



April 16, 2024

ADP Transport Ltd.
16700 River Road
Richmond, BC V6V 1L7

Commissioner's Decision

ADP Transport Ltd. (CTC Decision No. 06/2024)

Introduction

1. ADP Transport Ltd. ("ADP") 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 Container Trucking Services Licence ("2022 CTS Licence"), which became effective December 1, 2022, licensees are required to ensure that payroll and wage statements for drivers are created and maintained electronically.
4. Under Schedule 1, Appendix D, s. (4)(f) of the 2022 CTS Licence, licensees are required to maintain the prescribed payroll records for four years after the date on which the payroll records were created.
5. 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 a complaint has been received by the Commissioner.
6. As part of the random audits initiated by the Commissioner, an auditor was directed to audit ADP's records to determine if its directly employed operators (also known as company drivers) and independent operators ("IOs") were being paid the required minimum rates.
7. ADP has been the subject of two previous audits. In ADP Transport Ltd. (CTC Decision No. 11/2018), ADP was found to be in violation of s. 24 of the *Container Trucking Regulation* (the "Regulation") when it failed to pay its company drivers at least bi-monthly and no more than eight days after the end of a pay period. ADP was ordered to bring its payroll practices in compliance with the *Regulation* and the Commissioner exercised his discretion and did not issue an administrative penalty. In 2019, ADP was issued a letter of compliance following the second audit during the periods of August 1 - 31, 2018 and October 1 - 31, 2018.

Audit Report

8. On June 26, 2023, the auditor advised ADP that an audit had been initiated for the period of May 2019 to May 2023 (“Audit Scope”). The auditor selected and requested driver records for pay periods in May and October of 2019, March and October of 2020, June and December of 2021, April and October 2022 and May 2023 (the “Audit Period”).
9. ADP provided the requested records by the deadline except for the original timesheets for the periods of May and October of 2019, March and October of 2020, June, and December of 2021 (“Missing Trip Sheets”). Furthermore, ADP only provided handwritten trip sheets for May 2023 rather than electronically generated records.
10. ADP provided two different explanations regarding the Missing Trip Sheets. First, ADP advised the auditor that the Missing Trip Sheets were destroyed after the transition to a new GPS system in 2022. Then it advised that some of the Missing Trip Sheets (2019) were destroyed after two years, and some Missing Trip Sheets (2020 and 2021) were destroyed as soon as the “relevant information was noted” due to its concerns about storing documents during the pandemic.
11. The auditor confirmed payroll deductions during the Audit Period were corroborated by supporting documentation.
12. Based on the information that was provided, the auditor determined that there were immaterial discrepancies between the timesheet summaries and the total hours paid to each driver. Furthermore, he determined that the drivers were paid in accordance with the Rate Order.
13. On January 17, 2024, the auditor submitted an audit report (“Audit Report”) based on his review of the Audit Period which concluded the following:
 - a) ADP failed to maintain and provide timesheets for May and October of 2019, March and October of 2020, June and December of 2021 in accordance with Appendix D s. (4)(f).
 - b) ADP failed to maintain and provide electronically generated payroll records in May 2023 for company drivers in breach of section 6.10 of the 2022 CTS Licence.
14. A copy of the Audit Report was provided to ADP on February 1, 2024, and ADP was invited to provide a response no later than March 4, 2024.

Licensee Response

15. ADP maintains that since December 1, 2022, it has been compliant with 6.10 of the CTS licence and attaches GPS records associated with certain trucks movements in May 2023 it says demonstrates such compliance.
16. Regarding the Missing Trip Sheets, ADP expands on the explanation provided in the Audit Report by explaining that during the pandemic it was not accepting time sheets from its drivers and solely relied

on its GPS system to track the hours worked by its drivers.

17. Finally, ADP states it understands its obligations under section 28 of the *Employment Standards Act* to retain payroll records for 4 years after they were created “which is why we are maintaining GPS records, trip sheets, paystubs and wage statements electronically.”

Decision

18. I have considered the Audit Report and ADP’s response and for the reasons set out below, I find that ADP is in violation of s. 25 of the *Act* for failure to keep records as required by Appendix D s. 4(f) of its CTS licence and for failure to keep electronically generated payroll records as required by section 6.10 of its CTS licence.
19. ADP provides conflicting explanations regarding the reasons for the Missing Trip Sheets but does not dispute that they were created and destroyed. I am unclear why ADP felt it was only required to maintain some of the records for two years despite the requirement to retain them for four years. I also find ADP’s explanation that it destroyed or failed to retain the Trip Sheets due to the pandemic and/or because it had introduced a GPS system to be equally nonsensical. ADP does not dispute that the payroll records were created but does not explain why it did not take steps to retain those documents as required by the CTS licence. I was provided no evidence that ADP was ordered not to accept paper documents during the pandemic or that it was authorized to destroy documents when another system was put in place. At the end of the day, ADP did not retain the trip sheets that were created in accordance with Appendix D s. 4(f) of its CTS licence.
20. I am also not persuaded that the information provided by ADP demonstrates that it has an “electronically generated” payroll system. I have reviewed the timecard reports which appear to be a summary of each truck’s usage, but which do not indicate the driver’s name. It is unclear to me how this information is used to generate electronic payroll records and wage statements – especially if it does not identify the driver. ADP’s inclusion of handwritten trip sheets also suggests that it has not instituted an electronic system to generate payroll records.
21. 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.
22. ADP’s record keeping was found to be deficient. I agree with then Commissioner MacPhail’s analysis in HAP Enterprises Ltd. (CTC Decision No. 17/2016) which stated:

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.

23. Furthermore, while the requirement to maintain electronically generated records of drivers' hours and trips has only been in effect for over a year, it was well canvassed and discussed with the industry prior to its implementation on December 1, 2022. In other words, industry was given time to move away from handwritten trip sheets and towards implementing the electronic record keeping requirement before it came into effect.
24. 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.
25. Here, I have decided that an administrative penalty of \$5,000.00 is appropriate. In assessing an appropriate penalty, I am acknowledging the seriousness of improper record keeping but I am mindful that ADP was previously found in breach of the *Act* but has not been previously penalized. However, ADP has now breached the *Act* by failing to maintain records as required. Additionally, ADP did not implement electronically generated recording keeping for container trucking service hours and trips by December 2022 thus compounding the challenge of ensuring compliance with the established rates. This fine is consistent with other fines issued for failing to maintain proper records and failure to have an electronically generated payroll system.
26. 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 ADP to comply with section 6.10 of its 2022 CTS License within 45 days of the date of this decision and provide evidence of the same to the auditor.
 - b. I propose to impose an administrative fine against ADP in the amount of \$5,000.00.
27. Should it wish to do so, ADP 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.
28. If ADP provides a written response in accordance with the above, I will consider its response and I will provide notice to ADP 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 ADP and will be published on the OBCCTC's website (www.obcctc.ca) after ADP's response period has ended.

Dated at Vancouver, B.C., this 16 day of April 2024.

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