



June 3, 2024

Big Boss Transport Inc.  
23980 Thompson Gate  
Richmond, B.C. V6V 1C5

**Commissioner's Decision**  
**Big Boss Transport Inc. (CTC Decision No. 09/2024)**

**Introduction**

1. Big Boss Transport Inc. ("Big Boss") is a 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.
2. Royal City Roadline Inc. ("Royal City") is another 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.
3. 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.
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 work 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 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, Big Boss, along with Royal City, 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. However, I have decided to issue Big Boss a separate decision as each holds a separate licence.
9. This is Big Boss' third audit. The first audit was completed in 2016 and Big Boss was found to be in violation of the *Act* and the *Regulation* when it failed to pay \$10,983.33 to its company drivers between April 3, 2014, and March 16, 2016. An administrative penalty of \$1,500.00 was issued. The second audit was completed in 2019 and Big Boss was found to be compliant with the *Act* and *Regulation*.
10. Big Boss and Royal Teams were audited concurrently, and each licensee was provided with an audit report that identified similar facts and similar violations. Each licensee submitted separate but near identical submissions.
11. On May 31, 2024, I issued Royal City Roadline Inc. (CTC Decision No. 08/ 2024) ("Royal City Decision"). Given the similarity of the facts for both companies, and the similarities in the submissions received by Big Boss and Royal City, I have similarly summarized the facts in this case and have referred to the appropriate paragraphs in the Royal City Decision where I have decided those paragraphs also apply in the case of Big Boss.

### **Audit Report**

12. The OBCCTC requested and Big Boss provided payroll records for October 2019, March and October 2020, June and December 2021, April and October 2022, and May 2023 ("Audit Period").
13. The auditor noted six of the company drivers during the Audit Period were paid the Lower Rate. Big Boss provided job applications for each of the six drivers to demonstrate that each driver has not worked 2,340 hours or worked with a previous licensee. The auditor reviewed the job applications and attempted to call all six company drivers to confirm their experience as stated on their job application; she was only able to reach three of the drivers and each confirmed they had no previous experience as a driver with another licensee. The auditor relied on the job applications that indicated no previous experience with a licensee for two of the drivers she was unable to reach.
14. The auditor was unable to reach Mr. Navpreet Gill who worked for Big Boss 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 \$70.64 for the work he performed in October 2019.

15. In reviewing the payroll records for May 2023, the auditor noted that some of the drivers who worked for Big Boss were also working for Royal City. Royal City 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 Big Boss and immediately started working a shift at Royal City in May 2023. During each of the 20 occurrences in May 2023 when Big Boss drivers worked more than 9 hours in a day including the hours worked at Royal City, none of the four drivers were paid the overtime rate.
16. When asked why the four drivers were not paid the overtime rate during the 20 occurrences, Big Boss explained that some drivers requested to work longer, and they were accommodated by working for the other licensee. Big Boss maintains that it is a separate legal entity with separate owners from Royal City and the hours worked at one company are not transferable to another company for the purpose of overtime calculation.
17. The auditor determined the drivers would park the Big Boss-owned truck at a yard shared with Royal City and if they requested to work beyond 9 hours then Big Boss would accommodate and allow the drivers to continue to perform container trucking services in a Royal City-owned truck. The auditor understood that this arrangement had occurred for employees at both Royal City and Big Boss. 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 Big Boss' allowing drivers to perform relatively uninterrupted container trucking services work over more than 9 hours/day between the two licensees was an attempt to avoid paying the overtime regulated rate.
18. 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 Big Boss, Big Boss owes the driver for the unpaid overtime. The audit found a total of \$877.23 in overtime owed to company drivers employed by Big Boss for May 2023.
19. On December 11, 2023, the auditor completed an audit report ("Audit Report") and summarized her conclusions as follows:
  - a) Big Boss failed to pay Navpreet Gill the minimum regulated rate for a driver who has worked 2,340 hours or more and owes him \$70.64 for the container trucking services work performed in October 2019.
  - b) Big Boss and Royal City are Related Persons under the CTS licence and coordinated to avoid paying the overtime rate as a result of which Big Boss owes its drivers \$877.23 for May 2023.
20. On January 8, 2024, the OBCCTC sent a copy of the Audit Report to Big Boss and provided an opportunity to submit a response no later than February 7, 2024.

**Response**

21. On February 7, 2024, Big Boss responded to the Audit Report. Big Boss' response was substantially the same as Royal City's response. Big Boss disagreed 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, Big Boss 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, Big Boss 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 Big Boss that he was paid less than the regulated rate as evidence that he performed non-container trucking services work. Furthermore, Big Boss 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, Big Boss submits that Mr. Gill set out his expectation to be paid the Lower Rate in his application.
22. Regarding the payment of overtime, Big Boss (like Royal City) asserts it was not required to pay its drivers the overtime identified by the auditor. Big Boss also (like Royal City) asserts that the auditor made a number of errors in her interpretation of the CTS licence and the Rate Order.
23. First, Big Boss asserts that Royal City is not a Related Person because the ownership, trucks, payroll and clients of each company is separate. Furthermore, Big Boss (like Royal City) asserts that "Related Person" is meant to apply to companies without a CTS licence performing off-dock work – not capture companies who also have a CTS licence.
24. Second, Big Boss (like Royal City) says that even if the Commissioner determines Big Boss and Royal City 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.
25. Big Boss also (like 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 Big Boss after 9 hours. Regarding the 20 incidents in May 2023 identified by the auditor, Big Boss states that the drivers requested additional work, including one driver who needed to earn money due to a family hardship.
26. Finally, Big Boss (again like 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 the two companies.

## Decision

27. As described above, the circumstances of this case are:
- a. Big Boss and Royal City are licensees within the meaning of the *Act*.
  - b. Big Boss disputes it incorrectly paid Navpreet Gill the minimum regulated rate for work performed in October 2019.
  - c. Big Boss 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 Royal City 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.
28. Mr. Gill worked for both Royal City and Big Boss and I am unable to determine from the evidence whether Mr. Gill was entitled to the Higher Rate from Big Boss for the reasons set out in paragraph 27 of the Royal City Decision; those reasons apply in this case. At paragraph 28 of the Royal City Decision, I noted that licensees are responsible for ascertaining the number of hours of container trucking services a driver has performed. Big Boss, like Royal City, did not quantify or record the hours Mr. Gill worked at Big Boss 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. Big Boss provides more explanation in its submission about its reasons for allowing drivers to continue working in a Royal City owned truck after nine hours working for Big Boss. Big Boss maintains that it accommodated its drivers wishing to earn extra income by allowing them to continue working in a vehicle owned by Royal City. However, this does not change the application of the analysis I applied at paras 29-36 of the Royal City Decision and I apply the same analysis here.
30. I also apply the analysis at paras 30-33 of the Royal City Decision to conclude that Big Boss had control and direction over the drivers in question. Big Boss is an "employer" of its "employee" drivers when it allows them to work at Royal City. The fact that Big Boss was aware of the circumstances of these drivers and admits having facilitated their working for Royal City after they had completed 9 hours of work for Big Boss is telling and consistent with the definition of "employee." Big Boss was at least indirectly responsible for the employment of the driver with Royal City. Furthermore, I was provided with no evidence that Big Boss was not responsible for the control or direction of the drivers when they continued to drive a vehicle owned by Royal City and, for the reasons set out above, I find that Big Boss was responsible for its drivers' working in Royal City trucks. Given my finding based on the evidence that Big Boss and Royal City run an integrated operation, it is more probable than not that Big Boss had direction and control over the drivers when they worked beyond 9 hours each day.
31. Despite Big Boss' assertion that it is a separately run company from Royal City, I find the evidence

demonstrates that Big Boss and Royal City are both involved in container trucking services and share the same facilities and share the same employees. I also find Mr. Bath has the ability to accommodate drivers' requests to work at Royal City, which is consistent with my finding in the Royal City Decision that Mr. Bath was able speak on behalf of Royal City about the day-to-day operations of Royal City. I found in the Royal City Decision that Big Boss and Royal City are Related Persons as defined in the *Regulation* and the CTS license and I adopt that analysis here.

32. I also apply the analysis at paragraph 35 of the Royal City Decision: the common employer doctrine is applicable to Big Boss and Royal City and Big Boss is therefore responsible for overtime wages for the drivers in question.
33. At paragraph 38 of the Royal City Decision, I found that drivers who began working for Royal City recorded time worked at Big Boss as "off-duty time" on those days when the drivers also worked at Royal City. A review of the Big Boss drivers' long-haul daily logs and licensee payroll records shows that four Big Boss drivers performed container trucking services (not long-haul) for more than 9 hours in a day.
34. I find that the four drivers in question are owed overtime in May 2023 when they worked more than 9 hours per day.
35. 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.
36. 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.
37. 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.

38. As stated in the Royal City Decision, 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)

39. Like Royal City, Big Boss failed to maintain or account for any hours worked by Mr. Gill when calculating 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 Big Boss failed to provide any record of those hours as required under its CTS license. In fact, Big Boss' failure to maintain those hours hindered the auditor's ability to determine if and when Mr. Gill was entitled to the Higher Rate.
40. Regarding overtime, I apply the analysis at para 44 of the Royal City Decision, and I find that the way Big Boss facilitated four of its drivers continuing to work and avoided paying overtime rates as though those drivers were working for a "separate" and "unrelated" company is exactly the type of gamesmanship identified in the Recommendation Report.
41. I note that Big Boss, like Royal City, did pay overtime to other drivers during the Audit Period so I accept that this was not a comprehensive attempt to avoid paying overtime, but nonetheless Big Boss failed to pay overtime to four drivers during the Audit Period.
42. Like Royal City, Big Boss also appears to have produced records that do not accurately reflect the hours each driver actually worked in May 2023. As stated at paragraph 46 of the Royal City Decision, the National Safety Code is outside of my jurisdiction, but Big Boss provided long-haul logs to the auditor presumably to establish the hours and trips performed by each driver and it appears on the face of those logs that the four drivers worked fewer than 9 hours per day because the time worked at Royal City is recorded as "off-duty time." If the auditor had not compared those long-haul sheets to the ones provided by Royal City, she would not have been aware that the

drivers had worked during what was recorded as “off-duty” time. I find these records to be inaccurate and in breach of Appendix D 4 (f) of its CTS license.

43. I have also considered Big Boss’ previous audits. Big Boss, like 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.
44. In this case, I find that there was a breach of the *Act, Regulation* or term of the licensee related to payments of remuneration and improper record keeping. For these reasons I have concluded that an administrative penalty of \$2,000.00 is appropriate in this case.
45. 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:
46. I propose to impose an administrative fine against Big Boss in the amount of \$2000.00.
47. Should it wish to do so, Big Boss 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;
48. If Big Boss provides a written response in accordance with the above, I will consider its response, and I will provide notice to Big Boss 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.
49. Pursuant to section 9 of the *Act*, I order Big Boss to comply with the following:
  - a) pay the drivers in question the sum of \$877.23 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**

50. In summary, Big Boss has been found to have violated the *Act* by failing to pay the regulated overtime rate in May 2023. It has also produced inaccurate records and failed to provide required payroll records recording container trucking hours worked, which has affected the OBCCTC's ability to determine if Big Boss has properly paid its drivers.

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

Dated at Vancouver, B.C. this 3<sup>rd</sup> day of June 2024.

A handwritten signature in blue ink that reads "Glen MacInnes". The signature is written in a cursive, flowing style.

Glen MacInnes  
Commissioner