



January 30, 2024

MDW Express Transport Ltd.
3448 Thurston Place
Abbotsford, B.C. V2T 6Z3

Commissioner's Decision **MDW Express Transport Ltd. (CTC Decision No 02/2024)**

Introduction

1. MDW Express Transport Ltd. ("MDW") 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 current Container Trucking Services Licence, which became effective December 1, 2022 ("2022 CTS Licence"), 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 MDW's records to determine if its directly employed operators (also known as company drivers) were being paid the required minimum rates.
6. This is the third audit initiated by the Office of the BC Container Trucking Commissioner ("OBCCTC"). In the first audit, MDW was found to have failed to pay the regulated rates to its drivers, failed to pay its drivers in accordance with s. 24(1) of the *Regulation* and to have insufficient record keeping. MDW was issued an administrative fine of \$9,500.00 and ordered to bring itself into compliance with para. 3 of Appendix D to Schedule 1 and para. (g) of Schedule 2 of its then CTS licence MDW Express Transport Ltd. (CTC Decision No. 01/2017). In the second audit, MDW was found to have failed to pay its drivers for all hours worked, deducted money from a driver's pay, failed to pay a driver for training and withheld a driver's cheque for a period after the driver quit. An administrative fine was issued to MDW in the amount of \$5,000.00: A-Can Transport Ltd. and MDW Express Transport Ltd. (CTC Decision No. 07/2019).

Audit Report

7. On June 26, 2023, the auditor asked MDW to provide payroll records as required under its 2022 CTS Licence. The auditor requested driver records for the pay periods in May and October of 2019, March and October of 2020, June and December of 2021, May and October 2022 and May 2023 (the "Audit Period").
8. MDW provided the requested driver pay statements, cancelled cheques, and trip sheets covering the Audit Period. The auditor noted that MDW failed to provide electronically generated data recording the hours and/or trips for each driver for May 2023 in accordance with 6.10 of the CTS Licence.
9. On review of the pay statements, the auditor determined that the company drivers were paid in accordance with the Rate Order for the total hours recorded on the pay statement.
10. MDW advised the auditor that it did not have electronically generated payroll records for May 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.
11. On November 14, 2023, the auditor submitted an audit report ("Audit Report") based on her review of the Audit Period which concluded the following:
 - a) MDW pay statements reflected that its company drivers were paid in accordance with the Rate Order.
 - b) MDW failed to maintain and provide electronically generated payroll records for May 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.
12. A copy of the Audit Report was provided to MDW on November 20, 2023, and MDW was invited to provide a response by December 20, 2023.

Licensee Submission

13. On November 27, 2023, MDW advised it had reviewed the Audit Report and provided the following response:
 - a) We are currently not using an electronic system to record CTS hours and/or trips.
 - b) We had initially attempted to record drivers CTS hours and/or trips with the Motive Fleet platform. However, their platform was not user friendly for this purpose and did not have the capability to adequately record CTS hours as required by the OBCCTC.
 - c) We are currently in the onboarding process with the TMS platform, Port Pro. We have been working with their team over the last 3 months to set up and onboard our operations. Our goal with this platform is to make majority of our daily operations, including drivers CTS hours, electronic. Drivers' logbooks, drivers CTS hours, proof of deliveries, interchanges, and billing will all be electronically recorded and available within the platform. Our launch date is expected for January 1, 2024.

14. MDW noted a calculation error in the Audit Report related to one driver; the auditor acknowledges the error but states that the error did not change her findings that MDW paid the regulated rates in that pay period.

Decision

15. I accept the uncontroverted findings of the Audit Report and I find that MDW paid the compliant rates during the Audit Period; however, I find MDW failed to maintain electronic payroll records in May 2023 in accordance with s. 6.10 of the 2022 CTS Licence.
16. The introduction of electronic recordkeeping requirements in the 2022 CTS Licence was intended to assist OBCCTC auditors to properly audit licensees in an efficient and 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.¹
17. The industry was warned well in advance that it would require an electronic record keeping to be in place by December 2022 and other licensees have managed to do so.
18. As I stated in Super Star Trucking Ltd. (CTC Decision No. 14, 2023), failure to maintain proper records hinders the enforcement effectiveness of the OBCCTC and this is compounded when a licensee fails to maintain electronically generated records for driver's hours of work and trips completed. Such failures will likely attract a penalty.
19. 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.
20. 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;

¹ "CTS Licence Amendments: Consultation Report" Office of the BC Container Trucking Commissioner, August 2022, page 30

- 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.

21. Here, I have decided that an administrative penalty of \$6,000.00 is appropriate. In assessing an appropriate penalty, I am mindful that MDW was issued a previous administrative fine in part for poor record keeping and was previously ordered to maintain proper payroll records. I accept MDW's initial – but unsuccessful -- use of an electronic database is a mitigating factor, but I also consider that the absence of any electronic platform from at least May (I am unable to discern when MDW abandoned its previous platform) to January of 2024 to be a lengthy period for MDW to be in breach of its CTS Licence. The industry has been warned previously that failure to keep proper records is treated as serious misconduct and will not be tolerated and the proposed penalty is similar to those issued in Super Star Trucking Ltd. (CTC Decision No.14/2023) and Supersonic Trucking Ltd. (CTC Decision No. 11/2023).
22. 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 MDW 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 MDW in the amount of \$6,000.00.
23. Should it wish to do so, MDW 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.
24. If MDW provides a written response in accordance with the above, I will consider its response and I will provide notice to MDW 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 MDW and will be published on the OBCCTC's website after MDW's response period has closed (www.obcctc.ca).

Dated at Vancouver, B.C., this 30 day of January 2024.



Glen MacInnes
Commissioner