



September 11, 2023

Tri-R Transport Ltd.
7107 134A Street
Surrey, BC V3W 4V4

Tri-R Transport Ltd. (CTC Decision No 03/2023) – Decision Notice

Overview

1. On March 15, 2023, the Office of the BC Container Trucking Commissioner (“OBCCTC”) participated in an enforcement initiative and a truck operated by Tri-R Transport Ltd. (“Tri-R”) was observed performing container trucking services without a truck tag. On April 18, 2022, I invited Tri-R to provide a submission and requested payroll records to determine if Tri-R was compliant with sections 22 and 23 of the *Container Trucking Act* (“Act”) and sections 6.15 and 6.16 of the Container Trucking Services licence (“CTS Licence”). Tri-R provided a submission (“Submission #1”) on April 26, 2023.
2. In Tri-R Transport Ltd (CTC Decision No 07/2023) (the “Original Decision”), I determined that Tri-R had paid the driver the required minimum rates; however, I found Tri-R had violated sections 6.3, 6.15 and 6.16 of the CTS Licence and determined that this was an appropriate case to issue a penalty for the reasons set out in paragraphs 21-27 of the Original Decision. I proposed an administrative fine against Tri-R in the amount of \$1,000.00.
3. Consistent with s. 34(2) of the *Act*, I advised Tri-R that I would consider its written response to the proposed penalty if it was received within 7 days. Tri-R provided a written response via email dated May 18, 2023 (“Submission #2”).

Licensee Response (Submission #2)

4. Tri-R argues the penalty is disproportionate to the nature of the wrongdoing and the circumstances of the case and asks that I exercise my discretion and replace the proposed penalty with a written warning.
5. Tri-R acknowledges it was aware of the requirement to use tagged trucks and acknowledges the seriousness of using non-tagged trucks to perform CTS work; however, Tri-R argues that it has an exemplary compliance history with the OBCCTC and under the previous license regime managed by the Port of Vancouver. It argues it would be unfair to penalize Tri-R and cause it to suffer the negative consequences of a published Commissioner’s decision for its first minor infraction. Furthermore, Tri-R states the proposed penalty is disproportionate to a recent unidentified Commissioner’s decision where no penalty was issued following a finding of four unspecified infractions.
6. Tri-R denies that it suggested at any time that it was ignorant of the requirement to only use tagged trucks. Tri-R asserts it knew about its obligation under its CTS Licence and has submitted a November 7, 2022 email exchange with the VFPA showing its inquiry into how the Short Term Replacement

(“STR”) Tag Program works, in response to which the VFPA outlines the process for a replacement tag and advises that it could take up to 2 days unless expedited. The STR is a program that allows licensees to replace tagged trucks that are out of service for a short period of time with replacement trucks with a new tag and GPS system. Tri-R states that while it was an oversight not to have contacted the VFPA on March 15, 2023, even if it had done so, the STR Program can involve up to a two-day delay in processing the replacement truck and that would have impacted their service to a customer and prevented the driver from earning wages while he waited for the new tagged truck.

7. Tri-R submits that the *Regulation* does not include a streamlined process to address broken vehicles and provides a series of recommendations to the VFPA and the OBCCTC that would allow for tagged trucks to be replaced more quickly.
8. Tri-R also notes that the Commissioner did not find that the driver was paid less than the regulated rates.
9. Tri-R repeats many of the arguments raised in Submission #1 and concludes that its unblemished compliance with the *Act, Regulation* and its CTS License should afford it greater leniency considering it was placed in an impossible position after the breakdown of its tagged truck.

Consideration of Licensee’s Response

10. The factors outlined in Smart Choice Transport Ltd. (CTC Decision No. 21/2016) were applied and weighed when considering the proposed penalty. I acknowledged in the Original Decision that Tri-R experienced a mechanical breakdown and erroneously failed to inform the VFPA – and ultimately the OBCCTC -- that it was using a replacement truck. I also acknowledged that no drivers were harmed due to underpayment of wages and Tri-R had not received a previous penalty issued by the OBCCTC.
11. I acknowledge Tri-R’s concerns about possible delay had it used the STR Program on March 15, 2023, but, regardless of the consequences Tri-R felt may have occurred, its conduct is not permitted under the CTS Licence. I also note the VFPA’s comment in the email exchange reference above that the process can be expedited. As I outlined in Ferndale Transport Ltd. (CTC Decision Notice No. 07/2023), tagged trucks ensure that the truck is known to the OBCCTC and has the required GPS system to allow the OBCCTC to monitor compliance and avoid too many trucks chasing too few containers. Tagged trucks are also a visible identifier to other drivers and licensees of this system. To permit a licensee to use untagged trucks to perform container trucking services – even for a short period of time – would reduce the OBCCTC’s ability to enforce the *Act* and make it very difficult to distinguish between those licensees who have experienced a breakdown from the licensees who are using untagged trucks to move containers.
12. While Tri-R did not provide a citation for the Commissioner’s decision involving a different licensee who was allegedly not fined after its fourth breach, and I am not aware of same., I note that similar administrative fines have been issued in cases involving the use of untagged trucks. See Goodrich Transport Ltd. (CTC Decision Notice No. 06/2023) and Ferndale Transport Ltd. (CTC Decision Notice No. 07/2023).

13. I accept that the Original Decision incorrectly found that Tri-R claimed ignorance of the requirements under the CTS License as a reason for non-compliance. Submission #2 provided a more fulsome explanation of the proactive steps Tri-R took to ensure compliance and its the failure to contact the VFPA on March 15, 2023. I accept that Tri-R was aware of its obligations to only use tagged trucks and how to use the STR Program such that, but for the inadvertent oversight, it would have notified the VFPA on March 15, 2023. My understanding is that the STR process has an expedited process available to licensees but if that process is not sufficient to meet Tri-R's needs then Tri-R must take other steps to move containers while being compliant with its CTS Licence including using another tagged truck or contracting out to another licensee.
14. While I understand Tri-R's concern about the negative consequences that flow from any finding, the purpose of an administrative penalty is to deter the licensee from engaging in the same or similar conduct in the future and send a clear deterrent message to other licensees that the conduct will not be tolerated in the drayage sector. The fact remains that Tri-R – although inadvertently -- used an untagged truck to perform container trucking services in breach of its licence and Tri-R acknowledges that using untagged trucks is a serious matter.
15. I will not refrain from imposing a penalty for the reasons outlined above and in my Original Decision other than my understanding that Tri-R had suggested that it was unaware it required tagged trucks when using a replacement vehicle. In my view, there is little difference between an acknowledged oversight and ignorance of a license requirement and an administrative penalty is intended equally to ensure neither are repeated.

Conclusion

16. Having carefully considered Tri-R's submission and for the reasons outlined above and in my Original Decision, I will impose a penalty of \$1,000.00.
17. In the result, I hereby order Tri-R to pay an administrative fine in the amount of \$1,000.00. Section 35(2) of the *Act* requires that this fine be paid within 30 days of the issuance of this Decision Notice. Payment should be made by delivering to OBCCTC a cheque in the amount of \$1,000.00 payable to the Minister of Finance.
18. Finally, I note that Tri-R may request a reconsideration of the Commissioner's Decision Notice by filing a Notice of Reconsideration with the Commissioner not more than 30 days after Tri-R's receipt of this Decision Notice. A Notice of Reconsideration must be:
 - a. made in writing,
 - b. identify the decision for which a reconsideration is requested,
 - c. state why the decision should be changed,
 - d. state the outcome requested,
 - e. include the name, an address for delivery, and telephone number of the applicant and, if the applicant is represented by counsel, include the full name, address for delivery and telephone number of the applicant's counsel,
 - f. signed by the applicant or the applicant's counsel.

Despite the filing of a Notice of Reconsideration, the above orders remain in effect until the reconsideration application is determined.

This Decision Notice along with the Commissioner's Decision will be published on the OBCCTC website.

Dated at Vancouver, B.C. this 11th day of September 2023

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is fluid and cursive, with the first name "Glen" and last name "MacInnes" clearly distinguishable.

Glen MacInnes
Commissioner