



June 27, 2024

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

Commissioner's Decision
Lally Bros Holding Ltd. (CTC Decision No. 12/2024)

Introduction

1. Lally Bros. Holding Ltd. ("Lally Bros") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. ADP Transport Ltd. ("ADP") is another licensee within the meaning of the *Act*.
3. The owners of Lally Bros and ADP (collectively the "Companies") are related and the Companies use the same office, accounting systems and procedures and drivers.
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. 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.

5. 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.
6. 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.
7. 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.
8. On June 26, 2023, Lally Bros was advised that it was the subject of a random audit to determine if its directly employed operators (also known as company drivers) were being paid the required minimum rates. Lally Bros and ADP were audited concurrently, and each licensee was provided an audit report that identified similar facts and similar violations. Each licensee submitted separate but nearly identical submissions.

9. However, I have decided to issue separate decisions as each holds a separate license. On April 16, 2024, I issued ADP Transport Ltd. (CTC Decision No. 06/2024) (“ADP Decision”). Given that the facts for both licensees are similar and the submissions received from both licensees are similar, I have similarly summarized the facts in each case and I have referred to the paragraphs in the ADP Decision where I have decided the same analysis applies in the case of Lally Bros.
10. Lally Bros has been the subject of one previous audit in 2019 and was found to be compliant with the *Act* and *Regulation* between August 1-31, 2018 and October 10-31, 2018.

Audit Report

11. On June 26, 2023, the auditor advised Lally Bros 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”).
12. Lally Bros provided the requested records by the deadline except for original timesheets for the periods of May and October of 2019, March and October of 2020, and June and December of 2021 (“Missing Trip Sheets”). Furthermore, Lally Bros only provided handwritten trip sheets for May 2023 rather than electronically generated records.
13. Lally Bros provided two different explanations regarding the Missing Trip Sheets. First, Mr. Lally, on behalf of Lally Bros, advised the auditor that the Missing Trip Sheets were destroyed after the transition to a new GPS system in 2022. Then Lally Bros 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.
14. Lally Bros provided the auditor with payroll summaries covering the Audit Period that were generated in an Excel spreadsheet. The auditor was unable to reconcile the Excel spreadsheet with the manually entered payroll records provided by Lally Bros.
15. The auditor confirmed payroll deductions during the Audit Period were corroborated by supporting documentation.
16. 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, the auditor determined that the drivers were paid in accordance with the Rate Order.
17. On January 23, 2024, the auditor submitted an audit report (“Audit Report”) based on his review of the Audit Period which concluded the following:
 - a) Lally Bros failed to maintain and provide timesheets for May and October of 2019, March and

October of 2020, and June and December of 2021 in accordance with Appendix D s. (4)(f).

b) Lally Bros failed to maintain and provide electronically generated payroll records in May 2023 in breach of section 6.10 of the 2022 CTS Licence.

18. A copy of the Audit Report was provided to Lally Bros on January 29, 2024, and Lally Bros was invited to provide a response no later than February 28, 2024.

Licensee Response

19. On February 22, 2024, Lally Bros responded to the Audit Report. Lally Bros maintains that since December 1, 2022, it has been compliant with 6.10 of the CTS licence and attaches Timecard Reports and GPS records associated with certain trucks movements in May 2023 it says demonstrates such compliance.

20. Regarding the Missing Trip Sheets, Lally Bros 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.

21. Finally, Lally Bros states it understands its obligations under the CTS licence, which incorporates 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

22. I have considered the Audit Report and Lally Bros’ response and for the reasons set out below, I find that Lally Bros 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.

23. I apply the analysis at para 19 of the ADP Decision to conclude that Lally Bros did not retain the trip sheets (2019, 2020, and 2021) that were created in accordance with Appendix D s. 4(f) of its CTS licence. Lally Bros does not dispute that the payroll records were created or that it failed to retain those documents as required by the CTS licence.

24. I am also not persuaded that the information provided by Lally Bros demonstrates that it has an electronic payroll system as required by s. 6.10. I have reviewed the timecard reports and the GPS data driver data which appear to summarize each truck’s usage, but which do not indicate the driver’s name. In fact, next to the name of the truck unit number contained in the timecard reports are the words “Unknown Driver.” 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. While the file name assigned to each GPS report has a driver’s name, the data contained in the file only refers to the movements of a truck. In other words, I am unable to tell from the report itself if that is in fact the driver or if the file name was saved using the driver’s name. It appears that Lally Bros manually assigned the name to the electronic records which is not sufficient to satisfy the requirement that the records be electronically generated.

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25. 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.
26. Lally Bros' record-keeping was found to be deficient. At para. 22 of the ADP Decision, I adopted the analysis set out in HAP Enterprises Ltd. (CTC Decision No. 17/2016) and I adopt the same analysis in this decision.
27. At paragraph 23 of the ADP Decision, I recognized that the maintenance of electronically generated records of drivers' hours and trips was a relatively new condition but noted that the requirements were canvassed and discussed with the industry prior to its implementation on December 1, 2022.
28. 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.
29. Here, I have decided that an administrative penalty of \$5,000.00 is appropriate. In assessing an appropriate penalty, I acknowledge the seriousness of improper record-keeping, but I am mindful that Lally Bros has not previously been found in breach of the *Act*. Lally Bros has now breached the *Act* by failing to maintain records as required and therefore hindered the ability of the auditor to determine compliance. Additionally, Lally Bros 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 administrative penalties issued for failing to maintain proper records and failure to have an electronically generated payroll system.
30. 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 Lally Bros 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 Lally Bros in the amount of \$5,000.00.

31. Should it wish to do so, Lally Bros 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.
32. If Lally Bros provides a written response in accordance with the above, I will consider its response and I will provide notice to Lally Bros 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 Lally Bros and will be published on the OBCCTC's website (www.obcctc.ca) after Lally Bros' response period has ended.

Dated at Vancouver, B.C., this 27th day of June 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