



January 29, 2024

Quality Forest Products Ltd.
#203-17660 65A Ave.
Surrey, BC V3S 5N4

Commissioner's Decision
Quality Forest Products Ltd. (CTC Decision No. 01/2024)

Introduction and Background

1. Quality Forest Products Ltd. ("QFP") is a licensee within the meaning of the *Container Trucking Act* (the "Act"). QFP employs a mixture of company drivers and independent operators ("IOs").
2. Under sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services were first established in the *Container Trucking Regulation* ("Regulation") by the Lieutenant Governor in Council ("LGIC") and, subsequently, by the Commissioner ("Rate Order"). Licensees must comply with the established rates. In particular, section 23(2) of the *Act* 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. On July 1, 2019, the then-Commissioner amended the Rate Order and established a position movement rate ("PMR") of \$25.00 be paid to each IO paid by the trip for each container movement. The Rate Order sets out the trip rates to be paid to IOs for each container movement and requires licensees to pay a PMR for each container movement. The PMR must be separately accounted for on each driver's pay statement as set out in the Rate Order.
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. On December 1, 2020, the Office of the BC Container Trucking Commissioner ("OBCCTC") initiated a random audit of QFP to determine compliance with the required rates. QFP was required to provide payroll records in accordance with its CTS licence for the periods of August 2018 and August 2019 ("First Audit Period").
6. QFP provided a copy of the required payroll records including wage statements ("QFP Provided Pay Statements") for each IO that included the name of the licensee, the dispatch phone number, the name of the driver, the driver's truck number, the pay period, the number of containers moved each day in the pay period, the total amount paid to the drivers for each day, any deductions, and the total amount paid to the driver in that pay period.

7. On April 27, 2021, the auditor provided QFP an audit report (“Original Audit Report”) that determined QFP had failed to pay the regulated hourly rate to company drivers and failed to pay IOs the PMR for the First Audit Period. QFP was required to pay its company drivers an additional \$4,804.86 and its IOs \$18,471.72. QFP was also directed to recalculate the amounts owing to IOs for the period from April 2017 to May 2021 (“Second Audit Period”) including ensuring that each IO was paid the required PMR.
8. On or around July 15, 2021, QFP advised the OBCCTC that its recalculation of the Second Audit Period payroll records found that an additional \$114,437.99 was owing in outstanding wages to its drivers. The auditor advised QFP that it would conduct a spot audit of the Second Audit Period and requested payroll records for six drivers for June 2019, February 2020, April 2020, March 2021, April 2021 and June 2021 (“Spot Audit”).
9. On or around November 18, 2021, the auditor determined based on the Spot Audit that QFP owed drivers amounts totaling \$122,092.35 (“Outstanding Amount”) for the Second Audit Period, not the \$114,437.99 that QFP had determined. QFP paid the Outstanding Amount owing to the drivers.
10. Following QFP’s payment of the Outstanding Amount to its drivers, three QFP IOs (collectively “Complainants”) advised the OBCCTC that they had independently calculated the PMR owing based on the number of trips identified on their wage statements and found that the amount they had received from QFP was less than what they were owed for the PMR.
11. The Complainants provided the OBCCTC with copies of the wage statements they received from QFP for April 1-15, 2020, April 16-30, 2020, March 1-15, 2021 and April 16-30, 2021 (“Driver Provided QFP Wage Statements”). The Driver Provided QFP Wage Statements included the name of the licensee, the dispatch phone number, the name of the driver, the driver’s truck number, the pay period, the number of containers moved each day in the pay period, the total amount paid to the drivers for each day, any deductions, and the total amount paid to the driver in that pay period.
12. The auditor noted that the Driver Provided QFP Wage Statements and the wage statements provided by QFP during the Spot Audit (“QFP Provided Spot Audit Wage Statements”) for the same pay period showed the same total amount owing and the same deductions, but the number of container movements and the amount of money paid for those trips differed significantly. The auditor noted the number of container moves on the Driver Provided QFP Wage Statements were greater than number of container moves on the QFP Provided QFP Wage Statements.
13. On December 14, 2021, the auditor provided QFP with the Driver Provided QFP Wage Statements and the QFP Provided Wage Statements and requested an explanation from QFP for the difference in the records. QFP failed to provide a response.
14. On or around December 14, 2021, two of the Complainants provided the auditor with their daily driver logs for April 2, 3, 8, 17, 20, 23, 25, 28 and 30, 2020 (“Complainants’ April Daily Logs”). The Complainants’ April Daily Logs recorded the container number moved, the origin and destination of the container, and the date the container was moved. The auditor compared the Complainants’ April Driver Daily Logs with the corresponding QFP Provided Wage Statements and the driver trip sheets also provided by QFP and noted that the Complainants were not compensated for all of the container movements recorded on the Driver Daily Logs. In fact, the Driver Daily Logs recorded some trips that

were not recorded in QFP's records, and for which the drivers had not received a trip rate, PMR or fuel surcharge.

15. On January 25, 2022, the auditor advised QFP that she had compared the Driver Provided QFP Wage Statements and the Complainants' April Daily Logs with the QFP Provided Spot Audit Statements that she had used to determine the Outstanding Amount and had determined that QFP did not pay the proper PMR. The auditor provided QFP with copies of the Driver Provided QFP Wage Statements and the Complainants' April Daily Logs and instructed QFP to recalculate amounts owing for the period of April 1, 2020 to May 31, 2021 ("Third Audit Period") based on her instructions.
16. On March 30, 2022, QFP advised that it had recalculated amounts owing for the Third Audit Period and determined that there was no additional amount owed to the drivers.
17. The auditor left the employment of the OBCCTC on or around March 2022.
18. On June 28, 2022, the then-Commissioner advised QFP that he was closing the Original Audit as QFP had paid the Outstanding Amount and that he was initiating a new audit ("Current Audit") after reviewing the Driver Provided QFP Wage Statements and the Complainants' April Daily Logs. A decision was not issued.

Current Audit Report

19. QFP was required to provide and did provide payroll records ("QFP Provided Current Audit Wage Statements") for the four IOs it employed for May 2020 and February 2021 ("Fourth Audit Period").
20. The auditor reviewed the QFP Provided Current Audit Wage Statements and noted the IOs were paid trip rates higher than the regulated rates, but the QFP Provided Current Audit Wage Statements did not identify if the drivers were paid the PMR. QFP explained to the auditor that it incorporated the regulated trip rate with the PMR on its QFP Provided Current Audit Wage Statements.
21. The auditor accepted that QFP blended the PMR with the Trip Rate into one rate ("Blended Rate"). After separating the \$25.00 PMR rate from each Blended Rate, the auditor determined QFP had failed to pay the regulated trip rates for trips identified on the QFP Trip Sheets ("Undisputed Trips") and the following amounts were therefore owed to the drivers for the Fourth Audit Period:

Driver	May 2020	February 2021
PB	\$161.80	\$62.75
GD	\$102.40	\$51.81
GB	\$112.30	\$36.66
GG	\$584.60	\$75.52
	\$961.10	\$226.73

22. The auditor also determined QFP had deducted fees associated with the licensee’s National Safety Code requirements, cargo insurance and GPS tracking units from the IOs’ pay. The auditor determined the deductions were business costs as defined in the CTS licence and that the following amounts should not have been deducted:

Driver	May 2020	February 2021
PB	\$243.00	\$243.00
GD	\$243.00	\$243.00
GB	\$243.00	\$243.00
GG	\$243.00	\$243.00
	\$972.00	\$972.00

23. The auditor then reviewed daily logs kept by two of the Complainants which recorded the daily number of containers moved, the facilities the containers were moved to and from, and the container numbers. GB’s daily log covered the period of March 2, 2020 to March 12, 2021 (“GB’s Daily Log”) and PB’s daily log covered the period of June 4, 2020 to March 12, 2021 (“PB’s Daily Log”).
24. The auditor compared GB’s Daily Log and PB’s Daily Log (collectively the “Daily Logs”) to the QFP Trip Sheets for February 2021 and noted that the QFP Trip Sheets did not reflect all the trips recorded in the Daily Logs (“Missing Trips”).
25. The auditor sought and obtained data (“Port Pass Data”) from the Vancouver Fraser Port Authority (“VFPA”) that recorded each time GB and PB used their port passes to enter VFPA property during February 2021. The auditor noted that the Port Pass Data appeared to match the information in the Daily Logs and not the information provided in the QFP Trip Sheets.
26. The container trips recorded in the Daily Logs were compared to the QFP Trip Sheets and the VFPA data for the pay period of February 1-15, 2021:

PB	QFP Trips Sheet: trips to Port	PB Daily Log: trips to Port	Port Pass Data: ¹ trips to Port
February 1	1	2	2
February 3	0	1	1
February 4	3	4	4
February 8	0	2	2
February 10	0	1	1
February 11	1	1	1
February 12	0	1	1

GB	QFP Trips Sheet: trips to Port	GB Daily Log: trips to Port	Port Pass Data: trips to Port
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¹ Does not include Port Pass access to the Port Staging Area

February 1	1	2	2
February 3	0	1	1
February 4	3	4	4
February 8	0	2	2
February 10	2	2	2
February 11	0	1	1
February 12	0	1	1

27. On April 3, 2023, QFP was provided an opportunity to explain the Missing Trips and was advised that VFPA had confirmed the drivers were recorded as being at the Port during the same time as the Missing Trips that involved accessing the Port. QFP provided the following response:

We checked our records and all original trip sheets submitted to the registrar office as per requested in the past. We also checked the port system and did not find any transactions in the port system. Please advise.

28. The auditor accepted the Driver Logs over the QFP Provided Current Wage Statements based on the corroborating Port Pass Data and QFP's insufficient explanation of the discrepancies between the Port Pass Data and the QFP Trip Sheets. The auditor determined the two drivers were owed the following amounts for the Missing Trips made in February 2021:

Complainant	February 2021
PB	\$2,481.96
GB	\$3,320.14
	\$5,802.10

29. On May 23, 2023, the auditor submitted an audit report ("Current Audit Report") based on her review of the Fourth Audit Period and concluded the following:
- a) QFP improperly blended the trip rate with the PMR on each pay statement during the Fourth Audit Period.
 - b) Based on the QFP Provided Current Audit Wage Statements, QFP underpaid five IOs a total of \$1,187.83 during the Fourth Audit Period.
 - c) Based on the QFP Provided Current Audit Wage Statements, QFP improperly deducted \$1,944.00 from five IOs during the Fourth Audit Period.
 - d) QFP failed to pay two of the Complainants the trip Rates, PMR and fuel surcharge for the Missing Trips in their Daily Logs and confirmed by the VFPA. The auditor rejected QFP's explanation and found that the two Complainants were owed \$5,802.10 for trip rates, PMR and fuel surcharge trips not paid in February 2021.
30. A copy of the Current Audit Report was provided to QFP on June 14, 2023, and QFP was invited to provide a response by July 14, 2023.

QFP Response

31. On July 13, 2023, QFP provided a submission along with supporting documentation in response to the Current Audit Report.
32. QFP's submission mainly addresses the Missing Trips noted in the Current Audit Report and does not appear to dispute the calculations regarding the amounts owing for the Undisputed Trips or for improper deductions.
33. Attached to QFP's submission are copies of what appear to be GCT Canada marine terminal database searches ("Database Searches") of each container number involved with the Missing Trips. I understand from the submission that I am being urged to find that the absence of the Missing Trips in the Database Searches demonstrates that those Missing Trips did not occur as the two drivers claim.
34. QFP also states that any discrepancies found in the Original Audit were paid per the instructions of the OBCCTC and if there are any further discrepancies discovered it will correct those mistakes.
35. On January 5, 2024, I provided QFP with a copy of an email exchange between Deputy Commissioner Karm Jauhal and Andrew Arquillano, Operations Support Manager at GCT Canada, in which Mr. Arquillano advises that GCT Canada purges the data contained in its database after one year and it appeared that the Missing Trips were not found in the Database Searches because they happened more than a year. QFP was invited to provide a response.
36. On January 22, 2024, QFP advised that it did not dispute the record retention of the Database Searches, but it has no other way to confirm whether the Missing Trips occurred.

Decision

37. As described above, the circumstances of this case are that:
 - a. The then-Commissioner initiated the Original Audit on December 1, 2020.
 - b. The Original Audit Report determined that QFP had failed to pay the regulated hourly rate, the regulated PMR and the regulated fuel surcharge and had made improper payroll deductions. It was determined the QFP owed \$122,092.35 (Outstanding Amount) to its drivers.
 - c. After QFP paid the Outstanding Amount to its drivers, the Complainants reported that they were not fully compensated for each container movement during the First and Second Audit Period.
 - d. The auditor compared the Driver Provided Wage Statements to the QFP Provided Wage Statements and determined the two documents were different and directed QFP to review its payroll calculations for the Third Audit Period.
 - e. QFP reviewed its payroll calculations for the Third Audit Period and determined no additional wages were owing to its drivers.
 - f. The then-Commissioner closed the Original Audit following the payment of the Outstanding Amount and initiated the Current Audit to address the Complainants' evidence that they were not paid the full amount owed during the First and Audit and Third Audit Periods.
 - g. The Current Audit Report found the following for the Fourth Audit Period:
 - QFP blended the PMR into the trip rate for each container movement.

- QFP failed to pay the regulated trip rates based on the QFP Provided Current Audit Wage Statements in the amount of \$1,187.83.
 - QFP improperly deducted \$1,944.00 in business costs from four IOs.
 - QFP failed to pay two IOs trip rate, PMR and fuel surcharge for each container moved in February 2020 in the amount of \$5,802.10.
- h. QFP's submission included copies of the marine terminal container database searches showing no record of the Missing Trips but QFP did not dispute an email from GCT stating that the data would have been purged after one year.
38. QFP does not challenge the findings or calculations of the Current Audit Report related to the underpayment of the Undisputed Trips or the improper deductions during the Fourth Audit Period. Nor does it dispute that it failed to identify and separately account for the PMR payments on the QFP Pay Statements. I have reviewed this auditor's report and conclude that during the Fourth Audit Period QFP failed to comply with the minimum regulated rates for the Undisputed Trips resulting in an underpayment of \$1,187.83 and made improper deductions in the amount of \$1,944.00.
39. The Rate Order requires that PMR payments be separately accounted for on a driver's wage statement. The purpose of this requirement is to ensure that the auditor can ensure that each eligible move is paid the PMR. Blending the PMR with another rate (including a trip rate) makes it difficult to determine if the licensee is paying the regulated rates, including the PMR.
40. It is undisputed that that GB and PB did not receive payment for the Missing Trips; however, I must determine if the Missing Trips occurred as advanced by PB and GB and denied by QFP.
41. I find on the balance of probabilities that the Missing Trips occurred for the following reasons. I find the Port Pass Data provided by the VFPA persuasive evidence that the two drivers were at the Port on the days recorded in their respective Daily Logs. If I were to accept QFL's evidence that each driver did not move the identified containers to the Port on the days recorded by those drivers, I would have to conclude that each driver attended the Port for some purpose other than performing container trucking services during their workday or that the Port Pass Data was corrupted or in error. I do not find either possibility probable. Finally, I am satisfied that the reason QFP was unable to find the Missing Trips in its Database Searches is due to the records having been deleted after one year.
42. Based on the above, I find the Daily Logs to be an accurate record of the trips performed by the two drivers and I find that QFP failed to pay GB and PB for the Missing Trips. I have reviewed and accept the auditor's calculations and find the two drivers are owed a total of \$5,802.10 for February 2021.
43. Based on the evidence before me, I am unable to determine whether the Missing Trips were not paid because of an administrative error or due to QFP's deliberate manipulation of the payroll records. I am unable to determine why the drivers' wage statement differs from the ones provided by QFP or determine the actual number of container moves performed in each pay period because the PMR is blended with the container rate. For the purposes of this decision, I am prepared to accept that the errors were administrative and not a deliberate attempt by the licensee to mislead the OBCCTC into believing that it had paid the PMR when in fact it had not. If I had found that QFP had manipulated the payroll records, the proposed administrative penalty would have been significantly higher.

44. In the result and in accordance with section 9 and 34(2) of the *Act*, I hereby order QFP to, no later than March 1, 2024, review its payroll records for the period of December 1, 2019 to the date of this decision, calculate amounts owing as set out below, and provide its calculations to the OBCCTC:

- a. amounts owing to each IO after separating out the PMR from the trip rate as required by the Rate Order;
- b. amounts owing to all drivers for improper deductions;
- c. amounts owing to each IO who provided a daily log for any missing trips identified after comparison of the driver's daily logs to the corresponding trip sheets.

45. I also order QFP to pay the following amounts for the Fourth Audit Period to each driver no later than February 15, 2024, and to provide the OBCCTC confirmation that it has done so no later than February 21, 2024 (these calculations are based on the total amount found to be owed to each driver as set out above):

GB	$\$112.30 + \$36.66 + \$243.00 + \$243.00 + \$3,320.14$	$= \$3,955.10$
PB	$\$161.80 + \$62.75 + \$243.00 + \$243.00 + \$2,481.96$	$= \$3,192.51$
GG	$\$584.60 + \$75.52 + \$243.00 + \243.00	$= \$1,146.12$
GD	$\$102.40 + \$51.81 + \$243.00 + \243.00	$= \$ 640.21$

46. I also propose a penalty. 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.

47. 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.

48. Here, I have decided that an administrative penalty of \$5,000.00 is appropriate based QFP's underpayment of the Undisputed Trips, improper payroll deductions, inaccurate wage statements, and its failure to pay for the Missing Trips – all during the Fourth Audit Period. This proposed penalty is consistent with similar contraventions. Given the conclusion of the First, Second and Third Audit Period without a decision notice, I have not considered those periods in determining the appropriate

penalty.

49. In assessing an appropriate penalty, I am mindful that QFP has not previously been issued an administrative penalty but that inaccurate pay statements, failure to pay the regulated rates, and inappropriate deductions usually attract administrative penalties. Regardless of the fact that QFP was not penalized for prior contraventions, it has failed to comply with the *Act* in the past, its failures have been brought to its attention and it has been required to pay significant amounts owing to correct its failures.
50. I propose to impose an administrative fine against QFP in the amount of \$5,000.00;
51. Should it wish to do so, QFP 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.
52. If QFP provides a written response in accordance with the above, I will consider its response and I will provide notice to QFP of my decision to either:
- Refrain from imposing any or all of the proposed penalties; or
 - Impose any or all of the proposed penalties.

This decision will be delivered to QFP and will be published on the OBCCTC's website after QFP's response period has closed (www.obcctc.ca).

Dated at Vancouver, B.C., this 29 day of January 2024.

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is fluid and cursive, written over a white background.

Glen MacInnes
Commissioner