

May 18, 2023

Mr. Glen MacInnes
Commissioner
Office of the BC Container Trucking Commissioner
1055 Cambie Street
Vancouver, BC V6B 5L7

(via email)

Dear Mr. MacInnes:

Re: ADDENDUM, 2023 Rate Review Recommendation Report

Thank you for the opportunity to respond to your Addendum of April 25, 2023. In it, you note, in part:

“Thus, it is only fair that the I/Os are paid an overtime premium equivalent to 1.5 times the minimum hourly rate paid to Company Drivers to make sure that the premium is tied to the remuneration of the I/Os and not fixed expenses

The I/Os paid by a trip rate will be paid the greater of the remuneration they received, which is the sum total of their Trip Rate, PMR, and Wait Time multiplied by the number of trips they did in a single day; or the I/O hourly rate for 9 hours plus hourly overtime rate (as calculated in the above formula) multiplied by the number of extra hours worked in a single day.

In other words, if I/Os do numerous trips and their total remuneration adds up to be more, they will be paid that amount. But in cases where they do not happen to do many trips but end up working overtime, to ensure that they are still paid fairly, the hourly calculation (if that adds up to be a greater amount) will be used.”

We entirely disagree with the very premise that the “fairness” remark is made. Independent operators are independent businesses. They operate and are remunerated based on business activity. They have a business-to-business relationship with carriers. The proposal seeks to undo this independence by implementing an unwarranted model of time management into this relationship.

We note the multitude of fee for service contracts that exist in industries across our economy and note that none of them have a retrospective re-calculation element based on time that this proposal does. As we will discuss below, this approach, combined with the business-to-business relationship that exists, make it impossible for Licensees to manage this cost. As such, if a re-calculation element based on time is introduced Licensees will work diligently to avoid any exposure to this added cost which after the fact has no opportunity for customer billing.

A variety of method for remuneration exist in all areas of trucking and do in the drayage sector as well. We note that the enabling statute and regulations recognize this and establish two separate methodologies for remuneration. One, the payment of hourly wages; the other, payment by trip. In our view, your office has no authority to mix the two as the proposal intends.

This is supported by the terms and conditions of license set out in the “2022-CONTAINER-TRUCKING-SERVICES-LICENCE-AMENDED-FINAL.” Specifically, Appendix A Prohibited Practices, items 1. (g), states:

A Licensee must not do any of the following:

(g) pay Truckers by a method of Compensation that is a hybrid of per trip and hourly

In our view, it is incongruous that the commissioner would propose a methodology of compensation that is specifically prohibited in the terms and conditions of the licenses issued by the Commissioner’s office.

This principle is further entrenched by Appendix D in the standard license wherein Item A 1. (E) stipulates that “the type of remuneration for the trucker (whether hourly or per trip) is declared.” Further, Licensees are not permitted to change the methodology of payment from hourly to trip rate for a driver during the term of the license.

Despite the structure of the statutory framework to create different streams of remuneration, despite terms and conditions of Licenses issued which prohibit hybrid payment between hourly and trip rates, despite the delineation between hourly and trip rated tags, the Commissioner's proposal seeks to erase those lines. More than being arbitrary and unfair, we question if mixing the two methods of payment is lawful. At a minimum, if the Commissioner's proposal to mix hourly and trip rate remuneration were implemented, it would bring into question the consistency of application of law throughout the licensing and tag allocation process.

From a practical perspective, the proposal creates unmanageable circumstances for the Licensee.

Company drivers and IEOs are employees and are paid by the hour. The company can track and manage their activities and budget costs and charges accordingly as the starting point for the drivers is from a central point (generally the company yard) . Drivers are direct employees of the company and their start and end times and activity during the day are under the direct control and supervision of the company as the employer. Drivers that do not abide by company direction, can face discipline. If the undesired behavior does not change, the driver can be dismissed, and the company can then recruit elsewhere.

IOs are independent and their activity is not managed to the same degree as company drivers paid hourly. The I/Os manage for the most part manage their own time, they are provided with a start time and their first dispatch and then provided with subsequent dispatches on completion throughout the day. As such, their rates are structured to compensate them for work done, not for the time it takes to do the work. IOs have the flexibility to manage their own hours, schedules and method of travel. The I/O chooses their route which may be longer or shorter; I/Os can coordinate with dispatch during the course of their work day to get minor repairs or inspections completed so they do not have to do that on weekends or after hours and it is their choice as to when and where repairs will be done. In sum, Licensees have no tools or desire to manage time for trip rate IOs as these operators are, by definition, independent and paid for the work done, not how long that work takes. I/Os can work up to the full allowable hours as controlled by the National Safety Code. Many drivers choose to limit their availability to 9 or 10 hours in a day while others choose to work to the maximum hours allowable. This choice can in and of itself be equated to overtime as an O/O is paid for each leg and it only stands to reason that trip rates are an incentive to earn more money and it is their choice.

Licensees must work with their customers to negotiate rates for cartage of containers. This calculation is based on one of two methodologies; how long the trip is estimated to take OR the zone with pre-determined trip rates which are distance and time based. Each method has specific elements to manage and mitigate, leverage and compensate. The proposal as outlined by the commissioners office seeks to retrospectively address time for trip rates that have already been negotiated between Licensee and customer.

There is no ability for the Licensee to recover costs from customers after the fact based on an additional time calculation. Even if there were, which customer should costs be recovered from? The last move of the day that took place after an overtime threshold, or the one at the start of the day that set back the driver's schedule? Proportional payment is an untenable, unworkable option. The provision as presented will require Licensees to build in more costs on a broad set of moves to offset which is impossible to manage or predict cost. Another unintended consequence of such a change would destabilize carrier behavior which is why the regulations came into effect in the first place. The regulated rates provide for a level auditable remuneration platform which reduces creative under table arrangements that have gone on in the past and provides for predictable invoicing without additional unknowns.

This leaves the Licensee with very limited options. We are extremely concerned that trip-rated I/Os perhaps do not understand the implications of the proposal. Trip rated Licensees have been clear in discussing the proposal. Should this proposal come to pass, the only option licenses have to manage costs is to limit the moves available to trip-rated drivers. I/Os that are currently incented to work with trip rates allowing for increased earnings would immediately their overall earnings would drop.

This will have an impact on tag usage and efficiency. In short order, trip rated tags will be underutilized. It is disappointing that this proposal comes on the heels of the Bulletin issued April 19 ,2023 wherein the Commissioner discusses layoff of IOs. Making trip-rated IO unpredictably more costly than any other move only serves to make this situation worse. It is a certainty that unpredictable overtime costs, that the Licensee cannot mitigate, will lead to fewer trip rated moves.

From an audit perspective, the provisions will require duplicate effort in tracking hours. Not only will Licensees be responsible for tracking trip-rated hours for the purpose of compliance with Hours-of-Service regulations, Licensees will be required to track and attempt to manage all hours for all trip rated drivers at all times. IOs will lose any flexibility they have taking breaks mid shift. Requirements for breaks, including minimum and maximum as well as scheduling will be observed. No minor repairs can be allowed, lest that time ultimately be charged against a customer at a later time. IOs will see their time tightly managed and controlled and, most importantly, limited. It is also important to note that I/Os do not start their day from a central location. They park their trucks at home or on off-site lots throughout the lower mainland with many O/Os outside of the immediate lower mainland. The O/O manages his own time and has the freedom as a business to choose where they park their equipment.

This limitation will see the most senior, productive O/Os hurt most acutely. Those trip-rated operators that wish to work longer hours will simply not have the opportunity to do so. Work will not necessarily move to other IOs that are underutilized, but instead will flow to company drivers. This trend was evident with the implementation of the PMR in 2019 when trip-rated IOs suffered reduced workload, which did not resolve until the disruption of the pandemic. Given current market conditions where VFPA's GPS data shows a decline of 9% of moves in 2023, the number of laid off IOs as evidenced by your bulletin trying to find them work, the impending economic downturn, increasing capacity at alternative port facilities, it is startling that a proposal to add uncertainty and cost to the element of the fleet that is most impacted is put forth at this time.

We cannot stress this strongly enough. Adding uncertainty and increasing costs for trip-rated drivers will reduce their opportunity for revenue and will drive more business to hourly rated company drivers. Given that the Licensing provisions prohibit movement between trip rate and hourly rate remuneration, trip rated IOs should expect a reduction in the work available to them.

We respectfully submit that you should not advance any work on this issue at all. Doing so will not increase remuneration for trip rated drivers, will create friction between customers and carriers, and increase burden for TLS carriers.

Your way ahead



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We would be pleased to meet with you at any time to discuss our views. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Earle", is enclosed within a thin black rectangular border.

David Earle
President and CEO, BC Trucking Association

.Cc Steve Heywood, Executive Lead, Ministry of Transportation and Highways