



July 10, 2024

Embassy Transportation Inc.
2651 No. 5 Road
Richmond, BC V6X 2S8

Commissioner's Decision Embassy Transportation Inc. (CTC Decision No. 13/2024)

Introduction

1. Embassy Transportation Inc. ("Embassy") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. In Embassy Transportation Inc. (CTC Decision No. 04/2023) ("Original Decision"), I determined that Embassy was paying its drivers non-compliant rates and failing to pay its drivers within the time period required under the *Container Trucking Regulation* (the "Regulation"). Additionally, I found that Embassy had failed to maintain proper records. As a result, I ordered Embassy to:
 - Pay nine (9) of its drivers a total of \$11,691 within 7 days of the Original Decision and to provide the auditor with proof of payment no later than the May 31, 2023;
 - Review its payroll records from May 8, 2019 to the date of the Original Decision (excluding the months covered in the Audit Period (the "First Audit Period") [August 2018, October 2019, October 2020 and November 2021] and make the appropriate adjustments to bring itself into compliance with the Act within three months of the Original Decision; and
 - Advise the Commissioner of any corrections no later than August 31, 2023.
(collectively the "Original Orders")
3. In Embassy Transportation Inc. (CTC Decision No. 04/2023) ("Decision Notice"), I ordered Embassy to pay an administrative fine of \$6,000 within 30 days of the Decision Notice.
4. Embassy was previously issued an administrative penalty of \$500 in Embassy Transportation Inc. (CTC Decision No. 09/2018) after failing to pay its drivers the regulated fuel surcharge.
5. While Embassy paid the administrative fine in the Decision Notice within the required timeline, it failed to provide the auditor with confirmation that it had paid the seven (7) drivers a total of \$11,691 by the required deadline and did not advise the Commissioner of any underpayments owed to its drivers by August 31, 2023, as required by the Original Orders.

Audit Report

6. On October 30, 2023, the OBCCTC initiated an audit of Embassy to confirm that Embassy had complied with the Original Orders and requested payroll records for the following pay periods:
 - 2019 – May & June
 - 2020 – March & November
 - 2021 – January & December
 - 2022 – June & October
 - 2023 – January

(collectively the “Second Audit Period”)
7. The auditor responded to Embassy’s immediate query about the purpose of the requested records by explaining that she was confirming that Embassy had complied with the Original Orders.
8. On November 10, 2023, Embassy provided a spreadsheet detailing its calculations of monies owed to drivers from January 1, 2019 to January 31, 2023 –totaling \$59,802.05 and provided images of cheque made out to each driver totaling \$59,802.05. Embassy further explained that due to illness it could not deliver the requested payroll records that demonstrated how the amounts were calculated and informed the auditor that the cheques have not been issued to the drivers as it has not had sufficient funds available.
9. On November 24, 2023, the auditor sent an email to Embassy confirming her understanding that:
 - Embassy has not paid the \$11,691 to the drivers as required in the Original Decision;
 - Embassy has failed to provide the auditor with proof of payment of the \$11,691 by May 31, 2023;
 - Embassy has failed to advise the Commissioner that it had calculated an underpayment to its drivers of \$59,802.05 for the period between January 1, 2019 and January 31, 2023 by August 31, 2023 deadline; and
 - Embassy had failed to provide the payroll records requested in the October 30, 2023 letter.
10. Embassy was invited to respond by November 17, 2023 but did not do so.
11. On November 29, 2023, the auditor provided an audit report (“Original Audit Report”) with her findings and a copy was provided to Embassy who was provided an opportunity to respond by December 14, 2023.
12. On December 18, 2023, Embassy advised via email that it had attempted to deliver its records to the OBCCTC office on December 15, 2023 but was unable to gain access to the building as the staff were off-site. Eventually, Embassy was able to deliver the records requested in the October 30, 2023 letter with the exception of trip sheets and time sheets for May and June 2019. Embassy stated it was unable to locate those documents due to an office move.

Company Drivers

13. The auditor reviewed Embassy's calculations against its company driver payroll records for the Second Audit Period and confirmed the calculations were correct except for a total of four drivers who were not paid the minimum regulated rate for work performed in June 2019, March 2020, and October 2022. The auditor speculates that Embassy failed to adjust these drivers' hourly rate following the increase in the minimum regulated rates and determined that Embassy still owes \$1,003.98 to company drivers for the Second Audit Period. This amount was \$444.24 higher than the amount calculated by Embassy.

Independent Operators ("IO")

14. The auditor reviewed the calculations Embassy provided against the Second Audit Period payroll records. The auditor suspects Embassy simply increased the trip sheet summaries by an arbitrary percentage to determine that the amount owing to IOs over the Second Audit Period was \$5,731.96 instead of reviewing each individual IO's trips sheets and payroll records. Based on her review, the auditor determined that Embassy owed the IOs a total of \$15,210.37 -- for a difference of \$9,478.41 -- based on the following errors or omissions:

- Trips recorded on a IO's trip sheet were recorded as round trips. The rate paid for "round trips" was less than the minimum regulated rates which are based on a single container trip.
- Recording trips as "round trips" resulted in IOs not being paid the Position Movement Rate for each single trip.
- Incorrect fuel surcharge rates were used.
- IOs were not paid for dead runs.

15. The auditor also noted that Embassy failed to pay the wait time payments to its IOs within 30 days of receiving the funds from the Vancouver Fraser Port Authority.

Electronic Payroll System

16. On February 9, 2024, Embassy advised the auditor that it had an electronic system to track the number of hours and/or trips for its IOs but did not have such a system in place for its company drivers as required by 6.7 of its CTS licence.

Compliance with Original Orders

17. The auditor reviewed the Original Orders and determined that Embassy had:

- a) paid the administrative fine of \$6,000 by the deadline;
- b) failed to provide proof of payment and failed to pay a total of \$11,691.55 to the nine drivers by May 15, 2023 and had still not done so as of the date of the Supplemental Audit Report;
- c) failed to review all its payroll records between May 8, 2019 and May 8, 2023 and make the appropriate adjustments by August 9, 2023; and

- d) failed to advise the Commissioner by August 31, 2023 of the corrections made to its payroll.
18. While Embassy provided the auditor with calculations of amounts owing that substantially overlapped the period of time it was ordered to review (January 1, 2019 to January 31, 2023 instead of May 8, 2019 and May 8, 2023), it failed to pay its drivers or notify the Commissioner the amount it says it owes (\$59,802.05) for the period between January 1, 2019 and January 31, 2023 by the deadlines set out in the Original Order.
19. The auditor provided a supplement to her Audit Report (“Supplemental Audit Report”) to the Commissioner on March 11, 2024 outlining her findings as set out above.
20. Embassy was provided a copy of the Supplemental Audit Report along with the auditor’s working papers on March 18, 2024 and Embassy was provided an opportunity to make an additional submission no later than April 3, 2024. Embassy did not provide an additional submission by the deadline.

Decision

21. I accept the uncontroverted findings of the Original Audit Report and the Supplemental Audit Report that Embassy has failed to pay its company drivers the \$11,691.55 owed and failed to notify the Commissioner or the auditor by the deadlines set out in Original Orders. Embassy has also failed to properly calculate and pay its IOs the difference owing for period of May 8, 2019 to May 8, 2014, which Embassy has calculated to be \$59,802.05 and the auditor calculated at \$69,724.70 Finally, Embassy failed to produce trip sheets for May and June 2019.
22. On May 23, 2024, I called on Embassy’s security bond in the amount of \$11,691.55 and that amount has since been paid to Embassy’s drivers.
23. Embassy was ordered to review and make corrections to its payroll for the period between May 8, 2019 and May 8, 2024 but only appeared to provide the auditor with calculations up to and including January 31, 2024 and using an arbitrary percentage increase -- a “guestimate” -- to calculate the amounts owed to certain drivers. Furthermore, the auditor only reviewed nine (9) of the 96 months Embassy was ordered to review and yet she calculated Embassy owed an additional \$444.24 (company drivers) and \$9,478.41 (IOs) just in that time. It is probable that the calculation errors identified by the auditor in the Second Audit Period exist in the other months that Embassy was ordered to review and correct. Embassy concedes that it owes at least \$59,802.05 to its drivers for the period between January 1, 2019 and January 2023, and, when including the auditor’s corrected amounts (an additional \$444.24 and \$9,478.41), the total amount owing is at least \$69,724.70 for that period.
24. I am unclear whether Embassy has now complied with section 6.7 and 6.10 of its CTS licence, but I accept it was unable to demonstrate to the auditor that it met the requirements for its company drivers as late as January 2023.

25. Section 40 of the *Act* requires a licensee to comply with the order made under the *Act*. Other than paying the administrative fine and partially calculating the amount owing to drivers well after the deadline imposed for doing so, Embassy failed to substantially comply with any of the Original Orders made in the Original Decision. Embassy was reminded by the auditor of its obligations set out in the Original Orders and was provided an Original Audit Report and Supplemental Audit Report advising Embassy of the auditor's understanding that Embassy had failed to substantively comply with the Original Orders. The auditor then worked with Embassy when it finally provided the requested information and, despite all these steps, Embassy still has not paid its drivers as required by the Original Orders.
26. 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 section 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.
27. 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 drivers in compliance with 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.
28. In cases where orders involving payment of wages to drivers have not been followed, suspensions have been proposed because of the seriousness of not following a Commissioner's order and the need to immediately ensure that a licensee pays its drivers the money they are owed. See: Supersonic Transport Ltd. (CTC Decision No. 24/2018) and Can. American Enterprises Ltd. (CTC Decision No. 12/2020). In Pro West Trucking Ltd. (CTC Decision No 08/2023) (Decision Notice), I ordered the licensee to pay an administrative fine of \$50,000 and serve a four-week suspension after it had repeatedly failed to follow an order to calculate wages owed to its drivers; the suspension was appropriate because there was a concern that the non-compliance is ongoing. I adopt the analysis set out in those decisions.
29. In this case, Embassy was found in the Original Decision to be in breach of the *Act* and was then ordered to carry out certain tasks by certain deadlines to bring itself into compliance. I find that Embassy substantially disregarded the Original Orders and delayed paying the drivers the monies they were owed. I can infer from the Original Audit Report that part of the reason Embassy failed to comply with the Original Orders may be due to its inability to actually pay the funds, but this is not an acceptable reason. Given Embassy's failure to advise the Commissioner that it did not pay the \$11,691.55 to its drivers by the deadline, resources had to be assigned to confirm whether Embassy had paid its drivers. Together, these factors delayed the process of collecting the funds

from Embassy's security. As a result, the drivers who were owed wages had to wait longer than they should have to be paid such a significant amount.

30. While the drivers have been paid the \$11,691.55 directly from Embassy's security bond, I am unable to determine the exact funds still owing based on Embassy's failure to review the required payroll records, its "guesstimating" the amount owing to IOs, its failure to provide all the trip sheets during the Audit Period and it providing inaccurate calculations as determined by the auditor. I have found that the drivers are owed at least an additional \$69,724.70.
31. The Act gives the Commissioner a broad discretion as to whether a penalty should be issued in any particular case. The factors to be considered have been identified in earlier decisions (see: Smart Choice Transportation (CTC Decision No. 21/2016), including the Original Decision, and includes the following:
- the seriousness of the respondent's conduct;
 - the damage done to the integrity of the Container Trucking Industry;
 - factors that mitigate the respondent's conduct;
 - the respondents past conduct;
 - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of having a Container Trucking Services licence;
 - the need to deter those Licensees from engaging in inappropriate conduct;
 - Orders made by the Commissioner in similar circumstances in the past.
32. I have concluded that this is an appropriate case to issue a penalty. I come to this decision for the following reasons:
- a) Embassy failed to substantially comply with the orders to calculate and pay the drivers as set out in the Original Decision.
 - b) Embassy failed to maintain payroll records in accordance with Appendix D (4) of its CTS license.
 - c) The \$11,691.55 sum owed to Embassy's drivers impacted a total of nine drivers and Embassy's failure to pay those drivers, requiring the OBCCTC to call on Embassy's security, has compounded the impact.
 - d) The additional amount, at least \$69,724.70, owing to Embassy drivers is significant and Embassy's delay in paying those drivers has enriched the licensee and the expense of its drivers.
 - e) There is a likelihood that Embassy still owes a substantial amount.
 - f) Embassy has failed to demonstrate it has an electronically generated payroll system as required under section 6.7 and 6.10 of its CTS license.
 - g) Embassy has had two previous administrative penalties for failing to pay its drivers the regulated minimum rates and it appears that those penalties were not sufficient to correct Embassy's non-compliant behaviour.
 - h) Embassy failed to cooperate with the auditor early in the audit process causing unnecessary delays.

- i) Suspensions have been previously issued in similar circumstances when a licensee has failed to comply with a Commissioner's orders to calculate wages and pay drivers.
33. Considering the above circumstances, I find that to ensure that drivers are paid in an accurate and timely way and to encourage proper record-keeping, a penalty of \$60,000.00 is warranted. I also propose a suspension of Embassy's CTS license until such time as it had complied with my Original Orders or two weeks– whichever is sooner. In my view, \$60,000.00 and a suspension should be sufficient to deter continuing misconduct by Embassy and lack of attention to the Original Orders that has unreasonably delayed driver's compensation.
34. In the result and in accordance with Section 34(2) of the *Act*, I hereby give notice as follows:
- a. I propose to impose an administrative fine of \$60,000.00;
 - b. I propose to impose a suspension of Embassy's CTS license (22-054) until such time as it has complied with my Original Orders or two weeks– whichever is sooner;
35. In addition, pursuant to Section 9 of the *Act*, I hereby order ("Supplemental Order") Embassy to:
- a. immediately pay its drivers the \$69,724.70 adjustment amount found by the auditor to be owing; and
 - b. advise the auditor when it has paid the \$69,724.70 to its drivers within fifteen (15) days of this decision.
36. If Embassy fails to advise the auditor that it has paid the \$69,724.70 to its drivers by the deadline, I will proceed to call on Embassy's security bond.
37. Should it wish to do so, Embassy has 7 days from the receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed.
38. If Embassy provides a written response in accordance with the above, I will consider its response and I will provide notice to Embassy 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.

Conclusion

39. In summary, Embassy has been found in violation of the *Act*, the *Regulation* and its license for paying its drivers non-compliant rates, not having an electronically generated payroll system, and failing to comply with the Original Orders. I have proposed an escalating penalty of \$60,000.00 and a suspension of its CTS licence.

40. This decision will be delivered to the licensee and published on the Commissioner's website (www.abcctc.ca)

Dated at Vancouver, B.C. this 10 day of July 2024.

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

Glen MacInnes
Commissioner