



July 26, 2024

Pro West Trucking Ltd.
200 - 1170 Derwent Way
Delta, BC V3M 5R1

Commissioner's Decision **Pro West Trucking Ltd. (CTC Decision No. 14/2024)**

Introduction

1. Pro West Trucking Ltd. ("Pro West") is a licensee within the meaning of the *Container Trucking Act* (the "Act"). Pro West has eleven (11) directly employed operators ("company driver") tags and fifty-nine (59) independent operator ("IO") tags.
2. 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*.
3. 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 (via a "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.
4. Under section 24(1) and (2) of the *Container Trucking Regulation* (the "*Regulation*"), a licensee must pay remuneration and fuel surcharge owed to a company driver at least semi-monthly and no later than 8 days after the end of a pay period and must pay remuneration, wait time remuneration and fuel surcharge owed to an IO no later than 30 days after the end of the calendar month in which the IO performed the container trucking services for which the remuneration, wait time remuneration or fuel surcharge is owed.
5. Under s. 31 of the *Act*, the Commissioner may conduct an audit or investigation to ensure compliance with the *Act*, the *Regulation* or licence.

Background

6. Pro West has been the subject of two other decisions. In 2017, the Commissioner found that Pro West

had underpaid its drivers by more than \$660,000.00 and ordered it to compensate the drivers whose pay it had not already adjusted in the amount of \$174,903.16 and to pay an administrative fine of \$25,000.00 (“Pro West #1”).

7. In 2023, I found that Pro West had underpaid its company drivers by more than \$20,000 over a period of approximately one year and had underpaid its IOs over \$17,000 during the two months of the Initial Audit Period (August 2018 and September 2019), made improper deductions, and failed to comply with orders to correct certain payroll errors between 2016 and 2021 and bring itself into compliance by recalculating wages owed to its drivers by the deadline. I ordered Pro West to pay the outstanding amounts identified for the Initial Audit Period no later than August 9, 2023 and imposed an administrative fine of \$50,000.00 and a four-week license suspension beginning October 20, 2023. See Pro West Trucking Ltd. (CTC Decision No. 08/2023) – Decision Notice (“Pro West #2”).
8. On or around September 5, 2023, Pro West’s estate lawyers advised that the directing mind and sole shareholder and director, Mr. Bindy Sangara, had died without a will.
9. On or around September 20, 2023, I advised Pro West that as per section 6.28 of its container trucking services license, its licence would be cancelled upon a change of ownership unless the Commissioner agreed to a change of control. I invited Pro West to make an application for a change of control within 60 days.
10. On or around October 18, 2023, I accepted Pro West’s unperfected/deficient application for reconsideration of Pro West #2 and I amended my order in Pro West #2 to have the four-week suspension begin on November 16, 2023.
11. On November 15, 2023, Pro West provided a more substantial application for reconsideration of Pro West #2 and I amended my order in Pro West #2 to have the four-week licence suspension begin 7 calendar days after a Reconsideration Decision was issued.
12. On November 15, 2023, Pro West provided certain payroll records that it had earlier refused to produce and the OBCCTC auditors used these to extrapolate amounts owing between 2016 and 2021 based on certain errors (the “Extrapolation Audit”).
13. On November 16, 2023, Mr. Arthur Dahl applied for consent to a change of control on the basis that he would be the new directing mind. The application indicated that Mr. Dahl was the Vice President of Transportation Operations of Pro West and had worked with Mr. Sanghera for the previous 5 years and was seeking to be named as the Administrator of Mr. Sanghera’s Estate. In spite of Pro West #2, Mr. Dahl stated that “to the best of the Applicant’s knowledge, the Licensee [Pro West] is currently in compliance with the *Container Trucking Act and Regulation*.”
14. Both Pro West’s application for reconsideration of Pro West #2 and its application for a change of control are still before the Commissioner.
15. On or around January 19, 2024, the Supreme Court of British Columbia appointed Mr. Dahl as an administrator under special circumstances of the estate of Mr. Sanghera.

16. In or around early February 2024, the OBCCTC received complaints from drivers at Pro West that they had not been paid for several months and an investigation was initiated (the “2024 Unpaid Wages Complaint Audit”).

Audit Report #1 -- 2024 Unpaid Wages Complaint Audit

17. On or around February 6, 2024, an auditor spoke to Mr. Dahl about the alleged remuneration delays to its drivers. Mr. Dahl confirmed that, due to the death of Mr. Sanghera, there was a delay in remunerating company drivers but maintained that by the time of the conversation the company drivers had been fully paid. In a subsequent conversation with Mr. Nav Thind, Pro West’s Vice President of Finance, the auditor was advised that there had been no delay in the payment of wages to the company drivers.
18. Mr. Thind also advised that Pro West prepared IO pay cheques on the normal production dates but did not release the cheques to the drivers until there were sufficient funds in its bank account. Mr. Thind subsequently advised the auditor that Pro West split its IOs’ net pay for the pay period in half and paid each driver in two installments.
19. The auditor reviewed wait time payments, including evidence of proof of payment, and confirmed that Pro West had distributed wait time payments to its IOs within 30 days of receiving monies from the Vancouver Fraser Port Authority.
20. Pro West advises via Mr. Thind that it paid its IOs up to February 23, 2023, as follows:

<u>Pay Period</u>	<u>Regulated Due Date</u>	<u>Payment #1 Date</u>	<u>Payment #2 Date</u>
November 1-15, 2023	December 30, 2023	January 11, 2024	January 17, 2024
November 16-30, 2023	December 30, 2023	February 6, 2024	February 9, 2024
December 1-15, 2023	January 30, 2024	February 13, 2024	February 16, 2024
December 16-31, 2023	January 30, 2024	February 21, 2024	March 8, 2024
January 1-15, 2024	March 1, 2024	Unpaid	Unpaid

21. Despite the auditor’s repeated requests for proof of payment, Pro West was unwilling or unable to provide records that would demonstrate that each IO was paid in accordance with the dates Pro West states the cheques were distributed, or at all.
22. On March 11, 2024, the auditor issued an Audit Report stating that she has no confidence that Pro West had complied with section 24(2) of the *Regulation* and that Pro West was unable to demonstrate that all its IOs and company drivers received their pay cheques.
23. On March 12, 2024, I provided Pro West with a copy of Audit Report #1 and invited Pro West to provide a submission and the cancelled cheques of company drivers for September, October and November 2023. Given that it appears from Audit Report #1 that Pro West was not properly paying its drivers at the time of its change of control application on November 16, 2023, I also invited Mr. Dahl to speak to his assertion in the application that he believed Pro West was in compliance at the time he submitted his application. Given that Pro West appeared to be failing to pay its drivers in accordance with the

Regulation on an ongoing basis, I provided Pro West five days to respond.

Licensee Response to Audit Report #1

24. On March 15, 2024, Mr. Dahl responded. He advised that he had reviewed Audit Report #1 but did not provide detailed submissions in response to its findings or the requested payroll information. Mr. Dahl explained that he was not aware of Pro West's failure to pay its drivers in accordance with section 24 at the time of his application for a change of control.
25. On April 26, 2024, I provided Pro West with another opportunity to provide a submission on Audit Report #1 and another opportunity to provide the requested payroll documents in case they had been inadvertently omitted from its March 15, 2024 response. I also told Pro West that I had received an additional complaint that drivers were still without payment and invited Pro West to respond.
26. On May 1, 2024, counsel for Pro West advised that all of its company drivers had been paid "in a timely manner" at all material times and that the auditor must have misunderstood the statements made regarding the payment of company drivers in and around September 2023. Counsel for Pro West explained that the death of Mr. Sangara resulted in the bank not honouring the company drivers' pay cheques, but that Pro West rectified the situation upon learning of it, and the company drivers were able to cash their pay cheques the very same day. Counsel maintains that therefore both Mr. Dahl's statement and Mr. Thind's statements as described in paragraph 17, above, are true.
27. Pro West admits that due to cashflow issues it is one and one-half months behind the statutory time frame for payment to its IOs.

Supplemental Audit Report

28. On or around May 23, 2024, IOs complained to the OBCCTC that they had not received any wages from Pro West for work performed between the months of February and May 2024. They said that the last day they were paid was on or around February 15, 2024. The IOs advised that they stopped working for Pro West around May 27, 2024, as they were not being paid.
29. The OBCCTC advised Pro West of these complaints. Mr. Dahl confirmed in a telephone call with the Deputy Commissioner that Pro West had not paid its IOs since February 15, 2024, due to cash flow issues, the loss of a major customer, and delays in selling certain equipment to raise capital.
30. On June 17, 2024, the auditor required Pro West to confirm the last date it paid its IOs and to provide payroll records for each pay period it had not paid its IOs.
31. On June 21, 2024, Pro West advised that it last paid its IOs on May 21, 2024, for the February 1-15, 2024, payroll period and confirmed that its IOs had not been paid for any pay periods after February 16, 2024. Although it did not provide the materials upon which it based its calculations, Pro West advised that that it owed its IOs \$1,112,894.45 for unpaid work up to April 30, 2024.
32. On July 5, 2024, I provided Pro West with a copy of the July 5, 2024 supplemental audit report ("Supplemental Audit Report") which recorded that Pro West had admitted owing its IOs over \$1,000,000

for unpaid work up to April 30, 2024 and an undetermined amount for May 2024. Pro West was provided an opportunity to respond by July 12, 2024.

Licensee Response to Supplemental Audit Report

33. On July 5, 2024, Pro West provided the auditor with the outstanding amount (\$146,960.07) owed to IOs for container trucking services performed between May 1 and May 15, 2024. Again, Pro West did not provide anything more than this dollar figure.
34. On July 12, 2024, Pro West advised the auditor that it owed \$81,809.09 to its IOs for container trucking services performed between May 16 and May 31, 2024. Again, Pro West did not provide any records.
35. On July 12, 2024, counsel for Pro West also advised the OBCCTC, *inter alia*, that Mr. Dahl had recently resigned from Pro West and it was Pro West's understanding that he was no longer acting as the administrator of the estate. Counsel sought an extension of 60 days to respond to the Supplemental Audit Report.
36. I denied Pro West's request for an extension for reasons set out in my July 12, 2024 response to counsel.
37. Pro West did not submit a response to the Supplemental Audit Report by the deadline.

Order to Comply

38. On July 15, 2024, I found that Pro West in breach of section 24(2) of the *Regulation* after it failed to pay its IOs within 30 days of the last day of the months (February 16-29, March 1-15, March 16-30, April 1-15, April 16-30, May 1-15 and May 16-31, 2024) they performed container trucking services.
39. Pursuant to section 9 of the *Act*, I ordered Pro West to pay its IOs the following amounts no later than July 22, 2024 (the "2024 Order"):

Pay Period	Total Remuneration Owed
February 16-29, 2024	\$250,347.27
March 1-15, 2024	\$210,038.30
March 16-31, 2024	\$195,872.17
April 1-15, 2024	\$291,704.99
April 16-30, 2024	\$164,932.72
May 1-15, 2024	\$146,960.07
May 16 -31, 2024	\$81,809.09
Total	\$1,341,663.61

40. The 2024 Order advised that if Pro West failed to pay the amount owing by the date set, its security would be called. Pro West failed to comply with the 2024 Order and the OBCCTC has called Pro West's security bond of \$875,000.00, leaving an outstanding balance of \$466,663.61 owing to its drivers for the period

between mid-February and May of 2024.

Audit Report #2 – Extrapolation Audit

41. As set out above, Pro West was required to provide the auditor with payroll records for the following months: April and December, 2016; March and September 2017; February and July 2018; January and October 2019; February and May 2020; and July 2021 (the “Audit Period”). Pro West delivered all the records except for those for April 2016 and February 2018, which it later characterized as an oversight, although it did not afterwards provide these records.
42. Selecting a random sample of twenty-five drivers in each month of the Audit Period, the auditor focused on identifying unpaid trips based on the payroll information provided. Two errors were noted that led to the underpayment of drivers. One error involved Pro West calculating the driver’s pay based on the origin and eventual destination of the container instead of each movement between facilities performed by the driver. The second error involved failing to pay a driver who was unable to complete a trip due to unforeseen circumstances – colloquially called “dead runs.”
43. After determining the amount owing to the random sample of twenty-five drivers based on the underpayment errors in each month of the Audit Period (except for April 2016 and February 2018), the auditor used the sample amounts to perform a statistical extrapolation (outlined in Audit Report #2) to assess the amount owed between 2016 and 2021. She determined Pro West owed approximately \$631,092.42 to its drivers over approximately 5 years. The auditor noted that in Pro West #2 the licensee was found to owe \$17,877.14 for August 2018 and September 2019 for similar errors and, if Pro West had indeed paid that amount to the drivers, then the amount would be subtracted from the \$631,092.42.
44. The auditor also noted that three separate improper deductions (\$535, \$500 and \$500) were made from Mr. L. Sangha’s pay statements in 2018 to compensate Pro West for a “terminal rehandling charge” of \$1,535 issued by an off-dock facility. The auditor concluded that such a fee is a business cost of the licensee and the licensee’s deduction of it from its driver’s wages is in breach of Schedule 1, Appendix E, section 2 of the CTS licence.
45. The auditor provided her findings as set out above along with her working papers in an audit report on June 6, 2024 (“Audit Report #2”).
46. On June 10, 2024, Pro West was provided a copy of Audit Report #2 and invited to provide a submission no later than July 10, 2024. Pro West did not respond by the deadline and has not provided a response as of the date of this decision

Analysis and Decision

47. While there are several issues facing Pro West, this decision only addresses Pro West’s repeated failure to pay its drivers in accordance with the *Regulation* over late 2023 and the first half of 2024 and its failure to comply with my 2024 Order to pay its drivers. The reference to Pro West #2 (currently under reconsideration) and Pro West’s change of control application is context. Clearly some of Pro West’s issues predate the death of Mr. Sangara and others may rest on the lack of certainty about who is running

Pro West at this time. It is undisputed however that there is a significant amount of money owed to the drivers as identified in Audit Report #1 and the Supplemental Audit Report and it is unclear if the drivers will ever be paid in full.

48. As set out above, Pro West does not dispute that it has repeatedly missed paying its IOs within the period set out in the *Regulation*. The delays in pay range from at least 18 days up to 102 days as of the date of this decision for the pay periods between November 1, 2023 and May 30, 2024. Based on the undisputed evidence before me, I find Pro West in breach of s. 24(2) of the *Regulation* for failing to pay IOs within the required time for work performed between November 1, 2023 and February 15, 2024. For the reasons set out in the 2024 Order, Pro West was in breach of s. 24(2) of the *Regulation* when it failed to pay IOs within the required time for work performed from February 16 to May 30, 2024.
49. Furthermore, in spite of Pro West's assertion that Mr. Dahl and Mr. Thind were consistent in their comments about the delay in pay to company drivers, I was never provided the requested supporting evidence that would have confirmed that its company drivers were paid in accordance with section 24(1) of the *Regulation*. In the absence of such evidence, and in light of Pro West's established failures to pay its IOs on time or at all, I conclude that Pro West was also in section 24(1) of the *Regulation* in September 2023 for failing to pay its company drivers between September and November of 2023 within the required time period.
50. Finally, Pro West failed to comply with the 2024 Order to pay its drivers the substantial sum of \$1,341,663.61 by July 22, 2024.
51. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, 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 s. 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000 and up to \$10,000.00 in any other case.
52. While I understand that the death of Mr. Sangara without a will may have affected Pro West's operations, Pro West has been dispatching drivers and then failing to pay them for up to several weeks, or at all, and the drivers' uncertainty about their future income continues. Additionally, Pro West's underpayment of its drivers' pre-dates Mr. Sangara's death, as its drivers were found in 2017 to have been underpaid by more than \$600,000. Additionally, while I have not considered Pro West #2 in my consideration of the appropriate penalty here because Pro West's application for reconsideration is still before me, I note that Pro West has not disputed that the extrapolated amount owed to the drivers for work performed between 2016 and 2021 is more than \$600,000.
53. The fact remains that Pro West either delayed paying its drivers or outright failed to pay its drivers for work performed in late 2023 and until May of 2024. Such practices are neither consistent with the

Regulation nor consistent with the goal of the *Act* to bring stability to the industry. In addition, Pro West's failure to provide the requested payroll records for November 2023 to May 2024 has hindered the auditor's ability to determine the quantum of wages still owed to each driver. This has forced the auditor to determine the amounts owed to drivers based on the spartan information provided by Pro West and she does not currently have reliable assurance that Pro West has calculated those rates in compliance with the *Act*. I share her concern. As mentioned, this hinders my ability to ensure that drivers are paid either by Pro West or through its surety. In other words, all the protections put in place to ensure drivers are paid the minimum regulated rates in a timely way have been hindered by Pro West's failure to provide the required records.

54. Pro West's failure to comply with my 2024 Order is probably not surprising given its ongoing financial difficulties – however, that does not excuse it. In Pro West #2, I stressed the importance of complying with orders and Pro West has disregarded an order again. The fact is that Pro West does not have the revenue needed to meet its payroll obligations and is continuing to call upon drivers to work without being able to offer them any certainty that they will be paid their wages within the required timeframe or at all. Given the ongoing nature of the breach, I find it probable that this situation will persist despite an administrative penalty.
55. As set out above, I have not considered the penalty assessed in Pro West #2 here. I have however considered Pro West's previous breaches in Pro West #1 (including significant underpayment of its drivers) and its previous administrative penalty for this.
56. The *Act* and *Regulation* were enacted to ensure stability in the drayage sector through a regulatory scheme that ensures drivers are paid the regulated rates within a regulated period so as not to cause labour unrest or disruption. I was provided no insight into why Pro West has failed to pay its drivers beyond an apparent lack of funds but, regardless of the reasons, Pro West has continually failed to satisfy its obligations to pay its drivers on time and it is unclear to me that an administrative fine will correct the situation. I have therefore concluded that Pro West's license should be cancelled. In proposing this penalty, I have weighed the impact of a licence cancellation on drivers against the impact on them of Pro West's continued failures to pay them on time – or at all. I feel that the impact of the license cancellation on the drivers will be alleviated by their ability to work for other licensees who are able to meet their obligations under section 24 of the *Regulation*. The OBCCTC can and has started to facilitate the movement of drivers to other licensees.
57. In these circumstances, I have concluded that the cancellation of Pro West's license is appropriate.
58. In the result and in accordance with s. 34(2) of the *Act*, I hereby give notice that:
 - a) I propose to cancel Pro West Trucking Ltd.'s container trucking services license.
 - b) Should it wish to do so, Pro West has 7 days from receipt of this notice to provide a written response to me setting out why the proposed penalty should not be imposed.
 - c) If Pro West provides a written response on the proposed penalty in accordance with the *Act*, I will consider it and advise whether I will refrain from imposing any or all of the penalties.

59. This decision will be delivered to the Pro West and may be published on the OBCCTC's website (www.obcctc.ca) after Pro West's response period has closed.

Dated at Vancouver, BC, this 25th day of July 2024

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is written in a cursive, flowing style.

Glen MacInnes
Commissioner