



November 29, 2023

West Coast Freight Ltd.
19675 98 Avenue
Langley, BC V1M 2X5

Commissioner's Decision

West Coast Freight Ltd. (CTC Decision No. 15/2023)

Introduction

1. West Coast Freight Ltd. ("WCF") requires access to marine terminals in the Lower Mainland and is a licensee within the meaning of the *Container Trucking Act* (the "Act"). WCF was issued a container trucking services ("CTS") licence by the Commissioner on December 1, 2022 ("2022 CTS Licence").
2. RR Plett Trucking Ltd. ("RR Plett") is a Related Person (as defined in the *Container Trucking Regulation* ("Regulation") of WCF and performs container trucking services but is not a licensee.
3. Section 16(1)(b) of the *Act* states that a licensee must carry out prescribed container trucking services in the Lower Mainland 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.
4. Section 18 of the *Act* allows the Commissioner to impose any conditions on a license that the Commissioner considers necessary.
5. 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 via the Rate Order and licensees must comply with those statutorily established 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.
6. Section 21(1) of the *Regulation* requires licensees to pay directly employed operators ("Company Drivers") semimonthly and no later than 8 days after the end of the pay period.
7. Section 6.15 of the 2022 CTS Licence 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 6.3 prohibits a licensee from subcontracting out Container Trucking Services

with any party who is not a Licensee. Section 6.16 requires licensees to assign a Truck Tag to each truck performing Container Trucking Services.

8. Under section 31 of the *Act*, the Commissioner may conduct an audit or investigation to ensure compliance with the *Act*, the *Regulation* or a licence.
9. WCF has been the subject of one other decision. In 2017, the Commissioner found that it had underpaid drivers by a total of \$4,659.93; this amount was repaid, and the Commissioner exercised his discretion not to issue a penalty: West Coast Freight Ltd. (CTC Decision No. 18/2017).
10. On or around October 20, 2023, a complaint was received through the Office of the BC Container Trucking Commissioner (“OBCCTC”) Confidence Line stating that WCF tagged trucks had been observed moving containers to/from marine terminals and that those containers were subsequently moved by untagged trucks or unlicensed companies to their ultimate destination within the Lower Mainland between October 3 to October 18, 2023, as follows:
 - a. On or around October 4, 2023, WCF Truck Unit 1905 moved container SDCU9018050 (“Impugned Container #1”) from Fraser Surrey Dock and the same container was soon after moved by a RR Plett Truck Unit who delivered Impugned Container #1 to West Coast Engineering.
 - b. On or around October 4, 2023, WCF Truck Unit 1923 moved container SMCU9500754 (“Impugned Container #2”) from Fraser Surrey Docks and later transferred it to RR Plett Truck Unit who delivered Impugned Container #2 to West Coast Engineer.
 - c. On or around October 16, 2023, WCF Truck Unit 1908 moved container TRHU6925033 (“Impugned Container #3”) from Centerm and later transferred it to RR Plett Truck Unit 1403 who moved it to a facility.
 - d. On or around October 17, 2023, WCF Truck Unit 218 moved container MSDU1561900 (“Impugned Container #4”) from Deltaport and later transferred it to RR Plett Truck Unit 1921 who moved it to a facility.
 - e. On or around October 17, 2023, WCF Truck Unit 218 moved container MSDU1677017 (“Impugned Container #5”) from Deltaport and later transferred it to RR Plett Truck Unit 1909 who moved it to a facility.
 - f. On or around October 17, 2023, a WCF Truck Unit moved container MSDU6601670 (“Impugned Container #6”) from Deltaport and later transferred it to RR Plett Truck Unit 1922 who moved it to a facility.
 - g. On or around October 17, 2023, a WCF Truck Unit moved container MEDU3085690 (“Impugned Container #7”) from Deltaport and later transferred it to RR Plett Unit 1923 who moved it to a facility.

- h. On or around October 17, 2023, a WCF Truck Unit moved container CXDU2227653 (“Impugned Container #8”) from Deltaport and later transferred it to RR Plett Truck Unit who delivered it to Euroasia in Richmond, BC.
- i. On or around October 18, 2023, a WCF Truck Unit moved container TLLU7562583 (“Impugned Container #9”) from Vanterm and later transferred it to RR Plett Truck Unit 1249 who moved it to a facility.
- j. On or around October 18, 2023, a WCF Truck Unit moved container FBIU0189931 (“Impugned Container #10”) from Deltaport and later transferred it to RR Plett Truck Unit 1923 who moved it to a facility.
- k. On or around October 19, 2023, a WCF Truck Unit moved container MEDU2409602 (“Impugned Container #11”) from Centerm and then transferred it to RR Plett Unit 1249 who moved it to a facility.

(Collectively the “Impugned Containers”)

Background

11. On October 25, 2023, the OBCCTC advised WCF that it had begun an investigation into whether the container movements observed between October 3 to October 18, 2023, were authorized as the *Act, Regulation*, and CTS licence together prohibit licensees from carrying out container trucking services within the Lower Mainland with an untagged truck or subcontracting container trucking services to an unlicensed company. WCF was invited to review a summary of the complaint contained in an investigation report and provide a submission. The OBCCTC also requested payroll records and trip sheets for the drivers performing the work between October 3 to 18, 2023.
12. On November 9, 2023, WCF provided a submission acknowledging that Impugned Containers #1, 2, 3, 8, 9 and 11 were moved by an untagged truck or by an unlicensed company. WCF maintains that Impugned Containers #4, 5, 6, 7 and 10 were only moved by WCF Truck Units that have truck tags. WCF provided trip sheets to support the following:
 - a. A WCF tagged truck (Unit 1905) picked up Impugned Container #1 from Fraser Surrey Dock on October 3, 2023, and moved it to WCF’s yard. On October 4, 2023, Impugned Container #1 was moved from WCF’s yard by untagged RR Plett truck (Unit 1915) to a customer in the Lower Mainland. A WCF tagged truck (Unit 1909) then moved Impugned Container #1 from the customer to Fraser Surrey Docks.
 - b. A WCF tagged truck (Unit 1923) picked up Impugned Container #2 from Fraser Surrey Dock on October 3, 2023, and moved it to WCF’s yard. On October 4, 2023, an untagged RR Plett vehicle (Unit 1404) moved Impugned Container #2 from WCF’s yard to a customer in the Lower Mainland and then back to WCF’s yard. A WCF tagged truck (Unit 1909) then moved Impugned Container #2 from WCF’s yard in the Lower Mainland to Fraser Surrey Docks.
 - c. A WCF tagged truck (Unit 1908) picked up Impugned Container #3 from Centerm on October 16, 2023, and moved it to WCF’s yard. On October 17, 2023, a WCF untagged

- truck (Unit 1918) moved Impugned Container #3 from WCF's yard to a customer in the Lower Mainland and back to WCF's yard.
- d. A WCF tagged truck (Unit 1921) pickup Impugned Container #4 from Deltaport and moved it to a customer in the Lower Mainland on October 17, 2023. The same WCF tagged truck then picked up Impugned Container #4 and moved it to a Harbour Link off-dock facility.
 - e. A WCF tagged truck picked up (Unit 1909) Impugned Container #5 from Deltaport and moved it to a customer in the Lower Mainland on October 17, 2023. The same WCF tagged truck then picked up Impugned Container #5 and moved it to a Harbour Link off-dock facility.
 - f. A WCF tagged truck (Unit 1922) picked up Impugned Container #6 from Deltaport and moved it to a customer in the Lower Mainland on October 17, 2023. The same WCF tagged truck then picked up Impugned Container #6 and moved it to a Harbour Link off-dock facility.
 - g. A WCF tagged truck (Unit 1923) picked up Impugned Container #7 from Deltaport and moved it to a customer in the Lower Mainland on October 17, 2023. The same WCF tagged truck then picked up Impugned Container #7 and moved it to a Harbour Link off-dock facility.
 - h. A WCF tagged truck (Unit 1903) picked up Impugned Container #8 from Deltaport on October 17, 2023, and delivered it to Seaspan in the Lower Mainland. WCF then subcontracted to Varpal Trucking Ltd. to move Impugned Container #8 from Seaspan to Euroasia.
 - i. A WCF tagged truck (Unit 1922) picked up Impugned Container #9 from Vanterm and moved it to Seaspan in the Lower Mainland on October 18, 2023. WCF then subcontracted 1069650 BC Ltd. to move Impugned Container #9 from Seaspan to Euroasia.
 - j. A WCF tagged truck (Unit 1923) picked up Impugned Container #10 from Deltaport and moved it to a customer in the Lower Mainland. On October 18, 2023, the same WCF tagged truck moved Impugned Container #10 from the customer to a Harbour Link off-dock facility.
 - k. A WCF tagged truck (Unit 1922) picked up Impugned Container #11 from Centerm and moved it to RR Plett's yard on October 19, 2023. On October 20, 2023, WCF subcontracted 1069650 BC Ltd. to move Impugned Container #11 to a customer in the Lower Mainland and then to a Harbour Link off-dock facility.
13. WCF submits that in the normal course RR Plett only moves containers from facilities in the Lower Mainland to and from Alberta and Manitoba any involvement of RR Plett trucks in the movement of the Impugned Containers was inadvertent.

14. WCF explains that mechanical failures with WCF tagged trucks and the erroneous assignment of WCF drivers to non-tagged WCF or RR Plett trucks resulted in the use of untagged trucks and the subcontracting of work to unlicensed companies outlined above around Impugned Containers #1, 2, 3, 8, 9 and 11. WCF states it has worked with its dispatchers and planners to make changes, including numbering all tagged trucks with the same prefix, to ensure there are no further mistakes in the future.
15. WCF has Company Drivers and a review of the payroll records related to the Impugned Containers shows that its Company Drivers, whether they were driving a tagged or untagged WCF truck or a RR Plett truck, were paid the minimum regulated rates.
16. The payroll records provided by WCF show that the Company Drivers were paid more than 8 days after the end of a pay period as follows:

Pay Period	Pay Period End Date	Pay Cheque Date
<u>October 1-14, 2023</u>	<u>October 14, 2023</u>	<u>October 27, 2023</u>
<u>October 15-28, 2023</u>	<u>October 28, 2023</u>	<u>November 10, 2023</u>

Decision

17. As described above, the circumstances of this case are:
 - a. The OBCCTC received a complaint that WCF was using untagged trucks including RR Plett trucks to move the Impugned Containers between facilities in the Lower Mainland.
 - b. WCF acknowledged Impugned Containers #1, 2, 3, 8, 9 and 11 were moved between facilities in the Lower Mainland using untagged trucks WCF or RR Plett or trucks owned by Varpal Trucking Ltd. or 1069650 BC Ltd. between October 3 and October 19, 2023.
 - c. RR Plett, Varpal Trucking Ltd., and 1069650 BC Ltd. are not licensees under the *Act*.
 - d. WCF advised that it used untagged trucks and/or contracted out container trucking services to these non-licensees due to driver error and/or mechanical breakdowns.
 - e. WCF trip sheets indicate Impugned Containers #4, 5, 6, 7 and 10 were only moved in the Lower Mainland by WCF tagged trucks between October 3 and October 19, 2023.
 - f. WCF paid its Company Drivers the regulated rates for any of the Impugned Containers that they moved.
 - g. WCF Company Drivers who moved the Impugned Containers were paid more than 8 days after the end of the pay period in October 2023.
18. I have reviewed the trip sheets provided by WCF for Impugned Containers #4, 5, 6, 7 and 10 and I am satisfied based on the evidence that the licensee's tagged trucks were used to move those containers.
19. It is undisputed that Impugned Containers #1, 2, 3, 8, 9 and 11 were moved using untagged trucks or by companies who are not licensees. I find that WCF Company Drivers who moved the Impugned Containers were paid more than 8 days after the end of the pay period in October 2023.
20. 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 of remuneration, wait time remuneration or fuel surcharge. In any other case an administrative fine may not exceed \$10,000.

21. 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 established rates. Licensees must comply with the legislation, as well as the terms and conditions of their license, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.
22. 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.
23. In *Tri-R Transport Ltd.* (CTC Decision No. 03/2023), *Goodrich Transport Ltd.* (CTC Decision No. 06/2023), *Ferndale Transport Ltd.* (CTC Decision No. 07/2023), I outlined the historical reasons for and the practical importance of each licensed truck performing container trucking services having a truck tag. Truck tags are important for enforcement and performance purposes and licensees who use untagged trucks hinder the OBCCTC's mandate to ensure stability in the industry.
24. In those decisions I outlined the steps a licensee should take to replace a tagged truck when a mechanical failure occurs and made it clear to all licensees that container trucking services – both on-dock and off-dock -- must be performed using tagged trucks. I indicated that failure to comply is likely to result in a penalty. I adopt that analysis in this case.
25. The same challenges that arise when a licensee uses untagged trucks arise when a licensee sub-contracts out container movements to non-licensees and further exacerbates the instability in the industry as drivers retained by licensees lose off-dock work to presumably lower paid drivers at unlicensed companies. This issue was extensively addressed in the May 2021 Off Dock Drayage in the Lower Mainland Recommendation Report which led to the introduction of section 6.3 of the CTS Licence. It was found that licensed companies were contracting out to non-licensees to complete container moves beyond the marine terminal to avoid paying the regulated rates to drivers and using the savings to divert major customers away from other licensees with lower shipping rates. The result was the race to the bottom in wages and container shipping rates were continuing to undermine the

purpose of the legislative scheme to bring about stability. I agree with this analysis.

26. WCF used untagged trucks and RR Plett untagged trucks and subcontracted out work to other unlicensed container trucking companies in breach of its licence due to driver carelessness and/or mechanical failures over a two-week period between October 4-20, 2023. The result was the OBCCTC was unaware of container movements, which hinders enforcement for the reasons outlined above and, in the decisions, referenced above and does not have insight into how unlicensed companies subcontracted by WCF paid their drivers. I find that such actions call for an administrative penalty.
27. Like all licensees, WCF 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 WCF breached its license when it used untagged trucks to perform container trucking services and subcontracted out container trucking services to non-licensed companies on several occasions over several days between October 4 and October 20, 2023.
28. I have also considered WCF's previous audits. I recognize that WCF was found to have previously breached the *Act*, *Regulation* and/or licence but no administrative fine was issued.
29. If I had found the Company Drivers were not remunerated in accordance with the *Act*, the fine would have been significantly higher.
30. In previous decisions a licensee's failure to pay truckers within 8 days, when there is not a significant length of time between the date the wages were due and the date they were paid, has resulted in orders to comply. I find in this case that a delay of approximately 5 days is not significant enough to warrant a fine but warrants an order to comply.
31. Considering all the factors present in this case, I conclude that this is an appropriate case to issue a penalty of \$1,500.00. Therefore, in accordance with s. 34(2) of the *Act*, I hereby give notice as follows:
 - a. I order WCF to comply with section 24(1) of the *Regulation* which requires company drivers to be paid semi-monthly and no later than 8 days after the end of the pay period; and
 - b. I propose to impose an administrative fine against WCF in the amount of \$1,500.00
32. Should it wish to do so, WCF 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.
33. If WCF provides a written response in accordance with the above I will consider its response, and I will provide notice to WCF of my decision to either:
 - a. Refrain from imposing any or all of the penalty; or
 - b. Impose any or all of the proposed penalty.

Conclusion

34. In summary, WCF has been found to have violated its license by performing container trucking services in the Lower Mainland with untagged trucks and subcontracting out work to unlicensed companies. I have determined that it is appropriate to propose the imposition of a \$1,500.00 fine and order WCF to comply with the timelines for payment of its drivers set out in the *Regulation*.

Dated at Vancouver, B.C. this 29 day of November, 2023.

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

Glen MacInnes
Commissioner