



October 28, 2024

Triangle Transportation Ltd.
8970 River Road
Delta, BC V4G 1B5

Commissioner's Decision
Triangle Transportation Ltd. (CTC Decision No. 15/2024)

Introduction

1. Triangle Transportation Ltd. ("Triangle") requires access to marine terminals in the Lower Mainland and is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. Section 16(1)(b) of the *Act* states that a licensee must carry out prescribed container trucking services in the Lower Mainland 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. Section 18 of the *Act* allows the Commissioner to impose any conditions on a license that the Commissioner considers necessary.
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 via the Rate Order and licensees must comply with those statutorily established 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. On May 1, 2023, the Rate Order was amended to include a requirement that company drivers be paid a higher minimum rate for any hours worked in excess of 9 hours per day or 45 hours in a work week ("Overtime Rate").
6. Section 6.7 of the 2022 Container Trucking Licence ("Licence") states that the licensee must ensure that all trucks engaged in container trucking services for the licensee are equipped with an electronic device or technology that records the number of hours of container trucking services and/or trips

performed.

7. Section 6.10 of the 2022 Licence states that the Licensee must ensure that payroll records and wage statements for all drivers performing CTS are created and maintained electronically.
8. On December 19, 2023, Triangle was advised that it was the subject of a random audit to determine if its drivers were being paid the minimum rates required and was requested to provide certain payroll records.
9. Triangle has been the subject of one previous audit in 2017 and was determined to be compliant.

Audit Report

10. The OBCCTC requested and Triangle provided payroll records for April and August 2020, February and December 2021, March and July 2022, and January and May 2023 ("Audit Period").
11. The auditor determined that one driver was not paid all the hours worked in December 2021. Triangle agreed that a miscalculation had occurred and issued a cheque of \$680.63 to the driver on or around April 26, 2024. The auditor was unsuccessful in confirming with the driver that he in fact received the cheque.
12. The auditor also determined that Triangle had not paid the Overtime Rate in May 2023. Triangle advised that it started paying the Overtime Rate on July 1, 2023 due to a misunderstanding as to when the Overtime Rate went into effect. The auditor confirmed that Triangle started paying the Overtime Rate in July 2023 and calculated Triangle owed two company drivers a total of \$1,072.17 for overtime work performed in May 2023.
13. Triangle also failed to provide electronically generated payroll records for January and May 2023 and explained that its leased vehicles were not equipped with technology to track hours or trips until December 1, 2023. After Triangle provided the auditor with payroll records for December 2023, the auditor confirmed that Triangle did have an electronically generated payroll records system as of that date.
14. On April 29, 2024, the auditor completed an audit report ("Audit Report") and summarized her conclusions as follows:
 - a) Triangle did not pay a driver all the wages owed in December 2021 and because she was unable to confirm the driver received the \$680.63 that the money owed is outstanding.
 - b) Triangle owed two company drivers \$1,072.17 for overtime work performed in May 2023.

- c) Triangle was not compliant with section 6.7 and 6.10 of its CTS license for the period of December 1, 2022 to November 30, 2023.

15. On May 13, 2024, the OBCCTC sent a copy of the Audit Report to Triangle and provided an opportunity to submit a response no later than June 13, 2024. Triangle did not provide a response by the deadline.

Decision

16. I accept the uncontroverted findings of the Audit Report and I find that Triangle failed to pay two of its drivers the regulated rates during the Audit Period and failed to equip its trucks with the required equipment to electronically track hours/trips worked and failed to create electronically generated payroll records between December 1, 2022 to November 30, 2023.
17. 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.
18. 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.
19. 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.

20. 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)

21. In MDW Express Transport Ltd. (CTC Decision No 02/2024), I explained the purpose of introducing the electronic record keeping system requirements and the advance warnings that were provided to industry.
22. I agree with the reasons set out above and have considered them in this case.
23. Triangle failed to have properly equipped its trucks with electronic tracking equipment and failed to maintain electronically generated payroll records for one year and underpaid its drivers – albeit a relatively by a small amount – either due to neglect in understanding its obligations under its CTS license or miscalculations in its payroll records. Whatever the reason, the result is that Triangle was non-compliant.
24. While Triangle now equipped its trucks with electronic tracking for tracking hours/trips and now implemented electronic record keeping, I have considered that the absence of electronic record keeping for a one-year period is significant period to be in breach of its CTS license.
25. I am unclear from the Audit Report if the auditor reviewed the payroll records for June 2023 as Triangle indicated it did not pay the Overtime Rate during this period. Out of an abundance of caution, I will order Triangle to review the payroll records for June 2023 to ensure that Overtime Rate was paid to company drivers where applicable.
26. I have decided that an administrative penalty of \$8,000 is appropriate. In assessing the appropriate penalty, I am mindful that Triangle has not had a previous administrative penalty.
27. 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 Triangle to pay a sum of \$1,752.80 to the drivers named in the Audit Report no later than 30 days following this decision; and
 - b) I order Triangle to review its payroll records for June 2023 to ensure it is compliant with the Rate Order no later than 30 days following this decision; and
 - c) I propose an administrative fine against Triangle in the amount of \$8,000.00.
28. Should it wish to do so, Triangle 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.
29. If Triangle provides a written response in accordance with the above, I will consider its response and I will provide notice to Triangle 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

30. In summary, Triangle has been found in violation of the *Act*, the *Regulation* and its license for paying its drivers non-compliant rates, failing to have the proper tracking equipment in its trucks and not having an electronically generated payroll system, I have proposed a penalty of \$8,000.00.
31. This decision will be delivered to the licensee and will be published on the OBCCTC's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 28 day of October 2024.



Glen MacInnes
Commissioner