

March 14, 2023

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BY EMAIL - registrar@bcctc.ca

Office of the British Columbia
Container Trucking Commissioner
1085 Cambie Street
Vancouver, BC V6B 5L7

Attention: Glen MacInnes, Commissioner

Dear Sirs/Mesdames:

Re: Rate Review Consultation

We write on behalf of the Port Transportation Association (“PTA”) in response to the February 2023 Rate Review Recommendation Report (the “**Report**”). The PTA raises two issues for consideration in respect of the Proposals contained in the Report.

First, contrary to the what the Commissioner states in the Report, PTA members advise that the cost of employing company drivers is not significantly lower than that of engaging independent operators (“IO”). The PTA asks that the Commissioner consider the actual costs to licensees of using IOs versus company drivers when setting minimum rates. Just as the Commissioner considers equity as between company drivers and IOs, the Commissioner must also consider equity as between licensees using an IO Business Model versus a Company Business Model (defined below).

Second, and related to the above, the PTA urges the Commissioner to consider and implement a form of overtime pay for IOs comparable to the overtime pay for company drivers. Whereas the cost of an IO remains constant regardless of the number of hours worked in a day or over a week, the cost of company drivers increases when a driver exceeds 9 hours in one day or 45 hours for the week. This gives licensees with IOs a competitive advantage over licensees employing company drivers only. This also disadvantages company drivers employed by licensees that have the option to engage an IO after a company driver reaches overtime thresholds.

The PTA does not oppose appropriate pay adjustments to keep pace with inflation; however, the PTA is concerned that the Cascadia Report and the Commissioner have not given due consideration to the relative impacts of IO and company driver rates on different licensee business models, particularly in this context where licensees do not have the flexibility to adjust their business models very quickly or easily.

Company drivers can cost licensees as much or more than IOs

The Commissioner is concerned that company driver wages have not kept pace with IO wages and says that:

...if the gap between minimum rates for company drivers and IOs remains, the inequity will likely cause instability in the industry as more company drivers are forced to seek out being an IO to earn better wages or licensees move away from IOs because of the significantly lower costs for company drivers.¹

The PTA does not oppose appropriate pay adjustments to keep pace with inflation; however, the PTA does not agree that the costs to licensees of using company drivers is significantly lower than the cost of using IOs. PTA members advise that with the wage adjustment as proposed, it could cost licensees more to employ company drivers than to engage IOs.

The cost of employing a company driver is not simply the base hourly rate set by the Commissioner. In addition to a company driver's hourly rate, licensees must pay, among other things:

- Employment Insurance contributions;
- Canadian Pension Plan contributions;
- vacation pay;
- statutory holiday pay;
- sick day pay;
- Employer Health Tax;
- Workers Compensation Board contributions; and
- benefits.

Considering the above, the cost per hour of a company driver starting July 1, 2023, as proposed, is not just \$31.67, rather the cost per hour is \$40 plus.² On top of this, licensees pay truck payments (ranging from \$1200-\$3500/month/truck depending on the truck), insurance (around \$1000/month/truck), and maintenance and repair costs (\$500-\$1050/month/truck).

Licensees do not have to cover these additional costs on top of the IO rates.

¹ Rate Review Recommendation Report dated February 2023, Proposal 1, page 10.

² A rough calculation indicates an hourly cost for a company driver before fuel and truck costs of \$40.24:

Hourly	Vac	WCB	EI	CPP	EHT	Stat	Benefits	Sick Days	Total
	+4%	+3.7% x assessable	+\$2.82	+5.95%	+1.95%	+4%	+2%	+2%	\$40.24
\$31.67	\$1.27	\$1.31	\$0.89	\$1.88	\$0.62	\$1.27	\$0.69	\$0.63	\$40.24

Once a company driver becomes entitled to overtime pay, the company driver's hourly cost before fuel and truck costs gets much closer to that of an IO (1.5x \$40/hour = \$60/hour). And, the company has a depreciating asset to manage.

Although the cost of company drivers may seem less than or comparable to the cost of IOs on an hour by hour basis, when terminal wait times are significant, overtime is accumulating, and competitors can rely on IO trip rates, licensees employing company drivers may find themselves unable to compete with licensees using IOs. This in itself can have a destabilizing effect on the industry. The Commissioner should consider equity and competitive advantages as between licensees when determining relative rates for IOs and company drivers.

OBCCTC should require overtime pay for IOs

The Commissioner has declined to impose overtime rates for IOs as it is “unclear to [the Commissioner] how [the wage component of the IO rate] could translate into an overtime rate”. Only requiring overtime pay for company drivers and not for IOs creates two issues: 1) IOs are not compensated equally to company drivers despite working overtime; and 2) costs to licensees employing company drivers increase over a day or week, while costs to licensees engaging independent operators stay constant, despite drivers working overtime for both.

The Commissioner's decision not to impose a overtime rate for IOs, for the same amount of overtime hours worked, creates instability in the drayage industry in ways the Commissioner has acknowledged in the past. If the failure to pay overtime rates to company drivers creates “an improper competitive advantage for companies who fail to pay the overtime and may lead other licensees to resist paying overtime to remain competitive”³, such an improper competitive advantage is similarly created in favour of those licensees authorized, under the terms of their CTS licence, to dispatch IOs as opposed to dispatching company drivers for “overtime” trips. Licensees who are not authorized, under the terms of their CTS licence, to dispatch IOs for overtime trips may find themselves paying more to employ company drivers than to engage IOs in the circumstances. Correspondingly, those licensees may be required to charge their customers more and may therefore be unable to compete with the rates charged for services that could be performed by IOs at a lower cost.

Put another way, in the context of overtime remuneration, the current CTS licence terms favour licensees with truck tags allocated to IOs (the “**IO Business Model**”) rather than licensees with trucks tags allocated only to company drivers (the “**Company Business Model**”).

³ Rate Review Recommendation Report dated February 2023, Proposal 2, page 11.

The CTS licence provides that:⁴

6.15. The Licensee must carry out Container Trucking Services using only Truck Tags allocated by the Commissioner on the conditions imposed by the Commissioner.

6.16. The Licensee must assign a Truck Tag to each truck performing Container Trucking Services.

6.21. The Licensee must not engage the services of any Trucker for the carrying out of Container Trucking Services unless the Trucker is employed by the Licensee or is a Sponsored Independent Operator of the Licensee.

6.25. The Licensee must provide a copy of the Licence to Truckers who carry out Container Trucking Services on behalf of the Licensee before those Truckers commence those services.

6.26. The Licensee must not assign or transfer this Licence or Truck Tags.

6.27. The Licensee must not receive by assignment or transfer a Licence or Truck Tags.

[Emphasis added.]

The scheme of the CTS license is such that a licensee with a Company Business Model must only engage the services of its company drivers to perform container trucking services. It cannot:

- engage an IO if the IO is not sponsored within the meaning of the CTS licence,⁵ or
- reassign or reallocate its truck tags during the term of the CTS licence from a company truck to an IO.⁶

All licensees are effectively “locked in” to the business model they adopted at the time of the 2020 CTS licence application process, given the Commissioner’s decision to renew the term of the 2020 CTS licence for an additional two years.⁷ The CTS licence is now set to expire on November 30, 2024.⁸ Although the OBCCTC initially provided an opportunity for licensees to reconfigure their fleet by requesting truck tag conversions,⁹ the OBCCTC has been silent as to whether a similar opportunity will be provided to licensees again during the term of the CTS licence.

⁴ 2022 Container Trucking Services Licence [CTS Licence].

⁵ 2022 CTS Licence, s. 6.21.

⁶ 2022 CTS Licence, s. 6.26; CTS Licence Truck Tag Management Policy dated June 2020, page 1.

⁷ CTS Licence Renewal bulletin dated October 3, 2022.

⁸ 2022 CTS Licence, s. 3.1.

⁹ CTS Licence Renewal bulletin dated October 3, 2022; CTS Licence Term Renewal Package dated October 2022, page 2: Licensees who request for truck tag conversions. Otherwise, in the ordinary course, conversion of a company tag to an IO tag, or vice versa, during the term of the CTS Licence is prohibited, according to the CTS Licence Truck Tag Management Policy dated June 2020.

Licensees with the Company Business Model would experience further obstacles even if the OBCCTC extended an opportunity to request truck tag conversions, due primarily to the fact that licensees with the Company Business Model own their own fleet of trucks and cannot compel drivers (1) to purchase the aforementioned trucks or (2) to become an IO. Although it was suggested in the Cascadia Report that many company drivers expressed a desire to transition to an IO role¹⁰, the initial cost of owning and subsequently maintaining a truck in the drayage industry is prohibitive for many.

The Commissioner's decision not to impose overtime rates for IOs at this time is based on the current challenge to the OBCCTC of figuring out how to do so. Respectfully, this is not an appropriate response, particularly when the overtime rates for company drivers are already effective before any overtime rates for IOs are even determined.

To be clear, the PTA does not oppose the payment of overtime rates to drivers in principle. It is the negative economic implications of paying overtime rates to company drivers alone, and not also to IOs, that the PTA takes issue with. Leaving aside that licensees with the Company Business Model have to pay overtime to their drivers that those with the IO Business Model do not (in respect of their IOs), they also have to contend with negotiating and justifying trip rates with customers who use, as a starting point, the IOs trip rates published by the OBCCTC. If the OBCCTC imposes overtime rates only for company drivers, licensees with the Company Business Model expect to lose work to licensees with the IO Business Model and/or to suffer losses if they cannot recoup certain costs of performing CTS from their customers.

Under the circumstances, the PTA asks that the Commissioner consider an overtime rate applicable to IOs that will be imposed at the same time as the overtime rates for company drivers to ensure licensees with a Company Business Model are not disadvantaged in the market relative to licensees with an IO Business Model.

Yours truly,

Hunter Litigation Chambers

Per:



Monique Evans

MEE/mtd

¹⁰ Trucking Compensation Study by Cascadia Partners dated December 2022, page 19.