



May 12, 2023

Goodrich Transport Ltd.
1880 Dyke Road
Surrey, BC V3V 7P4

Commissioner's Decision
Goodrich Transport Ltd. (CTC Decision No 06/2023)

Introduction

1. Goodrich Transport Ltd. ("Goodrich") 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 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. Goodrich currently operates under a container trucking services license that came into force on December 1, 2022 ("2022 CTS License"). Section 6.15 of the 2022 CTS license states: "The Licensee must carry out Container Trucking Services using only Truck Tags allocated by the Commissioner on the conditions imposed by the Commissioner." Section 6.16 states: "The Licensee must assign a Truck Tag to each truck performing Container Trucking Services."
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. Goodrich has been the subject of two other audits -- one in 2017 and one in 2019. After both audits the Office of the British Columbia Container Trucking Commissioner ("OBCCTC") issued an audit completion letter to Goodrich and found no violations of the *Act, Regulation* or its CTS license.
7. On December 1, 2022, the OBCCTC participated in an enforcement initiative alongside the Commercial Vehicle Safety and Enforcement branch ("CVSE").

Investigation

8. On December 1, 2022, a container truck without a truck tag was observed moving a container on Blundell Road in the city of Richmond. The container truck was identified as Unit 127 and as owned by Goodrich (the "Untagged Unit").
9. On December 15, 2022, the Commissioner wrote to Goodrich concerning the Untagged Unit performing work on December 1, 2022 and asked for its response.
10. On December 22, 2022, Goodrich advised the OBCCTC that the Untagged Unit had performed untagged container trucking work on December 1, 2022. Goodrich explained that the driver was assigned the Untagged Unit after the tagged vehicle he normally drives was sent for repair. Goodrich provided receipts to demonstrate that the tagged unit was at the mechanic shop between November 24 and December 7, 2022. Goodrich further advised that when it became aware that the Untagged Truck had been used for container trucking services, its president held a meeting with his administrative staff to instruct them that "all trucking work, both off-dock and on-dock was [to be] undertaken by tagged trucks."
11. On January 17, 2023, the OBCCTC requested, obtained, and reviewed relevant records and determined that the Untagged Unit performed nine (9) trips over fourteen and half (14 ½) hours on December 1, 2022. The OBCCTC also determined that the Untagged Unit had performed five (5) trips over eleven (11) hours on November 28, 2022, six (6) trips over ten and half (10 ½) hours on November 29, 2022, and twelve (12) trips over eleven and a quarter (11 ¼) hours on November 30, 2022

Decision

12. As described above, the circumstances of this case are:
 - a. The OBCCTC conducted an enforcement initiative on December 1, 2022.
 - b. On December 1, 2022, the Untagged Unit owned by Goodrich was observed performing off-dock container work.
 - c. Goodrich records disclose that the Untagged Unit performed five (5) trips over eleven (11) hours on November 28, 2022, six (6) trips over ten and half (10 ½) hours on November 29,

2022, twelve (12) trips over eleven and a quarter (11 ¼) hours on November 30, 2022 and nine (9) container moves on December 1, 2022.

- d. Goodrich acknowledged that it had performed untagged work.
13. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act* or the terms of its licence, 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 may not exceed \$500,000 in cases relating to the payment remuneration, wait time remuneration or fuel surcharge. In any other case an administrative fine may not exceed \$10,000.
 14. 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 independent operators 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.
 15. 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.
 16. Historical labour disruptions in the container trucking industry were caused in part because there were too many I/Os chasing too few containers, forcing many drivers and companies to undercut each other's rates. The drivers and companies would offset their lower wages by increasing the volume of containers they moved each day. This practice led to an unequal distribution of work as the lowest paid drivers moved the most containers. As it eventually became less economically viable for drivers to move containers, labour unrest occurred.
 17. In order to address this instability in the drayage sector, the *Act* and the *Regulation* established minimum rates, and the OBCCTC adopted the Vancouver Port Authorities truck tags system. Minimum rates ensure that it is economically viable for drivers to move containers. Truck tags are a visible indicator to other container drivers and licensees that the truck is registered with the OBCCTC and are

an important way to balance the number of trucks with the volume of work available and encourage the movement of drivers to high performing companies.

18. The OBCCTC monitors the efficiency of licensees and ensures drivers are being paid the minimum rates by capturing GPS data generated from each tagged truck. GPS data assists the OBCCTC auditors in ensuring drivers are paid the minimum rates. The GPS data is also used to create a scorecard (“Scorecard”) that assists the Commissioner in evaluating the performance of each licensee. To ensure that there is enough work for the drivers, the Commissioner uses the Scorecard to reallocate tags assigned to trucks that are underperforming to licensees who have trucks that are overperforming.
19. Untagged trucks do not have a GPS system accessible to the OBCTCC, which hinders the OBCCTC’s ability to track trucks to ensure drivers are paid correctly. Having untagged trucks without GPS performing container trucking work also skews the Scorecards used to reallocate truck tags by not recording all the container moves of the licensee.
20. In the present case, Goodrich does not dispute that it performed untagged container trucking services. Goodrich admits that replacing a mechanically disabled tagged truck with the Untagged Truck was “an error and/or ignorance on their part...without realizing that the prohibition of untagged trucks performing off dock work had been implemented on December 1, 2022.” Goodrich also says that it has taken steps to ensure this is not repeated. In addition, Goodrich argues that it has been a licensee since the creation of the OBCCTC and has not been issued any previous fines.
21. While I accept the circumstances that led up to the use of the Untagged Truck between November 28 and December 1, 2022, I cannot accept that Goodrich was ignorant of requirements to only use tagged trucks to perform both off-dock and on dock work on December 1, 2022 or any other day. The 2022 CTS licence, and all prior licenses (which Goodrich has also operated under), requires licensees performing container trucking services (on-dock and off-dock) to use only tagged trucks. This is not a new requirement. On April 17, 2020, the OBCCTC issued a bulleting advising that all trucks performing container trucking services under licence must be tagged. On October 4, 2022, I issued an industry advisory reminding licensees that “both on and off-dock container trucking services are to be completed by licensed companies using tagged trucks.”
22. The amended license that became effective December 1, 2022 reinforces the prohibition against the performance of untagged off-dock container trucking services by adding a term prohibiting licensees from subcontracting off-dock work to non-licensees. As set out above, however, the requirement to use only tagged trucks for container trucking services work (both on-dock and off-dock) existed in previous licenses issued to Goodrich.
23. I acknowledge that the serious concern that using untagged trucks to avoid paying the minimum rates set out in the *Act* and the *Regulation* is not a factor in this case as Goodrich paid the driver of the Untagged Unit the regulated rates for the work performed between November 28 to December 1, 2022. However, the decision of Goodrich to use an untagged truck between November 28 – December 1, 2022 resulted in thirty-two (32) containers moves of which the OBCCTC was unaware.

Those moves did not form part of the Scorecard data used to assess whether Goodrich was meeting its performance expectations. Therefore, the Scorecard data generated for Goodrich was not a true reflection of the container moves performed between November 28 – December 1, 2022.

24. Like all licensees, Goodrich is responsible for knowing its obligations under the legislation and its licence, including ensuring that vehicles performing container trucking services are properly tagged. I find that Goodrich breached the 2022 CTS license when it operated an untagged container truck between November 28 and December 1, 2022.
25. I have also considered Goodrich's previous audits. I recognize that Goodrich has not to date been penalized for breaching the *Act, Regulation* or licence. This is a mitigating factor.
26. In this case, I did not find any breach of the *Act, Regulation* or term of the licensee related to payments of remuneration, wait time remuneration, or fuel surcharge. The maximum available administrative fine in any other case is \$10,000. For these reasons I have concluded that an administrative penalty of \$1,000 is appropriate in this case.
27. In Smart Choice Transportation Ltd. (CTC Decision No. 21/2016), it was noted that "the amount of any financial penalty must be sufficiently large to meet the objective of deterring non-compliance." The purpose of the fine is also one of general deterrence. It is intended to discourage other license holders from using untagged trucks to move containers in the Lower Mainland.
28. With this decision, it should be clear to all licensees that all container trucking services – both off-dock and on-dock – must be performed using tagged trucks. Failure to comply is likely to result in a penalty. This fine would be higher if Goodrich were not generally compliant in previous audits.
29. Considering all the factors present in this case, I conclude that this is an appropriate case to issue a penalty of \$1,000.00. Therefore, in accordance with s. 34(2) of the *Act* I hereby give notice as follows:
30. I propose to impose an administrative fine against Goodrich in the amount of \$1,000.00;
31. Should it wish to do so, Goodrich 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;
32. If Goodrich provides a written response in accordance with the above I will consider its response, and I will provide notice to Goodrich 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

33. In summary, Goodrich has been found to have violated its CTS license by performing container trucking services in the Lower Mainland with an untagged truck. I have determined that it is appropriate to propose the imposition of a \$1,000.00

Dated at Vancouver, B.C. this 12th day of May, 2023

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is written in a cursive style with a large initial 'G'.

Glen MacInnes
Commissioner