



March 7, 2024

A-Can Transport Ltd
13160 English Place
Surrey, BC V3W 5X2

Commissioner's Decision
A-Can Transport Ltd. (CTC Decision No 05/2024)

Introduction

1. A-Can Transport Ltd. ("A-Can") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. 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.
3. 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, and a licensee must comply with those 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.

4. Under section 25 of the *Act*, licensees must prepare and keep records as required by the Commissioner.
5. A-Can currently operates under a container trucking services license that came into force on December 1, 2022 ("2022 CTS License"). Section 6.7 of the 2022 CTS licence requires the licensee to ensure all trucks engaged in container trucking services are equipped with an electronic device or technology recording the number of hours of container trucking services and/or the number of trips performed. Section 6.10 of the CTS licence requires the licensee to create, maintain, and make available information electronic payroll records and wage statements. Under Appendix D of its CTS Licence, licensees are required to keep "complete, accurate, and up to date" payroll records for four years from the date of their creation.

6. Section 6.15 of the 2022 CTS license 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 6.16 states: “The Licensee must assign a Truck Tag to each truck performing Container Trucking Services.”
7. 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.
8. On June 26, 2023, A-Can was advised that it was the subject of a random audit to determine if company drivers were being paid the minimum rates required and was requested to provide certain payroll records.
9. This is A-Can’s third audit. The first audit was completed in 2018 and A-Can was found to be compliant with the *Act* and the *Regulation*. The second audit was completed in 2019 and the auditor was unable to determine if A-Can was compliant with the *Act* and *Regulation* due to discrepancies in the payroll records that could not be reconciled due to A-Can’s intermingling of its payroll records and assets with those of another licensee (MDW Express Transport Ltd.) as well as A-Can’s improperly transferring its truck tags to MDW Express Transport Ltd. An administrative fine of \$20,000.00 was issued to A-Can: see A-Can Transport Ltd. and MDW Express Transport Ltd. (CTC No. 09/2019) and the decisions underlying it.
10. During the current audit of A-Can, the OBCCTC received a complaint alleging A-Can was using an untagged truck to move a container within the Lower Mainland and began an investigation as a result. The results of the audit report and investigation report are outlined below.

Audit Report and Investigation Report

11. The auditor requested payroll records from A-Can for May and October 2019, March and October 2020, June and December 2021, April and October 2022, and May 2023 (“Audit Period”).
12. A-Can provided payroll records for June and December 2021, and April and October 2022 and May 2023 but failed to provide payroll records for May 2019, October 2019, or March 2020. A-Can explained that it did not have payroll records prior to July 2020 because of an ownership change in 2020. A-Can also explained that it does not have a program to track hours of work and/or trips as required by s. 6.7 of its 2022 CTS Licence.
13. The auditor reviewed a sample of truckers based on the payroll records provided by A-Can for the Audit Period and found that A-Can paid its company drivers rates consistent with the *Act* and *Regulation* during the months for which records were provided.
14. Before completing the audit, on or around November 30, 2023, the OBCCTC received a complaint (“Complaint”) that two container trucks owned by A-Can arrived at or near the 1000 block of Glen Drive in Vancouver each carrying a container. One of the A-Can trucks, Unit 406, did not display a truck tag (“Untagged Unit”) and was seen carrying container TGBU6007219. Another of the A-Can trucks, Unit 417, displayed a truck tag (“Tagged Unit”) and was seen carrying container

EITU1259432. The complainant reported observing the two trucks unloading their respective containers and chassis and loading each other's respective containers and chassis. The complainant attached photos of the location and the Untagged Unit carrying container TGBU6007219.

15. On December 14, 2023, the auditor requested payroll records for November and December 2023, including records related to long haul container trucking services work. The auditor noted that A-Can had provided payroll records associated with trucks that were not identified as tagged trucks registered with the OBCCTC. A-Can responded that these trucks were involved with "local deliveries" which it described as deliveries involving dry vans, transloads, warehouse to warehouse deliveries, amazon deliveries and LTL shipments. The auditor noted that A-Can's explanation characterizes off-dock container moves as "local deliveries" and that A-Can has several untagged trucks that it uses for off-dock container moves, for which it pays CTS hourly rates.
16. A review of the records provided by A-Can showed the following activities related to the Complaint on November 30, 2023:
 - a. The Tagged Unit picked up container EITU1259432 from Centerm terminals in Vancouver, BC and delivered the container to 1100 Charles Street in Vancouver.
 - b. The Tagged Unit picked up container TGBU6007219 from 1100 Charles Street in Vancouver and delivered it to Vanterm terminals in Vancouver, BC.
 - c. The Untagged Unit drove bobtail (without a chassis or container) to 1100 Charles Street in Vancouver where it picked up container EITU1259432 and delivered the container to Merritt, BC.
17. Based on the information provided by A-Can, it did not appear that the Untagged Unit moved container TGBU6007219 at any time on November 30, 2023, despite the information and photograph provided by the complainant.
18. On January 5, 2024, the Commissioner wrote to A-Can advising them of the details of the Complaint and attaching a photo of the Untagged Unit carrying TGBU6007219 at or near 1000 Block of Glen Drive on November 30, 2023 ("Investigation Report"). The Commissioner provided A-Can with an opportunity to respond by January 19, 2024.
19. On January 11, 2024, the auditor completed an audit report ("Audit Report") and summarized her conclusions as follows:
 - a) A-Can did not provide payroll records for May 2019, October 2019 and March 2020 for all drivers as required in the initial audit request in breach of Appendix D(4)(f) of its CTS Licence; and
 - b) A-Can did not have an electronic tracking system as required by s. 6. 7 of its CTS Licence; and

- c) A-Can paid the drivers of the Untagged Unit and Tagged Unit the regulated rate on November 30, 2023.

20. On January 24, 2024, the OBCCTC sent a copy of the Audit Report to A-Can and provided an opportunity to submit a response no later than February 21, 2024.

A-Can's Response

21. On January 18, 2024, A-Can responded to the Investigation Report stating that when the driver of the Untagged Unit arrived at 1100 Charles Street, the customer requested the driver of the Untagged Unit to move container TGBU6007219 to the dock and the driver obliged. The driver of the Untagged Unit then moved container EITU1259432 on its long-haul journey as originally dispatched. A-Can also stresses that it has repeatedly requested additional truck tags to meet the growing demand to move containers.
22. On February 19, 2024, A-Can responded to the Audit Report stating that there was a change in ownership in July 2020 and that it does not have access to any of the records of the previous owners despite repeated attempts to acquire them.
23. In addition, A-Can states it was under a misapprehension that the Vancouver Fraser Port Authority's ("VFPA") GPS system satisfied the OBCCTC requirement for an electronic system to track container trucking hours and trips. Based on the clarification provided by the OBCCTC, A-Can has now entered into a contract with a third party for this service.
24. Finally, A-Can now states that a miscommunication occurred between its dispatcher and driver that led to the Untagged Unit moving container TGBU6007219 on November 30, 2023. It also states that it has now been determined that the bobtail run to 1100 Charles Street by the Untagged Unit does not show up in its records due to a typographical error but is unable to confirm this as the driver of the Untagged Unit is out of the country.

Decision

25. As described above, the circumstances of this case are:
- a. A-Can failed to provide payroll records for May 2019, October 2019 and March 2020 and says that it does not have these records as the result of an ownership change in 2020;
 - b. A-Can did not have an electronic device or technology to track its drivers' container trucking services hours and trips in violation of s. 6.7 of its CTS Licence;
 - c. The Tagged Unit and the Untagged Unit were observed by the complainant "swapping" containers EITU1259432 and TGBU6007219 at or near 1000 block of Glen Drive.
 - d. A photograph provided by the complainant and provided to A-Can shows the Untagged Unit moving container TGBU6007219 at or near the 1000 block of Glen Drive on November 30, 2023.

- e. The trips sheets provided by A-Can identify the Tagged Unit moving container EITU1259432 from Centerm to 1100 Charles Street and then moving container TGBU6007219 from 1100 Charles Street to Vanterm on November 30, 2023.
 - f. The trip sheets provided by A-Can identify the Untagged Unit “bobtailing” from A-Can’s yard to 1100 Charles Street and then moving container EITU1259432 from 1100 Charles Street to Merritt, BC. The trips sheets do not identify the Untagged Unit moving container TGBU6007219 on November 30, 2023.
 - g. A-Can originally advised that the customer at 1100 Charles Street asked the driver of the Untagged Unit to move TGBU6007219 from 1100 Charles Street to the dock and the driver obliged and later advised that the Untagged Unit moved the container as the result of a miscommunication between dispatcher and driver.
 - h. The drivers of the Untagged Unit and the Tagged Unit were paid the regulated rate for November 30, 2023, except perhaps for the time associated with the unrecorded trip;
 - i. A-Can provided November and December 2023 time sheets for all its drivers including records for untagged trucks used for “local deliveries.”
 - j. A-Can has now entered into a contract with a third-party provider to comply with sections 6.7 of its CTS Licence.
26. Based on the uncontroverted evidence provided in the Audit Report, I am satisfied that A-Can failed to maintain and produce payroll records prior to 2020 as required under s. 25 of the Act and Appendix D of its 2022 CTS licence. I address A-Can’s position that it failed to obtain the payroll records from the previous owners below. I also deal with A-Can’s other record-keeping contraventions below.
27. I also find A-Can in contravention of the requirement that it perform container trucking services using only tagged trucks. I must address the discrepancy in the evidence on where exactly the Untagged Unit moved container TGBU6007219 on November 30, 2023. As mentioned above, the trip was not recorded on A-Can’s trip sheet and A-Can did not have technology in the Untagged Unit tracking the trips made on November 30, 2023. A-Can’s submission that the Untagged Unit moved container TGBU6007219 from 1100 Charles Street to the marine terminal seems unlikely, as the Untagged Unit would not be permitted by port security to enter Vanterm without a truck tag. It is likelier than not, based on this and on the complainant’s undisputed observation and photograph, that the Untagged Unit moved container TGBU6007219 from 1100 Charles Street to 1000 Glen Drive and the Tagged Unit moved the container to Vanterm.
28. However, even if I am wrong about how container TGBU6007219 arrived at Vanterm, I do not need to resolve the discrepancy as either movement of the container by the Untagged Unit (i.e. either between 1100 Charles Street and 1000 Glen Drive or between 1100 Charles Street and Vanterm) would require a licensee to use a tagged unit. The movement of container TGBU6007219 between 1100 Charles Street and the 1000 block of Glen Drive is a movement between two “facilities” in the Lower Mainland by an untagged truck owned by A-Can in breach of s. 6.15 and s. 6.16 of its 2022 CTS licence. The Untagged Unit’s movement of container TGBU6007219 from 1100 Charles Street

to Vanterm terminal would be an on-dock trip which also would be captured under the *Act* and would also require a tagged truck.

29. I have also reviewed the time sheets provided for Units 405, 406 and 409 in November and December 2023 in order to confirm what types of containers were being moved during this time period. Each entry provides a non-descript explanation of what each unit was carrying so I am unable to determine these Units were moving “containers” as defined under the *Regulation*. I am concerned about A-Can’s assertion that it uses untagged trucks for off-dock container moves and even though I am unable to determine if these three units were moving “containers,” I remind A-Can that all containers moved between facilities in the Lower Mainland (“off-dock trips”) must be moved by a tagged truck. This is dealt with in more detail below.
30. I also find that A-Can’s failure to record the Untagged Unit’s movement of TGBU6007219 on November 30, 2023, was in contravention of A-Can’s requirement to keep and produce accurate payroll records. A-Can’s statement that it failed to properly record the bobtail trip of the Untagged Unit is both curious and nonsensical. First, there was no suggestion that the “bobtail” trip between A-Can’s yard and 1100 Charles Street was missing from A-Can’s records – the trip that was missing was move involving container TGBU6007219 by the Untagged Truck. I was provided no explanation why the movement of container TGBU6007219 was not recorded on the Untagged Unit’s trip sheet. I do not find A-Can’s statement that a typographical error resulted in a container trip not being recorded but that it is unable to confirm this because the driver is out of the country helpful. The fact remains, the trip sheets were inaccurate.
31. I am satisfied based on my review of the payroll records that the drivers of the Tagged Unit and the Untagged Unit were both paid the regulated minimum rate for the hours recorded on November 30, 2023; however, given the inaccuracy of the trip sheets and the absence of electronic tracking of the hours worked and/or trips performed, I am unable to determine if the driver of the Untagged Unit was paid for the movement of container TGBU6007219.
32. I also find that A-Can failed to equip all its trucks performing container trucking services with an electronic tracking system as required by s. 6.7 of its licence. I accept that A-Can has now entered into a contract with a third-party provider to bring itself into compliance with section 6.7.
33. 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.
34. 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 rates established by the legislation. Licensees must comply with

the legislation, as well as the terms and conditions of their licenses, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.

35. 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.

36. While I understand that there was an ownership change in A-Can, the new owners assume A-Can's record-keeping responsibilities. A-Can's failure to obtain the documents from the previous owners cannot be used to avoid its responsibilities to maintain and provide the records required under its CTS licence. Given the previous administrative fine assessed against A-Can for failing to keep proper payroll records, the new owners should have been especially alive to this issue.

37. In HAP Enterprises Ltd. (CTC Decision No. 17/2016) then-Commissioner MacPhail emphasized the importance of proper record keeping and I agree with the following:

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. (para. 22)

38. In the present case, A-Can does not dispute that it performed untagged container trucking services. Truck tags are important. They are a visible indicator that the truck is registered with the OBCCTC and has an onboard tracking system. Importantly, they allow the OBCCTC to balance the number of trucks with the volume of work available and encourage the movement of drivers to high performing companies.

39. The OBCCTC monitors the efficiency of licensees by capturing data generated from the GPS affixed to each tagged truck. The GPS data is used to assist the Commissioner in evaluating the performance of each licensee. To ensure that there is enough work for drivers, the Commissioner uses the data to reallocate tags assigned to trucks that are underperforming to licensees who have trucks that are overperforming.
40. Having untagged trucks without the required GPS tracking system performing container trucking work skews the data used to reallocate truck tags by not recording all the container moves of the licensee and similarly hinders the ability to the OBCCTC to properly ensure that there are not too many trucks chasing too few containers. While it may appear that one untracked movement would not have an impact, based on the facts in this case, the Tagged Unit was able to access the terminal faster with the assistance of the Untagged Unit which would assist A-Can with its on-dock performance data compared to other licensees who followed their CTS licence.
41. In addition, as mentioned above, the trip sheet for the Untagged Unit does not accurately report the trips performed by the Untagged Unit given that its trip sheet does not indicate the movement of container TGBU6007219. But for the complainant witnessing the Untagged Unit exchanging the container with the Tagged Unit, there would have been no written record or GPS record of the Untagged Unit performing the work and this trip would have escaped detection.
42. I do not accept that A-Can's not having been granted additional truck tags should weigh against an administrative penalty. A-Can, like all other licensees, has periodic opportunities to submit applications for additional truck tags and if any licensee finds itself denied additional truck tags it is because they did not demonstrate the need to the satisfaction of the Commissioner. It is not acceptable for A-Can to breach its CTS licence because it disagrees with a tag allocation decision of the Commissioner.
43. The 2022 CTS licence, like all prior licenses (which A-Can has also operated under), requires licensees performing container trucking services (on-dock and off-dock) to use only tagged trucks. This is not a new requirement. On April 17, 2020, the OBCCTC issued a bulletin reminding that all trucks performing container trucking services under licence must be tagged. On October 4, 2022, I issued an industry advisory reminding licensees that "both on and off-dock container trucking services are to be completed by licensed companies using tagged trucks."
44. Using untagged trucks to avoid paying the minimum rates is a serious concern, and while I determined that the driver of the Untagged Unit was paid the regulated rates for each hour worked on November 30, 2023, I am unable to confirm if he was paid for the work while moving container TGBU6007219 because I was provided no evidence that how the drivers hours were calculated for work performed on November 30, 2023 and if it included the missing trip.
45. Like all licensees, A-Can 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 A-Can breached the 2022 CTS license when it operated an untagged container truck between November 28 and December 1, 2023.

46. I have also considered A-Can's previous audits. A-Can was previously penalized for failing to maintain proper records and for non-compliance around truck tags and I find that these issues have continued in this case.
47. I have not found any underpayment of drivers in this audit, but I am unable to comprehensively determine A-Can's compliance with the regulated rates because of its failure to produce all of the required payroll documents. While the maximum administrative fine related to a contravention not involving remuneration is \$10,000, I do not accept that the legislation was intended to allow a licensee to escape an administrative penalty above \$10,000 by simply failing to provide payroll records. Maintaining and producing payroll records, as well as recording and providing electronic tracking information, is fundamentally related to the payment of remuneration.
48. The penalty proposed here, based predominantly on A-Can's failure to maintain complete and accurate payroll records, is an escalating penalty based on A-Can's past failure to comply with the *Act* and in particular to keep and produce payroll records at all and to keep and produce accurate records.
49. For these reasons I have concluded that an administrative penalty of \$30,000 is appropriate in this case. This penalty is consistent with the range of administrative fines previously issued in Gantry Trucking Ltd. and TSD Holdings Inc. (CTC Decision 14/2017) and Aheer Transportation Ltd. (CTC Decision No. 01/2021) for similar contraventions.
50. Considering all the factors present in this case, I conclude that this is an appropriate case to issue a penalty of \$30,000. Therefore, in accordance with s. 34(2) of the *Act* I hereby give notice as follows:
51. I propose to impose an administrative fine against A-Can in the amount of \$30,000;
52. Should it wish to do so, A-Can 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.
53. If A-Can provides a written response in accordance with the above I will consider its response, and I will provide notice to A-Can of my decision to either:
 - i. Refrain from imposing any or all of the penalty; or
 - ii. Impose any or all of the proposed penalty.

Conclusion

54. In summary, A-Can has breached the *Act* and its licence by failing to provide payroll records at all for the period prior to 2020 and by failing to provide accurate records for work performed in November of 2023. It has also failed to equip its trucks with an electronic device or technology to track its drivers' hours and/or trips. Both of these failures have affected the OBCCTC's ability to determine if A-Can has properly paid its drivers. A-Can has been previously penalized for similar failures. A-Can has also violated the *Act* and its CTS license by performing container trucking services in the Lower Mainland with an untagged truck.

55. I have determined that it is appropriate to propose the imposition of a \$30,000.00.

Dated at Vancouver, B.C. this 7th day of March 2024.

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is written in a cursive, flowing style.

Glen MacInnes
Commissioner