



October 5, 2023

Jete's Lumber Company Ltd.
1877 Upland Drive
Vancouver, BC V5P 2C5

Commissioner's Decision

Jete's Lumber Company Ltd. (CTC Decision No 12/2023)

Introduction

1. Jete's Lumber Company Ltd. ("Jete's") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. MTB Freightways Ltd. ("MTB") is a company involved in container trucking services but is not a licensee under the *Act*.
3. Mr. Deepak Mattu is listed in the BC Company Summary (currency date March 10, 2023) as the sole director of Jete's. Mr. Deepak Mattu and his brother Terry Mattu are listed as a directors of MTB.
4. Jete's has 15 truck tags in total assigned under its container trucking services ("CTS") licence. Eight of the truck tags are designated company tags. Seven truck tags are designated independent operator ("IO") truck tags.
5. 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.
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. Jete's currently operates under a licence that came into force on December 1, 2022 ("2022 CTS licence"). Section 6.20 of the 2022 CTS licence states: "The Licensee must comply with the terms of the Sponsorship Agreement attached as Schedule 2 ("Sponsorship Agreement"). Condition #4 of the Sponsorship Agreement requires that the Sponsored IO is on the IO List held and administered by the OBCCTC. Condition #6 specifies that "the Sponsored IO may not employ more than one person at a

time to undertake Container Trucking Services.” A driver employed by a sponsored IO is referred to as an indirectly employed operator (“IEO”).

8. The Office of the BC Container Trucking Commissioner (“OBCCTC”) initiated an investigation after receiving a complaint that Jete’s had entered into a Sponsorship Agreement with MTB in contravention of its 2022 CTS license.

Background

9. On May 5, 2023, the Office of the BC Container Trucking Commissioner (“OBCCTC”) advised Jete’s and MTB that Jete’s Sponsorship Agreements with MTB appeared to be in violation of the *Act* and Jete’s CTS licensee. The reasons provided were as follows:
 - a) MTB is not listed on the OBCCTC I/O List as required by the Sponsorship Agreement; and
 - b) MTB and Jete’s share a director and a licensee is precluded from being an IO under the *Regulation*; and
 - c) Jete’s had signed four Sponsorship Agreements with MTB and four different full-time IEOs had been hired to drive the trucks in violation of the terms of the Sponsorship Agreement.
10. Both MTB and Jete’s (“the Companies”) were invited to provide a submission.
11. On May 30, 2023, counsel for the Companies provided a submission on behalf of both companies (the “Submission”) setting out the following:
 - a) Mr. Deepak “Billy” Mattu is the sole director of Jete’s and is also a director of MTB, along with his brother, Mr. Terry Mattu. While MTB and Jete’s acknowledge that Mr. Deepak Mattu is listed as director for both companies, they do not agree that this arrangement makes MTB a “Related Person” of Jete’s as defined in the CTS licence; therefore, MTB should not be considered the licensee and should not be prohibited from being classified as an IO.
 - b) MTB has been sponsored by Jete’s for approximately 15 years and should be on the IO list given that the CTS License Tag Management Policy (“Tag Policy”) provides at paragraph 16 that effective January 1, 2018, all sponsored and joined IOs have been placed on the I/O List. Given the list is not published and the OBCCTC approved the Sponsorship Agreements in 2020 and 2022, it has been assumed MTB is on the IO List.

- c) Jete's and MTB acknowledge MTB employs more than one IEO at one time via the four Sponsorship Agreements. However, they argue that given the provision was only introduced in the 2022 CTS license, an equitable solution could involve "grandfathering" the four Sponsorship Agreements until the renewal of the 2022 CTS license or allowing Jete's to maintain one Sponsorship Agreement with MTB and allocating the other three tags to Jete's as company tags.
- d) If it is determined that MTB is not on the IO List, MTB should be given a reasonable opportunity to apply to be on the IO List given the understanding that it was captured by paragraph 16 of the Tag Policy.
- e) No penalties should be issued in the case given the candor of the licensee and the relatively new requirements set out in the 2022 CTS License.

Analysis and Decision

12. As I understand it, there are four Sponsorship Agreements between the licensee (Jete's) and a company purporting to be an IO (MTB). MTB is owned by Mr. Deepak (Billy) Mattu, and his brother, Terry Mattu. MTB owns four trucks and has hired four individuals to drive them. In my view, to permit MTB to exist as an IO would be inconsistent with the *Act*.
13. The starting point of my analysis is the purpose of the *Act* and the regulatory scheme that necessitates Sponsorship Agreements between IOs and licensees.
14. After a number of work stoppages in the Lower Mainland drayage sector due to undercutting of wages by drayage companies, a Joint Action Plan ("JAP") between the Governments of Canada and British Columbia and recognized representatives of container truck drivers was signed in 2014. The Sponsorship Agreement regime associated with the CTS licence is a product of the reform committed to under the JAP, one of the main purposes of which was to control the number of drivers/trucks accessing the port.
15. The Sponsorship Agreement regime assists in avoiding an oversupply of drivers by allowing the OBCCTC to control the number of IOs that can be sponsored. The OBCCTC maintains an IO List of IOs eligible for sponsorship. The number of IOs on the IO List is limited to match the number of IO truck tags in circulation (both Active and Vacant tags) to avoid flooding the industry with IOs, as this could result in IOs being willing to accept less than the rates set in the Rate Order in order to gain more work from licensees, which can in turn destabilize the industry.

16. The OBCCTC also controls the number of IOs performing container trucking services to avoid undercutting of rates through a truck tag system by which the OBCCTC limits the number of truck tags issued to licensees to match the volume of containers that need to be moved on and off dock.
17. In the matter before me, Jete's and MTB appear to take the position that MTB should either be on the IO List or be permitted to apply to be on the IO List. However, MTB does not qualify as an IO under the *Act* or *Regulation*. MTB, as a company, does not and cannot operate any of its vehicles but rather hires drivers to exclusively operate the vehicles.
18. While some drivers who own their trucks may organize themselves through incorporation, the IO List referred to in the CTS Licence is associated with an individual driver. Permitting only individuals (i.e. drivers) on the IO List is consistent with the beneficial legislative scheme intended to protect drivers performing work in the drayage sector and create stability so those same drivers do not interrupt the ports due to improper remuneration. The benefits to drivers include setting minimum regulated rates for their work and shielding those who own vehicles from the fluctuations of the costs associated with the maintenance and use of their equipment for the benefit of the licensee.
19. An IO must personally perform the container trucking services. The *Regulation* defines an IO as "a person, other than a licensee, who performs container trucking services" (and who has an interest in a container trucking vehicle). Company drivers and IEOs are also defined as individuals who "perform" container trucking services.
20. Legislation should be interpreted purposively and practically. As stated by the *Supreme Court of Canada in Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, "words of the Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the intention of Parliament" (para. 21). Furthermore, as the Court notes in the next paragraph of that decision, every Act is "deemed to be remedial" and must receive "such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act, according to its true intent, meaning and spirit" (para. 22).
21. The *Act* was informed by the 2014 "Recommendation Report – British Columbia Lower Mainland Ports" prepared by Vince Ready and Corinn Bell ("Ready/Bell Report") following the signing of the JAP. The Ready/Bell Report discusses the unique role and challenges of IOs and clearly identifies IOs as "drivers":

The main difference between company drivers and owner-operators [IOs] is that company drivers are usually paid by the hour and are employees of drayage companies, while owner-operators are normally paid by the trip based on a share of revenue received by the drayage company from its customers and on existing regulated or contractually agreed rates and are

considered independent contractors selling their services to drayage companies as drivers.¹
(emphasis added)

22. The Ready/Bell Report defines drayage companies to include those that “depend entirely on revenue from transporting import/export containers” and “employ company drivers and/or owner operators [I/Os] to carry the containers in the local drayage market”² and recommends that each drayage company be required to hold a license. The companies described in the Ready/Bell Report who owned truck(s) but did not perform container trucking services – who instead hired drivers to perform container trucking services – are now licensed. Licensees are specifically excluded from being IOs per the *Regulation*, which defines an IO as “a person, other than a licensee, who performs container trucking services”. A company operating as a business carrying out container trucking services exclusively through its drivers is more akin to a licensee. Licensees, who receive earnings from the work of their drivers, are regulated under the *Act* in part to ensure the fair treatment of drivers. MTB is also receiving earnings from the work of its drivers as an IO, but because it is not a licensee the OBCCTC has less oversight over MTB.
23. In October 2014, the then Minister of Transportation and Infrastructure, the Hon. Todd Stone, introduced Bill-5, the *Container Trucking Act*, to the legislature. In a response to MLA Claire Trevena during the committee stages, Minister Stone reinforced that the definition of “trucker” was intended to include owner-operators (I/Os):³

C. Trevena: It’d be nice if it’s all so easy, wouldn’t it? We now get to the definition of “trucker.” We have quite a long definition here, three parts: “(a) a person who has an ownership interest or a leasehold interest in a vehicle...(b) an employee, within the meaning of the *Employment Standards Act*...and (c) a person who drives a vehicle described in paragraph (a) on behalf of (i) a licensee, or (ii) a person referred to in paragraph (a).” I wonder if the minister can clarify how this works, the relationship between the owner-operators and the employee drivers. Is it once more, because we’re talking about “person” in the legal sense, that it is a corporate person rather than an individual? I wonder if the minister could just clarify a little bit about what the single definition of “trucker” is.

Hon. T. Stone: Yes. This definition of “trucker,” by breaking it out into the three different subcomponents, is intended to capture the full scope or full gamut of the different types of realities that come into play with respect to truckers. In sub (a), really, that language is intended to reflect owner-operators. Sub (b) is intended to reflect employees of trucking companies. Sub (c) is intended to reflect the situation of a subcontracted individual who works

¹ Recommendation Report – British Columbia Lower Mainland Ports” Vince Ready and Corinn Bell, September 25, 2014

³ Hansard Debates, November 17, 2014 (afternoon sitting) at 1445

for an owner-operator. It's not a hugely common scenario, but it does exist in the sector. Between the owner-operator, the employee of the company and the subcontractor of an owner-operator, we think we've got an all-encompassing definition here of the word "trucker."

24. All of this is also consistent with the Tag Policy, which deals with the IO List. The Tag Policy states that the status on the IO List is associated with an individual. It also permits licensees to nominate drivers to be added to the IO List and requires new IOs wishing to join the IO List to have five (5) or more years of experience in providing local drayage and/or long-haul trucking services. It also states that an IO who is unable to perform container trucking services due to an unexpected leave of absence will have his or her Sponsorship Agreement cancelled after 90 days. Clearly, neither the driving experience required, nor the leave of absence provision would be necessary if a company could be an IO.
25. In my view, allowing a company to be an IO and on the IO List would not be consistent with the beneficial nature of the legislation as outlined above. The *Act* is not intended to ensure companies receive the appropriate levels of compensation. In fact, the *Act* places the onus on companies who hire or retain drivers to maintain proper records, provide sufficient surety, and risk losing access to a marine terminal for failing to follow the legislative scheme, including failing to compensate individual drivers according to the Rate Order.
26. In this case, MTB - a company - is remunerated by Jete's - a company- in accordance with the regulated rates, the fuel surcharge protection, and the wait time payments set out in the *Act*, but MTB only pays its IEOs the regulated hourly rate. The difference between the payment it receives from Jete's and the IEO wages and truck expenses is profit (or losses). MTB owns the trucks but does not drive the trucks; that task is handled by the four employees hired to work for MTB. MTB cannot meet the Tag Policy requirements of being an individual or of "having 5 or more years of experience." MTB cannot have its Sponsorship Agreement cancelled due to an unexpected leave of absence for the simple reason that MTB is not an individual who performs container trucking services. I find that such an arrangement is not consistent with the *Act*. In summary, MTB is not on the IO List and cannot, as a company, apply to be on the IO List.
27. Many OBCCTC audits and investigations address new or different issues or facts. The resulting decisions can establish new precedents or methods of assessment which may then be applied to future investigations and audits. In circumstances such as this, where the licensee has operated under a regulatory regime that pre-dates the *Act*, it is perhaps not surprising that its prior practices are not compliant with the *Act*. It is unfortunate that the non-compliant Sponsorship Agreements were not remarked sooner but, ultimately, it is the licensee's responsibility to be compliant with Sponsorship Agreement requirements.

28. MTB is not properly an IO, and I cannot therefore excuse it for the duration of the term of the current licence from the requirement of having only one IEO as set out in condition #6 of the Sponsorship Agreement.
29. I would not do so in any event, because licensees are responsible for ensuring that they are compliant with the Act and CTS license, including adhering to the plain language set out in condition #6 of the Sponsorship Agreement. Condition #6 was in fact first introduced in the 2020 CTS License – not in the 2022 CTS License as the Submission says, and the OBCCTC published a bulletin on March 30, 2021 reminding licensees that the Sponsorship Agreement “prohibits a sponsored IO from employing more than one person at a time to undertake Container Trucking Services on their behalf.” My understanding is that IEOs have been used from time to time as relief drivers, but the prohibition against hiring more than one IEO was the result of some IOs hiring multiple drivers to exclusively operate the IO’s truck – also problematic for reasons similar to those set out above. Given that this requirement has been in place for some time and has been publicized in a bulletin, I would not allow MTB to have more than one IEO for the duration of its license.
30. MTB submits that it should be on the IO List in accordance with paragraph 16 of the Tag Policy which states that “effective January 1, 2018, all sponsored and joined IOs have been placed on the I/O List.” (Before 2018 the Port administered truck tags.) I accept the Companies’ evidence that MTB was a sponsored IO with the Port of Vancouver prior to 2018, and I therefore understand Jete’s operating assumption that MTB was at all material times on the IO List. It is unclear to me why MTB was not told at the time that it did not qualify as an IO for the reasons outlined above. But this does not change the fact that, based on the information before me, MTB does not qualify as an IO.
31. In the Submission, the Companies ask that if three of the four Sponsorship Agreements are cancelled, three of the four MTB truck tags be reallocated to Jete’s. This request is premised on MTB’s qualifying as an IO, which it does not. However, that does not mean that Jete’s cannot retain the truck tags currently assigned to MTB’s trucks. The only issue before me is whether MTB is an IO. Since I have determined that MTB is not an IO, Jete’s has 90 days to enter into new Sponsorship Agreements for any truck tags rendered vacant by the cancellation of the MTB Sponsorship Agreements.
32. I cannot permit the Sponsorship Agreements between Jete’s and MTB to continue for the reasons set out above. MTB is free to apply to be a licensee during the next licence period. Furthermore, I am satisfied that Jete’s had noticed that only one IEO could work under a Sponsorship Agreement prior to 2022 and should have taken steps to bring itself into compliance.
33. I accept that Jete’s believed it was compliant with its CTS license when it sponsored MTB and it does not appear to me that Jete’s or MTB attempted to mislead the OBCCTC. In these circumstances, I exercise my discretion not to impose a penalty for non-compliance in this case.

34. The Companies also propose a number of other solutions to bring Jete's into compliance with the Act. I have directed the Deputy Commissioner to reach out to the Companies to discuss the proposed solutions and identify any that are consistent with the Act.

35. Based on the above, I find that the Sponsorship Agreements between MTB and Jete's are not valid.

Dated at Vancouver, B.C. this 5 day of October 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