



May 12, 2023

Tri-R Transport Ltd.
13911 Garden City
Richmond, BC V7A 2S5

Commissioner's Decision
Tri-R Transport Ltd. (CTC Decision No 03/2023)

Introduction

1. Tri-R Transport Ltd. ("Tri-R") 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. Tri-R 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. The Office of the BC Container Trucking Commissioner ("OBCCTC") CTS License Truck Tag Management Policy (June, 2020) provides that tags "cannot be explicitly or implicitly or directly or indirectly assigned, transferred, shared, traded, bought or sold."
6. 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.

7. Tri-R has been the subject of one audit and the Office of the British Columbia Container Trucking Commissioner (“OBCCTC”) issued an audit completion letter to Tri-R and found no violations of the *Act, Regulation* or its CTS license.
8. On March 15, 2023, the OBCCTC participated in an enforcement initiative alongside the Commercial Vehicle Safety and Enforcement branch (“CVSE”).

Investigation

9. On March 15, 2023 a container truck (Penske) without a truck tag was observed moving a container at or near Kennedy Road in Pitt Meadows. The container truck was identified as being rented by Tri-R (the “Untagged Unit”).
10. On April 18, 2022, the Commissioner wrote to Tri-R concerning the Untagged Unit performing work on March 15, 2023 and asked for its response.
11. On April 26, 2023, Tri-R advised the OBCCTC that the Untagged Unit had performed five untagged container movements on March 25, 2023. Tri-R explained that Untagged Unit was a loaner vehicle used to replace another tagged unit that was off the road getting repairs. Tri-R acknowledges the Untagged Unit was not compliant with its CTS license but argues that its use of the Untagged Truck was an unintentional oversight and the driver was paid the regulated rates which is the main purpose of the *Act*. Tri-R provided receipts to demonstrate that the tagged unit was at the mechanic shop between February 28 and March 16, 2023. Tri-R argues that they should be given some consideration based on the situation and their understanding that the legislation does not permit replacement trucks.
12. The OBCCTC requested, obtained, and reviewed relevant records and determined that the driver in the Untagged Unit worked for 10 ½ hours on March 15, 2023 and he was paid at least the minimum hourly regulated rates.

Decision

13. As described above, the circumstances of this case are:
 - a. The OBCCTC conducted an enforcement initiative on March 15, 2023.
 - b. On March 15, 2023, the Untagged Unit rented by Tri-R was observed performing off-dock container work.
 - c. Tri-R records disclose that the driver performed 10 ½ hours of CTS work in the Untagged Unit on March 15, 2023 and he was paid the minimum regulated rates.
 - d. Tri R acknowledged that it had performed untagged work on March 15, 2023.

14. 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.
15. 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.
16. 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.
17. 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.
18. 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.

19. 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.
20. Untagged trucks do not have a GPS system accessible to the OBCCTC, 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 and GPS data used to reallocate truck tags by not recording all the container moves of the licensee.
21. In the present case, while the use of the Untagged Unit was minimal, Tri-R does not dispute that it performed untagged container trucking services. Tri-R admits replacing a mechanically disabled tagged truck with the Untagged Truck and it "mistakenly forgot that we had not advised the Port of Vancouver TLS administration team that we would be using a temporary sub-truck in place of our regular tagged truck." Tri-R argues that using the Untagged Truck was an oversight and under the circumstances they faced it should be given consideration.
22. While I accept the circumstances that led up to the use of the Untagged Unit on March 15, 2023, I cannot accept that Tri-R was ignorant of requirements to only use tagged trucks to perform both off-dock and on dock work on March 15, 2023 or any other day. The 2022 CTS licence, and all prior licenses (which Tri-R 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."
23. 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 Tri-R.
24. 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 Tri-R paid the driver of the Untagged Unit the regulated rates for the work performed between March 15, 2023. However, the decision of Tri-R to use an untagged truck on March 15, 2023 resulted in containers moves of which the OBCCTC was not aware. Those moves did not form part of the Scorecard data or GPS data used to assess whether Tri R was meeting its performance expectations. Therefore, the Scorecard generated for Tri R was not a true reflection of the container moves performed on March 15, 2023.

25. I am also concerned that Tri-R deflects some of its responsibility for its oversight based on its interpretation that the regulatory scheme in place does not accommodate replacement trucks in circumstances like mechanical breakdowns. The CTS License requires all the licensees' trucks to be tagged and if a licensee has an inoperable tagged truck for any reason, they can contact the TLS administrator or the OBCCTC who will take steps to ensure the replacement truck is tagged and has the GPS installed. This may be a process that a licensee may find too onerous, but the regulatory scheme permits such a replacement truck to perform the work. If a licensee chooses to forgo the process in place to set up a replacement truck, then they are likely to face a penalty if they choose to operate an untagged replacement truck.
26. Like all licensees, Tri-R 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 Tri-R breached the 2022 CTS license when it operated an untagged container truck on March 15, 2024.
27. I have also considered Tri-R's previous audits. I recognize that Tri-R has not to date been penalized for breaching the *Act, Regulation* or licence. This is a mitigating factor.
28. 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.
29. 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.
30. 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 Tri-R were not generally compliant in previous audits and they had not paid the driver the regulated rates.
31. 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:
32. I propose to impose an administrative fine against Tri-R in the amount of \$1,000.00;
33. Should it wish to do so, Tri-R 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;

34. If Tri-R provides a written response in accordance with the above I will consider its response, and I will provide notice to Tri-R 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

35. In summary, Tri-R 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 12 day of May, 2023

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is written in a cursive, flowing style.

Glen MacInnes
Commissioner