



United Truckers Association

PO Box 71114 Scott Road
Delta, B.C. V4C 6P6
T. 604.499.8400 E. uta@unitedtruckers.ca

June 5, 2023

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

Sent via email: Glen.MacInnes@obcctc.ca

Re: UTA Response to the Addendum to the February 6, 2023, Rate Review Consultation Report

Dear Commissioner MacInnes:

Please accept this correspondence as the UTA's submission for the Overtime Calculation for Independent Operators ("IOs") Addendum released on April 25, 2023.

To begin, we want to emphasize the obvious: IOs are business owners who have made a decision to invest in running their own business. And as is the case with most entrepreneurs, standard hours akin to employees are not the kind of expectation our membership has within the drayage sector. The minimum callout rate (with the addition of a number of days or average minimum cheque amount), which applies when an IO agrees to work for four or more continuous hours in a 24-hour period, is the protection that our membership relies on to have a minimum standard of pay when scheduled for work by a sponsor licence holder.

For context, IOs have been the backbone of the local drayage sector for decades, with many of the current crop veterans for more than 25 years of working under their belt. Further, previous to the 2014 labour disruption, IOs had the ability to work for any employer of their choice, without the kind of restrictions they currently encounter.

So to clarify, the UTA finds the notion of overtime for business owners like IOs, as a curious direction to take, and one that we don't feel is necessary. There are four primary reasons for this.

First, the majority of the UTA's membership is paid by the trip. Our unique position in the industry is the ability to offer our sponsors flexibility through a transactional pay model, which either differentiates from the fixed costs of the company-owned fleet, or helps to facilitate business for those companies who do not have their own fleet to deploy.

With the minimum call-out in place, we would much prefer suggesting to you that the current \$300 rate should be increased as a larger priority than offering a new convoluted overtime system as you are suggesting.

Your move towards this overtime scheme would take the independence of our members' unique position in the industry and make them even more dependent than they already are as a result of the sponsorship agreement system introduced in 2014. In fact, UTA IOs crave the return of this independence far more than any firm of overtime.

Secondly, with IOs already being boxed out of adequate amounts of work to earn a living by several licence holders (as the UTA has continually pointed out to you since September 2022), additional costs such as overtime pay would only add to the reasons why companies are choosing to mismanage their fleet's distribution of work.

We once again strongly encourage you to focus on tag management and monitoring across the entire sector to ensure that the amount of tags that a licence holder possesses is being used to full extent. As we have repeatedly stated, an IO who is sponsored by a company, must have a reasonable expectation of certain level of work to sustain a business and one's dependents.

Simply put, this overtime scheme acts contrary to this goal of ensuring that all companies properly use the tags they have been allotted, at risk of losing them if utilization continues to be uneven and erratic.

Third is the fact that we have a drayage sector where current pay rates that are supposed to be enforced by the OBCCTC, are being completely flaunted by a large percentage of the licensees you oversee.

Here are just a few examples (many of which the UTA has frequently brought to your attention):

- The use of unlicensed and illegal off-dock trucks is still as rampant and widespread as ever, happening in the open at every off-dock terminal and facility within your jurisdiction. In spite of the OBCCTC's announcement of partnering up with CVSE to create a new era of enforcement, the social media posts you have relied on to communicate the initiative have been met with little to no action or penalty, and as a result, few in the industry fear or take this new regime seriously;
- In spite of the 2014 Joint Action Plan ("JAP") and subsequent legislation stating that no collective agreement shall offer pay rates that are lower than what is required by law, there are many in existence that openly flaunt the pay-scale that the OBCCTC is tasked with enforcing. After notifying your office about this situation and providing specific examples over the past nine months (And to your office from the last 9 years); the UTA can only assume that unions are being offered a pass and less scrutiny due to the labour links and support by the current government. If collective agreements are allowed to openly break and flaunt the law, how can you expect the UTA or any other stakeholder to believe that you will be able to enforce a new overtime pay system?;
- Licence holders like CNTL continue to offer pay rates that are less than the legislated pay. Further, there are upwards of over 30 IO trucks being driven by designates rather than the

owner, and in these instances, they are not only not receiving the proper pay they are due, but are being caught without benefits in limbo between driving an IO vehicle but essentially operating as an employee. Where is the OBCCTC looking out for these poor fellows? This seems like yet another example of a unionized shop being given the green light to flaunt the law and your office's authority;

- The fuel surcharge formula has been selectively adjusted by the OBCCTC, giving some companies a way of avoiding direct payments to IOs due to exemption (which is totally different that was committed to in the JAP);
- The system governing the IO list is a muddled, manipulated mess as a result of the OBCCTC's targeted interventions and different treatment for various individuals (citing Mr. Sall, Mr. Brar, the exemption from consequences for Sandhar and the targeting of GRL as specific examples).

This is in addition to the fact that there was no hourly rate contained in the JAP (only a 12% increase from the 2006 Reddy rates) as well as CN and CP no longer being considered as terminals which resulted in a reduction of rates for IOs.

In other words, there are so many glaring holes in the current pay system that are being exploited across the sector, which are having so many negative impacts on the ability of our members to earn an appropriate living. The fact of the matter is that greater resources devoted to not only enforcement through social media, but in action where companies are penalized to the extent the OBCCTC's powers according to the *BC Container Trucking Act*, will be far more impactful on the well-being and working environment that IOs can expect in the current situation.

Finally, your proposed formulas for calculating are flawed and problematic for a number of reasons:

- The waiting time rate you use is not being paid per the JAP, making the calculation illegitimate (this also includes the fact that the waiting time compensation promised for both CP and CN are still no in effect);
- IOs are unable to directly access the information for how much waiting time they are due from a particular transaction (and with waiting time payouts only coming to companies three times a year, it is impossible to calculate overtime on a daily basis as per your formula);
- There has not been any consultation with industry with regards to the Deltaport staging area, making waiting times at this particular terminal fraught with dispute and disparity.

In short, if you were to implement this proposed overtime system, it would have a similar impact and shock to the system to the time when the Port of Vancouver kicked out more than 600 trucks and 25 smaller companies from the TLS in 2014. Until a federal court decision reversed this glaring injustice, the decision was the most damaging set of consequences that IOs have ever faced in the entirety of the existences of the Metro Vancouver drayage infrastructure.

We strongly encourage the OBCCTC to defer this overtime scheme, and instead put real money back in the pockets of IOs who are working legitimately within the system, but still getting the short end of the stick due to unscrupulous practices and operators.

If you tackle the systemic problems of law-breaking, ignoring rules and favoritism (a.k.a. turning a blind eye) to the unfair practices of unionized companies, and you will solve so many of the current issues that are making IOs in the local drayage sector struggle so significantly and often.

The UTA strongly affirms that your overtime proposal will not do anything to address these massive, industry-wide practices and concerns, and in fact, could lead to more hardship for IOs that are in this system of not being able to seek our new work without severing a sponsorship agreement.

We hope that you carefully consider the sentiments the UTA is expressing, as we are the largest labour organization representing IOs in this drayage sector, and our members are overwhelmingly in favour of stronger enforcement and follow-through to tighten what is already in existence, but being ignored in a very significant fashion.

Thank you for the opportunity to share our position.

Yours sincerely,



Gagan Singh
Spokesperson for the UTA
(604) 349-3333