those statutorily established rates. 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.

4. The Office of the BC Container Trucking Commissioner (“OBCCTC”) publishes an online and printed map and accompanying descriptions of the Commissioner’s trip rate zones along with the established rates. There were no changes to the trip rate zones or trip rates for IOs between June 1, 2018 and March 31, 2020.
5. Under section 31 of the Act, the Commissioner may conduct an audit or investigation to ensure compliance with the Act, the *Container Trucking Regulation* (the “Regulation”) or a licence.
6. UCL has been subject to two other decisions. In 2017, the Commissioner found that UCL underpaid its drivers by a total of \$31,893.66 and ordered it to compensate the drivers and pay an administrative fine of \$1,500.00 (“UCL #1”). In 2018, the Commissioner found that UCL failed to pay some of its IOs the regulated trip rates for certain dead runs involving containers and pre-pulls

and improperly sought a financial set-off from drivers. UCL was ordered to compensate drivers in the total amount of \$18,708.40 and to pay an administrative fine of \$5,000.00.

7. The current audit was initiated on August 24, 2021 as a random audit.

## **Audit Report**

### *Initial Audit Period*

8. The auditor requested and reviewed the relevant records for the periods of August 1-31, 2018, October 1-31, 2019 and October 1-31, 2020 (together, the "Initial Audit Period").
9. The auditor concluded that during the Initial Audit Period UCL did not pay one company driver the correct minimum hourly rate when the driver exceeded 2340 hours in service. It was determined that the driver was underpaid by \$270.00. UCL stated they inadvertently reset the driver's experience hours when he was assigned a new company vehicle.
10. The auditor also found UCL had used an incorrect zone when calculating the trip rate paid to IOs delivering containers to and/or from one of UCL's customers. The auditor determined that placing its customer in the incorrect zone resulted in UCL underpaying its drivers ("Incorrect Rate Zone Payments") for the month of August 1-31, 2018 but paid the correct rate in October 1-31, 2019 and October 1-31, 2020. UCL was found to owe a total of \$1,095.10 to IOs for the Initial Audit Period.
11. UCL advised the auditor that it had started paying the correct rates to IOs performing work for that customer starting on July 1, 2019 and provided records documenting this.

### *Expanded Audit Period*

12. On June 6, 2022, the auditor directed UCL to calculate the appropriate hourly rate owing to one company driver for the period of October 16, 2020, when he reached 2340 hours, to January 1, 2021, when he was eventually paid the appropriate hourly rate. The auditor also directed UCL to recalculate the trip rates for IOs who were paid the Incorrect Zone Rate Payments between the end of the previous audit on July 1, 2018 and July 1, 2019 (together the "Expanded Audit Period").
13. UCL provided the auditor with its calculations of outstanding wages owed to the one company driver and to the IOs who were paid the Incorrect Rate Zone Payments. The auditor conducted a spot audit of UCL's calculations and noted some errors. The auditor calculated that UCL owed an additional \$560.28 to IOs and \$420.00 to the company driver for the Expanded Audit Period.

14. On October 7, 2022, the auditor provided UCL with the cumulative amounts owing to the eighteen (18) IOs and one (1) company driver:

<b>Independent Operators</b>	<b>Amount Owing</b>
Initial Audit Period	\$1,095.10
Expanded Audit Period	\$560.28
Subtotal for IOs	\$1,655.38
<b>Company Driver</b>	
Initial Audit Period	\$270.00
Expanded Audit Period	\$420.00
Subtotal for Company Driver	\$690.00
<b>Total Amount Owing</b>	<b>\$2,264.38</b>

15. The audit report concludes by noting that effective October 27, 2022, UCL had paid its drivers a total of \$2,264.38 as set out in the audit report and had provided documentation to show it was paying in accordance with the Rate Order.
16. I accept the findings of the auditor which are not, so far as I am aware, contested by UCL.

### **Decision**

17. As described above, the circumstances of this case are that:
- UCL has undergone an audit and cooperated with the auditor.
  - UCL failed to increase the hourly rate paid to one company driver at the time the driver reached 2340 hours.
  - UCL failed to pay the appropriate trip rate to IOs between July 1, 2018 to June 30, 2019 when it misidentified the proper geographic location of one of its customers.
  - In advance of the audit, UCL had unilaterally corrected the Incorrect Rate Zone Payments paid to IOs who performed CTS work for one of its customers starting on July 1, 2019.
  - UCL paid out adjustment amounts totalling \$690.00 to compensate a company driver for payment of non-compliant minimum hourly rates and \$1,655.38 to eighteen (18) IOs who were not paid the appropriate trip rate when performing work for one customer between July 1, 2018 and June 30, 2019.
  - UCL is now paying its company driver and IOs the minimum rates required by regulation.
18. UCL has now paid the amounts owing under the *Act* and *Regulation* for both the Initial and Expanded Audit Periods. As a result, I find it unnecessary to issue an order pursuant to section 9 of the *Act* requiring UCL to comply with the *Act*.
19. Section 34 of 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. Available penalties include suspending or cancelling the licensee's licence or imposing an

administrative fine. Under section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000.

20. The seriousness of the available penalties indicates the potential gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and IOs in compliance with the rates established by the legislation (*Act* and *Regulation*). Licensees must comply with the legislation, as well as the terms and conditions of their licences, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.
21. In keeping with the above-described purpose of the legislation the factors which will be considered when assessing the appropriate administrative penalty include the following as set out in *Smart Choice Transportation Ltd.* (OBCCTC Decision #21/2016):
- The seriousness of the respondent's conduct;
  - The harm suffered by drivers as a result of the respondent's conduct;
  - The damage done to the integrity of Container Trucking Industry;
  - The extent to which the licensee was enriched;
  - Factors that mitigate the respondent's conduct;
  - The respondent's past conduct;
  - The need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of having a CTS licence;
  - The need to deter licensees from engaging in inappropriate conduct, and
  - Orders made by the Commission in similar circumstances in the past.
22. UCL cooperated fully with the audit. It complied with the directions given by the auditor, including disclosing records. It has paid the necessary amounts required to bring itself into compliance for both the Initial and Expanded Audit Periods.
23. Like all licensees, UCL is responsible to know its obligations under the *Act* and to ensure that it is paying compliant hourly rates. I have concluded that UCL made mistakes which resulted in a failure to pay its company driver and IOs the full amount of compensation owing under the *Act* and *Regulation*. Although the total amount involved is not large and the breach occurred over a relatively short period, UCL failed to meet its obligation to ensure proper payment to its drivers.
24. I am also concerned that UCL failed to take steps to retroactively pay its IOs once it discovered the Incorrect Rate Zone Payments on or around July 2019. Although it started to pay its IOs correctly once it discovered the mistake, it did not adjust their compensation retroactively.
25. In *Olympia Transportation* (CTC Decision No. 02/2016) the Commissioner made it clear that licensees are to be proactive in taking the necessary steps to ensure compliance:

the onus to become and remain compliant with the requirements of the *Act* rest entirely with the Licensee. Licensees should not rely on Commission auditors to determine whether

or not they are compliant, nor should they wait until a Commission audit process is undertaken before taking steps to ensure compliance.

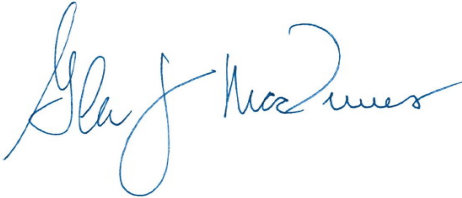
(Emphasis added)

26. In the present case, UCL proactively corrected the Improper Zone Rate Payments paid to IOs for CTS work performed on and after July 1, 2019; however, it did not ensure each of the I/O drivers were properly renumerated for the work they performed prior to July 1, 2019.
27. Since UCL took steps to correct the Improper Rate Zone Payments on a go forward basis starting July 1, 2019, it is reasonable to conclude UCL would be at least uncertain whether it had correctly calculated the trip rates paid to IOs who performed CTS work for the same customer prior to July 1, 2019. I was provided no explanation as to why UCL took no steps at that time to bring itself into compliance between July 1, 2018 and June 30, 2019. It is reasonable to conclude that, but for this current audit, these drivers would not receive proper payment for CTS work performed for this customer between July 1, 2018 to June 30, 2019.
28. I note that UCL paid two administrative fines (UCL#1 and UCL#2) of \$1,500 and \$5,000.00 respectively *inter alia* for paying its drivers non-compliant rates. In UCL#1 the licensee was found to have failed to pay company drivers the regulated minimum hourly rates. In UCL#2, the licensee was found to have failed to pay IOs the regulated trip rates. While the reasons for UCL's violations of the *Act* are different in this case, the impact was the same in that the company driver was not paid the minimum hourly rates and the IOs were not paid the trip rates in accordance with the Rate Order.
29. In my view, a fine is needed to meet the objective of deterring non-compliance. However, the previous fines did not sufficiently deter UCL from further non-compliance. If UCL had not taken steps to unilaterally correct the Improper Rate Zone Payments to IOs on a go forward basis after discovering their error, this fine would have been significantly higher.
30. Considering all the factors present in this case, including UCL's failure to bring itself into compliance between July 1, 2018 to June 30, 2019 of its own initiative, I conclude that this is an appropriate case to issue a nominal penalty of \$7,000.00. Therefore, in accordance with Section 34(2) of the *Act* I hereby give notice as follows:
  - a) I propose to impose an administrative fine against UCL in the amount of \$7,000.00;
  - b) Should it wish to do so, UCL 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 UCL provides a written response in accordance with the above I will consider its response, and I will provide notice to UCL 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.

**Conclusion**

31. In summary, UCL has been found to have violated the *Act*, the *Regulation*, and its license paying its company drivers and IOs non-compliant rates. While UCL eventually paid the amounts owing to its drivers and brought itself into compliance, I have determined that it is appropriate to propose the imposition of a \$7,000.00

Dated at Vancouver, B.C., this 20th day of January, 2023

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is fluid and cursive, with the first name "Glen" and last name "MacInnes" clearly distinguishable.

Glen MacInnes, Commissioner