



May 31, 2024

Royal City Roadline Inc.
23980 Thompson Gate
Richmond, B.C. V6V 1C5

Commissioner's Decision
Royal City Roadline Transport Inc. (CTC Decision No 08/2024)

Introduction

1. Royal City Roadline Inc. ("Royal City") is a licensee within the meaning of the *Act*. As per a BC Corporate Registry search, Ms. Gurinder Bath ("Ms. Bath") is the sole director and officer of Royal City.
2. Big Boss Transport Inc. ("Big Boss") is another licensee within the meaning of the *Container Trucking Act* (the "*Act*"). As per a BC Corporate Registry search, Mr. Gurveen Bath ("Mr. Bath") is the sole director and officer of Big Boss.
3. Section 16(1)(b) of the *Act* states that a licensee must carry out container trucking services 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. 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. 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.
5. The Rate Order establishes a lower hourly rate ("Lower Rate") for drivers who have worked less than "2,340 collective hours of container trucking services for any licensee or licensees." Once a licensee has worked 2,340 or more collective hours of container trucking services for any licensee or licensees, they are paid a higher hourly rate ("Higher Rate").

6. On April 28, 2023, the Rate Order was amended to include overtime rates for company drivers and indirectly employed operators who work more than 9 hours in day and/or more than 45 hours in a week.
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 21, 2023, Royal City, along with Big Boss, was advised that it was the subject of a random audit to determine if its company drivers were being paid the minimum rates required and was requested to provide certain payroll records. As they each have their own licences, I have decided to issue each licensee a separate decision.
9. This is Royal City's third audit. The first audit was completed in 2016 following a confidence line complaint and Royal City was found to be in violation of the *Act* and the *Regulation* when it failed to pay \$16,018.18 to its company drivers between April 3, 2014, and March 16, 2016. An administrative penalty of \$2,000.00 was issued. The second audit was completed in 2020 and Royal City was found to be compliant with the *Act* and *Regulation*.

Audit Report

10. The OBCCTC requested and Royal City provided payroll records for October 2019, March and October 2020, June and December 2021, April and October 2022, and May 2023 ("Audit Period").
11. The auditor noted that during the Audit Period eight company drivers were paid the Lower Rate. The auditor reviewed the drivers' job applications showing their previous work history and was able to confirm with four of the drivers that they had no previous experience as a driver with another licensee. The auditor was unable to reach the other four drivers but for three of them she relied on job applications that indicated no previous experience with a licensee.
12. The auditor was unable to reach Mr. Navpreet Gill who worked for Royal City between August 8 and December 21, 2019. However, she determined from Mr. Gill's job application that he worked as a company driver for two previous licensees for more than 16 months (one licensee from January 2012 to January 2016 and another licensee from March 2016 to June 2016). Based on the length of time Mr. Gill worked as a company driver, the auditor determined that the evidence did not support Mr. Gill earning the Lower Rate in October 2019. Based on her calculations, Mr. Gill was underpaid \$7.20 for the work he

performed in October 2019.

13. In reviewing the payroll records for May 2023, the auditor noted that some of the drivers who worked for Royal City were also working for Big Boss. Big Boss had provided payroll records for May 2023 in a separate audit and the auditor was able to determine that four company drivers ended their shift at Royal City and immediately started working a shift at Big Boss in May 2023. During each of the 20 occurrences in May 2023 when Royal City drivers worked more than 9 hours in a day including the hours worked at Big Boss, none of the four drivers were paid the overtime rate.
14. When the auditor sought an explanation from Ms. Bath about why the four drivers were not paid the overtime rate, Mr. Bath (rather than Ms. Bath) responded on behalf of Royal City. Mr. Bath said that when a Royal City driver returns to the yard after a full shift, the driver then switches to a Big Boss-owned truck and drives additional hours and is paid by Big Boss for those additional hours. Mr. Bath maintains that Royal City is a separate legal entity with separate owners from Big Boss and the hours worked at one company are not transferable to another company for the purpose of overtime calculation.
15. The auditor determined that those drivers who worked more than 9 hours in a day would drive a full-shift for Royal City and then park the Royal City-owned truck at a yard shared with Big Boss. They would then continue to perform container trucking services in a Big Boss-owned truck. The auditor understood that this arrangement had occurred for employees at both Royal City and Big Boss and that the two licensees shared employees. The auditor determined that Royal City and Big Boss were "Related Persons" as defined in the CTS licence who shared the same employees and yard and she determined that Royal City's allowing drivers to perform relatively uninterrupted container trucking services work for Big Boss after a shift with Royal City was an attempt to avoid paying the overtime regulated rate.
16. Based on the above determination, the auditor calculated the amount of unpaid overtime owed to the drivers for May 2023 on the basis that because the driver started his day with Royal City, Royal City owes the driver for the unpaid overtime. The audit found a total of \$368.22 in overtime owed to company drivers employed by Big Boss for May 2023.
17. On December 11, 2023, the auditor completed an audit report ("Audit Report") and summarized her conclusions as follows:
 - a) Royal City failed to pay Navpreet Gill the minimum regulated rate for a driver who has worked 2,340 hours or more and owes him \$7.20 for the container trucking services work performed in October 2019.

- b) Royal City and Big Boss are Related Persons under the CTS licence and coordinated to avoid paying the overtime rate as a result of which Royal City owes its drivers \$368.22 for May 2023.

18. On December 12, 2023, the OBCCTC sent a copy of the Audit Report to Royal City and provided an opportunity to submit a response no later than January 11, 2024.

Response

19. On January 11, 2024, Royal City provided a submission in response to the Audit Report and on January 12, 2024, Royal City provided copies of several Royal City driver's wage statements to demonstrate that it pays overtime to its drivers.
20. Royal City disagreed with the auditor's assessment that Mr. Navpreet Gill's previous experience with other licensees should be considered in the calculation of the 2,340 experience hours. Quoting from Mr. Gill's employment application, Royal City notes his experience moving "20,40,45,53 containers" and "B-Train Containers with one licensee between March 2016 and August 2016 and speculates that less than 6 months is not sufficient time to accumulate 2,340 hours of experience. In addition, Royal City argues that I should not consider Mr. Gill's experience as a company driver with another licensee between July 2018 and August 2019 because that licensee is engaged in transportation service outside of container trucking. I am urged to consider the fact that Mr. Gill noted in his application that he left the licensee due to lower pay and his utterance to Royal City that he was paid less than the regulated rate as evidence that he performed non-container trucking services work. Furthermore, Royal City maintains the OBBCTC has access to other licensees' payroll records and the absence of any records provided for Mr. Gill is evidence that he did not perform container trucking services. Finally, Royal City submits that Mr. Gill set out his expectation to be paid the Lower Rate in his application.
21. Regarding the payment of overtime, Royal City asserts it was not required to pay its drivers the overtime identified by the auditor. Royal City also says that the auditor made a number of errors in her interpretation of the CTS licence and the Rate Order.
22. First, Royal City asserts that Big Boss is not a Related Person because the ownership, trucks, payroll and clients of each company is separate. Furthermore, Royal City asserts that "Related Person" is meant to apply to companies without a CTS licence performing off-dock work – not to capture companies who also have a CTS licence.

23. Second, Royal City says even if the Commissioner determines that Royal City and Big Boss are related companies, it has little relevance to the wording of the Rate Order which makes no mention of the hours worked by company drivers with another licensee.
24. Third, Royal City disagrees that it is avoiding paying overtime to its drivers and provided payroll records that include overtime pay for drivers who continue to drive trucks owned by Royal City after 9 hours.
25. Finally, Royal City states that the introduction of the overtime in the Rate Order is relatively new and despite its understanding that there is a widespread practice of drivers working for different companies and not accruing overtime, this issue has never been addressed in an industry advisory or previous Commissioner's decision. Despite its position that overtime does not accrue in these circumstances, it has since unilaterally prohibited its drivers from switching between Royal City and Big Boss.

Decision

26. As described above, the circumstances of this case are:
 - a) Royal City and Big Boss are licensees within the meaning of the *Act*.
 - b) Royal City states it paid Navpreet Gill the minimum regulated rate for work performed in October 2019.
 - c) Royal City disputes it was required to pay the regulated overtime rate for work performed over 9 hours in a day in May 2023 because it is not a Related Person of Big Boss and the Rate Order does not require one licensee to account for a driver's hours of work with another licensee when calculating overtime hours.
27. I am unable to determine from the evidence whether Mr. Gill was entitled to the Higher Rate. Mr. Gill's application clearly indicates he has about six months' experience moving "20,40,45,53 containers" during the period he worked for one licensee but does not speak to the experience he had with the other licensee. I find Mr. Gill's failure to note any container trucking services experience beyond the six months on his application leaves open the possibility that he was not performing container trucking services outside of that period. This appears to be supported by Mr. Gill's application stating his expectation of being paid the Lower Rate. Given that Mr. Gill only worked for Royal City for five months and that the auditor was unable to reach Mr. Gill, I cannot determine if he was entitled to the Higher Rate at any point of his employment.
28. I was provided with no evidence that Royal City quantified the container trucking service hours worked by Mr. Gill. It was incumbent on Royal City to ascertain the hours Mr. Gill had worked for previous licensees and to add them to the hours Mr. Gill worked at

Royal City in order to determine when he would be entitled to the Higher Rate. A licensee who is paying a driver the Lower Rate must keep records of how many hours of container truckers services work a driver has performed for other licensees and keep track of the number of hours that of container trucking services the driver has worked in total so that it can move the driver to the Higher Rate at the appropriate time.

29. Turning to the issue of overtime, Royal City asserts that a company driver who works for one licensee and then works for another licensee does not necessarily accrue the hours worked at both companies for the purpose of earning the overtime rate. However, the Rate Order is intended to apply to drivers who perform container trucking services regardless of the licensee(s) the driver works for. This is like the higher minimum rate that a licensee is required to pay a driver even if the driver has worked 2,340 hours with another licensee or combination of licensees. The fact that the driver may not have worked more than 9 hours in a day or 45 hours in a week for the same licensee does not mean that the licensee is not responsible for paying the driver overtime.
30. Even if I am wrong about that, when a licensee has control and direction over the driver while they work the additional hours, and/or has control over both licensed companies, then the driver continues to work for that licensee.
31. This interpretation is consistent with the *Regulation* which defines a “directly employed operator” (company driver) as an “individual who performs container trucking services and is an employee, within the meaning of the *Employment Standards Act*, of a licensee.” The *Employment Standards Act* defines an “employee” as including:
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
32. The *Employment Standards Act*¹ defines an “employer” to include a person:
- (a) who has or had control or direction of an employee, or
 - (b) who is or was responsible, directly or indirectly, for the employment of an employee;
33. The question to be asked is: did Royal City have control or direction of the four drivers who worked for Royal City and then worked for Big Boss on the same day? Or, was

¹ The *Regulation* uses the term “employer” but does not define “employer”. Since the *Regulation* defines “employee” as set out in the *Employment Standards Act* (“ESA”), I have relied on the *ESA* definition of employer which is synonymous with Licensee.

Royal City responsible, directly or indirectly, for the employment of those drivers when they continued to work in a Big Boss truck on the same day they worked for Royal City?

34. Despite Royal City's assertion that it is a separately run company from Big Boss, the evidence demonstrates that Royal City and Big Boss are both involved in container trucking services and share the same facilities and the same employees. I also find Mr. Bath's response to the auditor's inquiry about Royal City's failure to pay overtime to its drivers is telling as Mr. Bath is the owner of Big Boss. Mr. Bath appears to be familiar with the day-to-day staffing of Royal City so much so that he can provide an explanation about how Royal City drivers are dispatched. My understanding is that Mr. and Ms. Bath are related. I am satisfied that Big Boss and Royal City are Related Persons as defined in the *Regulation* and the CTS license and that Royal City is an "employer" of its "employee" drivers when it allows them to work at Big Boss.
35. Under the common law's common employer doctrine, an employee may be employed by more than one company at the same time. In essence this doctrine prevents an employer from escaping liability to its employees simply due to its corporate structure. If there is a sufficient degree of relationship between the different corporations, or common control, they can be regarded as one for the purposes of liability to employees. See *Downtown Eatery (1993) Ltd. v. Ontario* (2001), 54 O.R. (3d) 161 (ONCA). Royal City and Big Boss are essentially the same business, carried out by the same people, from the same premises, and using the same employees; therefore, the doctrine is applicable.
36. Moreover, Royal City was at least indirectly if not directly responsible for the employment of drivers with Big Boss when it allowed drivers to continue to work in a Big Boss-owned truck after their shifts with Royal City. I was provided with no evidence to the contrary and, for the reasons set out above, I find that Royal City was responsible for its drivers' working in Big Boss trucks. Based on the evidence that Royal City and Big Boss run an integrated operation, it is more probable than not that Royal City had direction and control over the drivers when they worked beyond 9 hours each day.
37. Based on the above, I find that the four drivers are owed overtime in May 2023 when they worked more than 9 hours per day.
38. Royal City drivers appear in their long-haul daily logs (which I understand are a National Safety Code requirement for drivers who perform long-haul moves) to have recorded time worked at Royal City as "off-duty time" on those days when they also drove trucks owned by Big Boss. Similarly, on those days when a driver worked first at Big Boss, they appear to have recorded that time as "off-duty time" before they transferred to a truck owned by

Royal City. It is unclear to me that recording time worked in another truck as “off-duty time” is correct under the National Safety Code, but that is outside my jurisdiction. However, when comparing the long-haul daily logs against the container trucking service payroll records, it is clear that the four drivers in question performed container trucking services (not long-haul) for more than 9 hours in a day in May of 2023.

39. 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 \$10,000.00.
40. 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.
41. 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.
42. 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)

43. Royal City failed to keep track of hours worked by Mr. Gill in order to properly calculate his hourly rate and the auditor was unable to determine whether or when he was entitled to the Higher Rate. There was not enough evidence to support Mr. Gill being paid the Higher Rate, but this does not change the fact that Royal City failed to provide any record of his container trucking hours as required under its CTS license. In fact, Royal City’s failure to record and keep track of those hours hindered the auditor’s ability to determine if and when Mr. Gill was entitled to the Higher Rate.
44. While the overtime rate is a relatively new introduction, I am cognizant of a caution first made by Vince Ready and Corrin Bell in their Recommendation Report that led to the creation of the *Act*. In that report, the authors lamented the following when they first proposed a wage system:

We sincerely remain concerned that undercutting and gamesmanship will continue in this industry. In particular, we are concerned that, based on some of the scenarios presented to us over the course of the previous four months, companies and drivers will seek to find loopholes in the proposed wage system.

45. In this case, I find that the way Royal City facilitated four of its drivers continuing to work after a full shift with Royal City and avoided paying overtime rates on the pretense that the drivers were working for a “separate” and “unrelated” company is exactly the type of gamesmanship identified in the Recommendation Report. I note that Royal City did pay overtime to other drivers during the Audit Period (when they drove exclusively for Royal City), so I accept that this was not a comprehensive attempt to avoid paying overtime, but nonetheless Royal City failed to pay overtime to four drivers during the Audit Period.

46. I am not entrusted with enforcing the National Safety Code requirements, nor is it within my authority to determine if a breach of that Code has occurred. However, Royal City provided long-haul logs to the auditor presumably to establish the hours and trips performed by each driver and considered in isolation, those logs show that the four drivers in question worked fewer than 9 hours per day because the time worked at Big Boss is recorded as “off-duty time.” If the auditor had not compared those long-haul logs to the ones provided by Big Boss, she would not have been aware that the drivers had performed container trucking services in the Lower Mainland during what was recorded as “off-duty” time. I find these records to be inaccurate and in breach of Appendix D 4 (f) of the CTS license.
47. I have also considered Royal City’s previous audits. I recognize that Royal City was not previously penalized for failing to maintain proper records but was penalized for failing to pay the regulated rates to its company drivers. I have also considered the relatively small amount owing to the drivers over a one-month period in this audit.
48. In this case, I find that there was a breach of the *Act* related to the payment of overtime remuneration. I also find improper record-keeping in breach of the licence.
49. Considering all the factors present in this case, I conclude that this is an appropriate case to issue a penalty of \$2,000.00. Therefore, in accordance with s. 34(2) of the *Act* I hereby give notice as follows:
50. I propose to impose an administrative fine against Royal City in the amount of \$2,000.00.
51. Should it wish to do so, Royal City 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 Royal City provides a written response in accordance with the above, I will consider its response, and I will provide notice to Royal City 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.
53. Pursuant to section 9 of the *Act*, I order Royal City to comply with the following:
- a) pay the drivers in question the sum of \$368.22 as set out in the Audit Report within 30 days of this decision; and

- b) review its payroll records from April 1, 2023 (the date the overtime rate came into effect) to the date of this decision (with the exception of May 2023) and pay the regulated overtime rates in accordance with the Rate Order within 30 days of this decision; and
- c) provide the OBCCTC with proof of having complied with (a) and (b) no later than June 17, 2024

Conclusion

54. In summary, Royal City has been found to have violated the Act by failing to pay the regulated overtime rate in May 2023. Royal City has also breached its CTS licence by producing inaccurate records and failing to maintain and provide payroll records recording container trucking hours worked which has affected the OBCCTC's ability to determine if Royal City has properly paid its drivers.

55. I have determined that it is appropriate to propose the imposition of \$2,000.00.

Dated at Vancouver, B.C. this 31st day of May 2024.



Glen MacInnes
Commissioner