



May 8, 2023

Embassy Transportation Inc.
2651 No. 5 Road
Richmond, BC V6X 2S8

Commissioner's Decision
Embassy Transportation Inc. (CTC Decision No 04/2023)

Introduction

1. Embassy Transportation Inc. ("Embassy") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
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, 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. Section 24(2) of the *Container Trucking Regulation* (the "*Regulation*") states that remuneration, fuel surcharge and wait time payments must be paid out to independent operators ("IOs") within thirty (30) days after the end of the calendar month in which the IO performed the work.
5. Section 25 of the *Act* requires licensees to retain and provide records as required by the Commissioner.
6. Embassy operates under a container trucking services licence ("CTS licence"). Section 4(f) of Appendix D to Schedule 1 of the CTS licence states that a licensee must produce payroll records as defined and required by sections 27 and 28 of the *Employment Standards Act* upon request to the Commissioner.

7. Under section 31 of the *Act*, the Commissioner may conduct an audit or investigation to ensure compliance with the *Act*, the *Regulation* or a licence.
8. Embassy has been the subject of one other decision. In 2018, the Commissioner found that it had underpaid fuel surcharges owed to IOs by a total of \$3,354.955: *Embassy Transportation Inc.*, CTC Final Decision Notice No. 9/2018 (“Embassy #1”). Embassy was ordered to compensate the drivers and to pay an administrative fine of \$500.00.
9. In January of 2022, the Commissioner directed an auditor to audit Embassy’s payroll records to determine its directly employed operators (company drivers), indirectly employed operators (“IEOs”) and IOs were being paid at least the regulated minimum rates. The auditor was directed to audit the periods of August 2018, October 2019, October 2020, and November 2021 (together, the “Audit Period”).

Audit Findings

10. On January 5, 2022, the auditor directed Embassy to provide payroll records for the Audit Period.
11. On March 17, 2022, Embassy delivered all the requested records except for the driver trip sheets (“October 2019 Trip Sheets”) for the period of October 2019. Embassy explained that they were unable to locate October 2019 Trip Sheets and suggested they went missing after a change in office locations.
12. The auditor determined that Embassy failed to pay its company drivers in accordance with the minimum regulated rates in during the Audit Period and a total of \$460.83 was owed to four company drivers for work performed in August 2018, \$495.68 to 5 company drivers in October 2019, \$103.15 in October 2020 and \$0.02 in November 2021.
13. The auditor also determined that in the Audit Period Embassy applied incorrect trip rates to IOs, failed to pay the correct Position Movement Rate (PMR) paid less than the regulated rate for the fuel surcharge of 10% in October 2019, 14% in August 2022, and 10% in October 2019. In one instance, Embassy failed to pay one driver for dead runs in August 2018 and October 2020. In total, the auditor found that two IOs were owed a total of \$3,300.27 between them for improperly applied trip rates and PMR and \$4,509.85 for improper fuel surcharges.
14. Embassy explained that their failure to pay the regulated rates during the Audit Period was due to their lack of awareness of the various rate increases.
15. The auditor also noted that two IOs’ October 2019 wage statements showed payroll deductions of \$1,671.56 and \$1,150.11, labeled “adjustments.” Embassy explained that these “adjustments” were reimbursements from the IOs for fuel after an external fuel company it hired inadvertently filled the vehicles owned by the IOs. Embassy was unable to provide the auditor with any invoice from fuel company to substantiate the deductions. One IO confirmed that he was deducted the

cost of fuel from his wages in October 2019 after company Embassy's contractor inadvertently filled his truck with diesel alongside the company trucks owned by the licensee.

16. Upon review of the wait time payments from the Port to Embassy, the auditor noted that Embassy had failed to remunerate IOs within thirty (30) days following the month the wait time payments were earned. The auditor confirmed with Embassy that the wait time payments of October 10, 2019, September 30, 2020 and November 5, 2021 were paid beyond the thirty (30) day period.
17. Embassy's failure to produce the October 2019 trip sheets meant the auditor was unable to confirm that the IOs were paid properly for all trips performed in that month.
18. An audit report was prepared by the auditor and was sent to Embassy on March 2, 2023. Embassy was invited to provide a response to the audit report and no response was received by the deadline.

Decision

19. I accept the findings of the auditor.
20. As described above, the circumstances of this case are:
 - a. The Commissioner ordered an audit of Embassy's company drivers, IEOs and I/Os for the Audit Period (August 2018, October 2019, October 2020, and November 2021).
 - b. The audit process disclosed that Embassy had failed to pay its company drivers and I/Os rates consistent with the *Regulation* during the Audit Period. It was determined that Embassy had underpaid its Company drivers by a total of \$1,059.65 (\$460.83+ \$495.68+103.15 + \$0.02+ \$3,032.61) for the Audit Period.
 - c. The audit also disclosed that Embassy had deducted an inadvertent fuel expense from two IOs during the Audit Period and failed to provide the auditor with supporting documentation for deductions totaling \$1,676.51.
 - d. Embassy also failed to pay IOs the correct fuel surcharge during the Audit Period and underpaid its drivers by a total of \$4,777.51.
 - e. Embassy also failed during the Audit Period to remit the wait time payments to IOs thirty (30) days following the last day of month they were earned. The total amount of wait time was ultimately paid after the 30 day period.
 - f. Embassy failed to produce driver timesheets for October 2019 to the auditor.
 - g. Embassy did not respond to the Audit Report.
21. With respect to Embassy's payroll deduction of \$1,671.56 and \$1,150.11 after its contractor inadvertently provided fuel to two IOs, there are two issues that need to be addressed. First, Embassy failed to provide any supporting documentation to establish that the deductions matched the fuel cost associated with the respective driver as required in in appendix D (4)(f). Second, section 13 of the *Regulation* creates a minimum rate which must be paid to drivers for each trip

made and section 24 of the Act and Appendix E (2) of the CTS license prohibit set offs or business costs from compensation owed to a driver. In this case, Embassy was allegedly charged by its contractor for filling two trucks it should have not filled. Embassy offset their contractors charge by passing its cost onto the two drivers. Embassy hired a contractor and the contractor made an error – that is the cost of doing business. While Embassy or the contractor may be entitled to a return of the fuel or payment from the recipient, Embassy is not entitled to make deductions for such a business cost – especially those not supported by documentation – as they are not permitted under s. 24 of the Act or its CTS License. In either case, I find that the deductions totalling \$1,671.56 and \$1,150.11 was in breach of the Act.

22. 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.
23. The seriousness of the available penalties indicates the 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 established rates. 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.
24. In previous decisions of the Commissioner, the violations of the types identified in this audit (non-compliant rate payments, improper deductions and poor record keeping) have resulted in financial penalties to the licensee. Embassy has been issued a penalty in the past for failure to pay the regulated rates. Maintenance of complete, accurate and up-to-date records is a fundamentally important obligation. See for example *MDW Express Transport Ltd.* (CTC Decision No. 01/17).
25. The Act gives the Commissioner a broad discretion as to whether a penalty should be issued in any particular case. The factors to be considered have been identified in earlier decisions and include the following:
 - did the company cooperate fully with an audit or investigation?
 - has the company complied with orders or directions given by the Commissioner (or a delegate of the Commissioner, including an auditor)?
 - has the company engaged in meritless dispute of, or delays in paying, amounts found to be owing?
 - has the company engaged in any form of fraudulent, deceptive, dishonest or bad faith behavior with respect to compliance with the requirements of the Act, the Regulation or a licence?
 - has the company been significantly enriched by the breach?
 - has the licensee received a previous penalty?

26. I have concluded that this is an appropriate case to issue a penalty. I come to this decision for the following reasons:

a. While Embassy cooperated with the auditor, its record keeping was deficient. The lack of proper record keeping – albeit for a one-month period - frustrated the auditor’s ability to confirm that Embassy was compliant with the *Act* for the month of October, 2019.

b. Embassy has a statutory obligation and an obligation under the terms of its licence to pay the rates set out in the *Act*. The audit results disclose that it has not met this obligation. The compensation being paid to its drivers during the Audit Period was found to be inadequate and requires adjustment in the sum of \$11,691.55 While this sum is not a exorbitant amount, it impacted a total of nine drivers over 4 months with one of those months not subject to the auditor’s scrutiny due to Embassy’s lack of record. It must be emphasized that the onus to become and remain compliant with the requirements of the *Act* rests entirely with the Licensee. The *Regulation* requires the Commissioner’s rate to be set by order and before that the rate was set out through an order-in-council. In either case, the regulatory scheme required publication of the rates and the changes. The rates are published and updated on the Commissioner’s website. I was provided no explanation why Embassy failed to inform itself of the rate changes which is entirely its responsibility.

c. The fuel surcharge underpayment of over \$4,500 to two drivers over four months may not be excessive, it is a significant amount of money and concerning since Embassy was previously penalized \$500.00 in Embassy #1 after it failed to pay its IOs the regulated fuel surcharge. Repeated failures to comply with the *Act* will almost certainly result in an escalating penalty – especially when a licensee’s actions persist after an initial penalty is issued. In this case, I find that the previous penalty did not have the desired deterrent effect.

27. Considering the above circumstances, I find that to ensure that drivers are paid properly and in a timely way and to proper record keeping, a penalty of \$6,000.00 is warranted. In my view, \$5,000.00 is sufficiently large to meet the objective of deterring continuing misconduct by Embassy.

28. I also order Embassy to pay the following drivers within 7 days of this decision the amounts identified in the Audit Report and to provide the auditor with proof of payment no later than the May 31, 2023:

Driver	Wages	Fuel Surcharge	Improper Deduction	Total
R. Brar	\$215.60			\$215.60
S Gill	\$244.30			\$244.30
P. Multani	\$124.61			\$124.61
R. Vasir	\$91.93			\$91.93
Z. Yin	\$187.20			\$187.20
C. Cai	\$101.51			\$101.51
L. Lam	\$94.61			\$94.61
J. Nijjar	\$2,394.57	\$3,076.14	\$1,671.56	\$7,142.27
G. Sidhu	\$905.70	\$1,433.71	\$1,150.11	\$3,489.52
TOTAL				\$11,691.55

29. I also order Embassy within three months of this decision to review its payroll records from the period of May 8, 2019 to the date of this decision (excluding the months covered in the Audit Period) and make the appropriate adjustments to bring itself with compliance with the Act. If Embassy determines an underpayment(s) occurred, it is to advise the Commissioner of the corrections no later than August 31, 2023.

30. 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 to \$6,000.00
- b. Should it wish to do so, Embassy has 7 days from the receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
- c. If Embassy provides a written response in accordance with the above, I will consider its response and I will provide notice to Embassy 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, Embassy has been found in violation of the Act, the Regulation and its license for paying its drivers non-compliant rates and failing to pay its drivers within the period required under the Regulation. Additionally, Embassy has failed to maintain proper records and continued to under-pay the regulated fuel surcharge despite the administrative fine issued in Embassy #1. I have deemed it appropriate to propose an escalating penalty of \$6,000.00 for its non-compliance.

32. I have also ordered Embassy to pay the drivers the amount identified in this decision within 7 days and to review its payroll records from the date of this decision back to May 8, 2019 in order to make the necessary adjustments and resulting payments to drivers to bring itself into compliance within three months of this decision. Failure to do so may result in a further administrative penalty.
33. This decision will be delivered to the licensee and published on the Commissioner's website (www.obcctc.ca)

Dated at Vancouver, B.C. this 8 day of May, 2023

A handwritten signature in blue ink that reads "Glen MacInnes". The signature is written in a cursive, flowing style.

Glen MacInnes
Commissioner