



July 18, 2024

Lally Bros Holding Ltd.
7126 Brown Street
Delta, BC V6B 1G8

Lally Bros Holding Ltd. (CTC Decision No. 12/2024) – Decision Notice

Overview

1. In Lally Bros Holding Ltd. (CTC Decision No. 12/2024) (“Commissioner’s Decision”) I found that Lally Bros Holding Ltd. (“Lally Bros”) failed to provide the Office of the BC Container Trucking Commissioner (“OBCCTC”) with trips sheets for May and October of 2019, March and October of 2020, June and December of 2021 in contravention of Appendix D s. 4(f) of its Container Trucking Services (“CTS”) licence and failed to maintain electronic payroll records in May 2023 in contravention of section 6.10 of its CTS license. An administrative penalty of \$5,000 was proposed.
2. Consistent with s. 34(2) of the *Act*, Lally Bros was given seven (7) days to provide a written response setting out why the proposed penalty should not be imposed. I also ordered Lally Bros to become compliant with section 6.10 of the CTS license within 45 days of the Commissioner’s Decision.
3. Lally Bros provided a written argument (“Submission”) in response to the proposed penalty within the specified timeframe. I have considered Lally Bros’ response to the Commissioner’s Decision and provide the following Decision Notice.

Lally Bros Response

4. Lally Bros does not deny that it failed to provide the auditor with trip sheets created by its drivers for May and October of 2019, March and October of 2020, June and December of 2021 (“Missing Trip Sheets”) but states that the Missing Trip Sheets “are not strictly required by the requirements of its CTS license” and therefore cannot be in breach of Appendix D s.4(f) since there is no specific requirement to maintain the Missing Trip Sheets.
5. Furthermore, Lally Bros argues that the payroll records provided to the auditor were generated by a payroll software system and were sufficient for the auditor to conclude that the company drivers were paid the required minimum rates. Lally Bros maintains that the wage statements and payroll records it provided to the auditor and examples of a driver’s wage statement, time sheet report, driver logs, and time card report attached to its Submission were created in accordance with s. 27 and 28 of the *Employment Standards Act* and therefore meet the requirements of both section 6.10 and Appendix D s.4(f) of its CTS license.
6. Lally Bros argues that the requirement that wage statements and payroll records be “created and maintained electronically” in section 6.10 of the CTS license does not require the payroll

information to be created or maintained by GPS. Furthermore, the term “created and maintained electronically” is ambiguous as many records require manual input including initially setting up a profile for an employee including name, date of birth, address etc. If strictly interpreted that any manual input was unacceptable, Lally Bros argues that the Commissioner should have warned licensees before issuing administrative penalties for such “onerous requirements” as every licensee would be “breaching s. 25 of the [Container Trucking] Act.

7. Finally, Lally Bros. notes that the Original Decision fails to note that it was also the subject of two previous audits in 2017 and 2019 – not one as indicated at para. 10 in the Commissioner’s Decision - and was found to be compliant both times.
8. Based on the reasons set out in its Submission, Lally Bros submits that no penalty should be imposed.

Consideration of Licensee’s Response

9. Lally Bros is correct that a licensee is not specifically required to maintain “trip sheets”, but it glosses over the fact that information normally gleaned from “trip sheets” must be provided in order to meet the requirement of Appendix D s.4(f). Trip sheets provided by licensees normally contain a list of “trips completed on each day” and hours worked each day by the driver on behalf of the licensee. Appendix D s.4(f) requires more than just the information contained in s. 27 and 28 of the *Employment Standards Act*; it specifically requires the information that identifies the following:
 - i. fuel surcharges paid to the Trucker;
 - ii. payment of Wait Time Remuneration;
 - iii. hours worked and trips completed on each day by the Trucker performing Container Trucking Services on behalf of the Licensee;
 - iv. benefits, if any, paid to the Trucker;
 - v. total Compensation, before taxes and any other deductions, paid to the Trucker;
 - vi. any deductions made from the Trucker’s Compensation, and the reason for the deductions; and
10. Lally Bros failed to provide all the information (trip sheet or otherwise) regarding all the trips completed and daily hours worked during the audit period. The Missing Trip Sheets merely are the vehicle Lally Bros used to track container movements by drivers, and it failed to provide the information. I have not been provided with any other records that record the trips completed by the driver during the period of May and October of 2019, March and October of 2020, June and December of 2021. For the reasons set out in this Decision and paragraph 23 of the Commissioner’s Decision, I am not persuaded that Lally Bros was compliant with Appendix D s.4(f).
11. I have also reviewed the wage statements, the timesheet, driver log #1 and driver log #2 and the timecard report for the driver of truck #400 between May 1-15, 2023 provided in the Submission and I concur with the auditor’s findings that “discrepancies were identified in the payroll summaries for drivers, where printed copies of manually entered payroll records were furnished,

and instances were noted where the figures did not reconcile.”¹ The timesheet adds up to 111.50 hours recorded in the driver’s wage statement for the pay period of May 1-15, 2023, but I am unable to ascertain how Lally Bros calculated the driver’s hours based on either the handwritten driver logs or the electronically generated time card report. Both handwritten driver logs and the GPS generated timecard report do not match the timesheet or wage statement produced for the driver:

Date	Timesheet Report	Driver Log #1	Driver Log #2(Raymont)	Time Card Report
May 1, 2023	11	11	10.25	11
May 2, 2023	9.75	9.75	9.54	9.75
May 3, 2023	10.75	10.45	10	10.75
May 4, 2023	8.50	11	9	11
May 5, 2023	12.50	8.5	N/A	8.75
May 8, 2023	12.50	12.50	11.75	N/A
May 9, 2023	10.75	10.75	N/A	10.75
May 10, 2023	8.75	8.75	N/A	8.75
May 11, 2023	8.75	8.75	N/A	8.75
May 12, 2023	9.25	9.25	N/A	9.5
May 15, 2023	10.50	10.50	10.00	N/A
Total	111.50	111.20	60.54	149.54

12. I am unclear why the same driver had two different handwritten driver’s logs on the same days, and I note that the start and end times on each driver’s log on the same day were different and overlapped. Regardless, even though there are discrepancies, I find it likelier than not that Lally Bros continues to rely on handwritten payroll records to calculate its drivers’ hours given that the timecard report has different and missing hours for the driver. I am therefore not persuaded that Lally Bros maintains electronically generated payroll records in accordance with s. 6.10 of the CTS license.
13. It is not clear if Lally Bros is suggesting that the payroll records provided to the auditor satisfy the requirements under s. 27 of the *ESA* and therefore should equally satisfy the requirement under section 6.10 of the CTS license. If so, I note that Section 27(2) of the *ESA* is a permissive clause that sets conditions if an employer transmits a wage statement electronically, it does not say the wage statement itself needs to be created or maintained electronically. However, s. 6.10 of the CTS license clearly set out that wage statements and payroll records must be created and maintained electronically, and I find this clause is prescriptive beyond simply transmitting a document. It appears where Lally Bros has produced “electronic” time sheets, they are actually entering the information manually and therefore they are not “created electronically”.
14. I am also not persuaded that there has been a lack of clarity regarding s. 6.10 of the CTS license as the purpose was well canvassed with licensees – of which Lally Bros was one of at the time - before that section was introduced into the 2022 CTS license. At pages 6-7 of the CTS License

¹ January 23, 2024 Audit Report, page 3

Amendments Consultation Report August 2022, the then-Commissioner explained that the introduction of sections 6.7-6.10 was “intended to increase industry compliance with the rate and record keeping requirements by 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.” The then-Commissioner continues at page 10 that “the manual entry of start and stop times is not sufficient.” While common sense suggests there may be some manual entry required to initially set up an employee’s profile in a software system, I find that the then-Commissioner’s warning about manual entry was restricted to how a licensee generated and calculated the work performed by the driver. I find that the purpose and the wording of the “created and maintained electronically” payroll records requirement set out in s. 6.10 was speaking to the ongoing tracking of the hours worked and trips performed by the driver.

15. In this case, Lally Bros has sent different documentation during the audit, the audit response and now the response to the Commissioner’s Decision in support of its claim that it was in compliance with section 6.10 of its CTS license, and I reject that evidence for the reasons set out in paragraph 24 of the Commissioner’s Decision and the reasons set out in this Decision.
16. Furthermore, the Commissioner’s Decision did not imply that a licensee had to rely on a GPS system to “create and maintain” its payroll records but merely responded to Lally Bros argument that it relied on a GPS tracking system.
17. I find Lally Bros’ statement that the auditor was able to determine compliance during the audit period to be manifestly wrong. The auditor concluded in his January 23, 2024 audit report that he found Lally Bros “paid their drivers in accordance with the *Regulation* and the Rate Order for the audit periods for which records were provided” (emphasis added). At para. 29 of the Commissioner’s Decision I addressed how the lack of proper record keeping hinders the ability of the auditor to determine compliance and I reject that Lally Bros has demonstrated that it has provided the required information necessary for the auditor to determine compliance in this case.
18. I was unable to find any reference to another audit in 2017, but I note that in 2015 the then-Commissioner ordered Lally Bros. to undergo an audit by a Certified Professional Accountant to review two months of payroll records and was found to be compliant. Regardless, at para 29 of the Commissioner’s Decision I noted that Lally Bros had not been previously found in breach of the *Act* and the existence of the audit in 2015 does not change my analysis.

Conclusion

19. I am not persuaded to refrain from imposing an administrative penalty based on the response provided by Lally Bros. Having carefully considered Lally Bros’ submission, and for the reasons set out in the Commissioner’s Decision, I hereby order Lally Bros to pay an administrative fine of \$5,000.00.
20. Section 35(2) of the *Act* requires this fine to be paid within 30 days of the issuance of this Decision Notice.

21. Finally, I note that Lally Bros may request a reconsideration of this decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after the company's receipt of this Decision Notice. A Notice of Reconsideration must be:
- a) made in writing;
 - b) identify the decision for which a reconsideration is requested;
 - c) state why the decision should be changed;
 - d) state the outcome requested;
 - e) include the name, an address for delivery, and telephone number of the applicant and, if the applicant is represented by counsel, include the full name, address for delivery and telephone number of the applicant's counsel; and
 - f) signed by the applicant or the applicant's counsel.
22. Despite the filing of a Notice of Reconsideration, the above order remains in effect until the reconsideration application is determined.
23. This Decision Notice along with the Commissioner's Decision will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 18th day of July 2024.



Glen MacInnes
Commissioner