



October 27, 2023

Super Star Trucking Ltd.  
Unit 105 - 8047 199 Street  
Langley, BC V2Y 0E2

**Commissioner's Decision**  
**Super Star Trucking Ltd. (CTC Decision No. 14/2023)**

**Introduction**

1. Super Star Trucking Ltd. ("Super Star") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. 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 ("Rate Order"), and a licensee must comply with those rates. In particular, 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.

3. Under s. 6.10 of the Container Trucking Services Licence ("2022 CTS Licence"), which became effective December 1, 2022, licensees are required to ensure that payroll and wage statements for drivers are created and maintained electronically.
4. Under section 31 of the *Act*, the Commissioner may initiate an audit or investigation to ensure compliance with the "Act, the regulations and a licence" whether or not a complaint has been received by the Commissioner.
5. As part of the random audits initiated by the Commissioner, an auditor was directed to audit Super Star's records to determine if its directly employed operators (also known as company drivers) were being paid the required minimum rates.
6. Super Start employed only company drivers during the Audit Period (defined below).
7. This is the second audit initiated by the Office of the BC Container Trucking Commissioner ("OBCCTC"). In the first audit, Super Star was found to be in compliance with the *Act* and *Container Trucking Regulation* ("*Regulation*") and no penalties were imposed.

## **Audit Report**

8. On March 21, 2023, the auditor asked Super Star to provide payroll records as required under its 2022 CTS Licence. The auditor requested driver records for the pay periods in May and June of 2019, March and October of 2018, April and August of 2021, May and October 2022 and January 2023 (the "Audit Period").
9. Super Star provided the requested driver pay statements, cancelled cheques, and trip sheets covering the Audit Period. The auditor noted that Super Star failed to include any driver timesheets or other documentation to establish the drivers' daily start time, end time, and total hours worked.
10. The auditor then sent a second request for records of the drivers' daily hours of work and Super Star's owners responded that since they became the new owners in May 2022, they have simply been following the previous owner's practice of having drivers verbally advise the dispatcher of their start time and end time each day and the dispatcher then provides the total hours worked for each driver to Super Star's payroll person. This process was confirmed to the auditor by six drivers and one driver advised they also provide a written copy of their hours to the dispatcher. Super Star advised it destroys any unsolicited written documentation it receives directly from drivers and relies on the daily records provided by the dispatcher. Super Star confirmed it does not have any documentation recording the start and finish time of its drivers but now understands its obligation and going forward will keep a record of the drivers' daily hours of work.
11. Super Star advised the auditor that it did not have electronically generated payroll records for the period of January 2023 and has been in the process of implementing an electronic time recording system to bring itself into compliance with s. 6.10 of the CTS Licence in an email to the auditor on July 11, 2023.
12. On review of the pay statements, the auditor could only determine that the company drivers were paid in accordance with the Rate Order for the total hours recorded on the pay statement.
13. On July 17, 2023, the auditor submitted an audit report ("Audit Report") based on her review of the Audit Period which concluded the following:
  - a) Super Star pay statements reflected the Company Drivers were paid in accordance with the Rate Order.
  - b) Super Star failed to provide any documentation establishing the daily hours worked by its drivers during the Audit Period, although it is required to do so by s. 6.11 and section B(4)(f)(iii) in Appendix D of its 2022 CTS License, thus preventing the auditor from verifying the drivers were paid for all hours worked.
  - c) Super Star failed to maintain and provide electronically generated payroll records for January 2023 in breach of section 6.10 of the 2022 CTS Licence and advised that it was in the process of implementing an electronic time recording system.

14. A copy of the Audit Report was provided to Super Star on July 26, 2023, and Super Star was invited to provide a response by August 25, 2023. Super Star did not provide a submission by the deadline.

### Decision

15. I accept the uncontroverted findings of the Audit Report and I find Super Star was in violation of s. 6.11 and Appendix D section B(4)(f)(iii) of its CTS Licence when it failed to provide the auditor with payroll records identifying the daily hours worked by each driver during the Audit Period. I also find Super Star failed to maintain electronic payroll records in accordance with s. 6.10 of the 2022 CTS Licence.
16. While I understand Super Star has relatively new owners and may have been under the misapprehension that the previous owners' practices were compliant with the *Act*, it is ultimately the licensee's responsibility to ensure that its policies and procedures are in accordance with the legislative requirements. This is particularly true when it comes to proper record-keeping.
17. As I noted very recently in Supersonic Trucking Ltd. (CTC Decision No. 11/2023), citing to HAP Enterprises Ltd. (CTC Decision No. 19/2016), prior Commissioners have stressed the importance of proper recording-keeping since the *Act* has been in force:

The requirement to keep complete, accurate and up-to-date records is a fundamentally important obligation flowing from the legislation and the Container Trucking Services Licence (the "licence"). The maintenance of complete, accurate and up-to-date records by licensees is absolutely essential to the OBCCTC's fulfillment of its rate compliance mandate and its ability to properly perform audits in a timely and fulsome way. Failure to keep proper records, including those required under both Paragraph 3 of Appendix D to Schedule 1, and under Schedule 2 of the licence, directly interferes with the audit process, will not be tolerated, and will be regarded as a serious violation of licensees' obligations under the legislation and their licence.

18. As I also noted in Supersonic Trucking Ltd., many audits over the last eight years have identified failures to keep records pursuant to the CTS Licence and penalties have been levied for these failures.<sup>1</sup>
19. The importance of maintaining proper records was reinforced in Olympia Transportation Ltd. (CTC Decision No. 02/2016). In that case, the Commissioner found that the licensee had failed to maintain proper records following an audit and proposed a fine of \$4,000.00. He also provided the following warning:

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<sup>1</sup> See for example MDW Express Transport Ltd. (CTC Decision No. 01/2017); Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018) and Olympia Transportation Ltd. (CTC Decision No. 10/2021).

With the publication of this decision, licensees have express notice that a failure to maintain the required records will almost certainly result in a penalty. The moderate amount of the penalty in this case reflects the fact that this is the first instance in which a penalty has been proposed for this form of non-compliance. Licensees should assume that a significantly higher penalty may be proposed for any future findings of non-compliance by failure to maintain required records. All licensees should accordingly review their record-keeping practices and ensure their payroll and driver records are complete, up-to-date and accurate. (para. 30)

20. The introduction of electronic recordkeeping requirements in the 2022 CTS Licence was intended to assist OBCCTC auditors to properly audit licensees in a timely way and thereby increase industry compliance with the rate and record keeping requirements. Eliminating the use of paper based/manual trip or hourly tracking and payroll systems, which are harder to manage, easier to manipulate and have more potential for error, makes record-keeping simpler for licensees at the same time that it facilitates effective audits.<sup>2</sup>
21. As I stated in Supersonic Trucking Ltd., and as prior Commissioners have also recognized, failure to maintain proper records is a serious violation and likely to attract a penalty.
22. The seriousness of the available penalties indicates the potential 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 the 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.
23. 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 No. 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.
24. Here, I have decided that an administrative penalty of \$6,000.00 is appropriate. In assessing an appropriate penalty, I am mindful that Super Star's failure to keep a daily record of hours worked

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<sup>2</sup> "CTS Licence Amendments: Consultation Report" Office of the BC Container Trucking Commissioner, August 2022, page 30

has hindered the OBCCTC's ability to fulfil its mandate of ensuring compliance with the required rates. The industry has been warned previously that failure to keep proper records is treated as serious misconduct and will not be tolerated. Additionally, Super Star did not implement an electronically generated payroll and wage statement system and it appears has still not come into compliance with s. 6.10 of its CTS Licence thus compounding the challenge of ensuring compliance.

25. In the result and in accordance with section 9 and 34(2) of the *Act*, I hereby order and give notice as follows:
- a. I order Super Star to comply with section 6.10 of its 2022 CTS License within 45 days of the date of this decision; and
  - b. I propose to impose an administrative fine against Super Star in the amount of \$6,000.00.
26. Should it wish to do so, Super Star 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.
27. If Super Star provides a written response in accordance with the above, I will consider its response and I will provide notice to Super Star of my decision to either:
- Refrain from imposing any or all of the penalty; or
  - Impose any or all of the proposed penalty.

This decision will be delivered to Super Star and will be published on the OBCCTC's website after Super Star's response period has closed ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 27 day of October 2023.



Glen MacInnes  
Commissioner