



November 29, 2024

Canada Drayage Inc.  
1375 Kingsway Avenue  
Port Coquitlam BC V3C 1S2

**Re: Notice of Order against Canada Drayage Inc. to Comply with the Container Trucking Act and Container Trucking Services Licence**

**Introduction**

1. Canada Drayage Inc. (“CDI”) is a licensee within the meaning of the *Container Trucking Act* (the “Act”).
2. According to CDI’s submissions, Fastfrate is an intermodal carrier which operates facilities and provides services within North America. It is involved in moving containers within the Lower Mainland but is not a licensee within the meaning of the *Act*.
3. CDI and Fastfrate are related persons as defined in the CTS license.
4. Teamsters Local 31 represents the drivers at CDI.
5. 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.
6. 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.

**Background**

7. Around March of 2022, CDI and Teamsters, Local 31, sought a preliminary view in the abstract regarding whether certain types of container movements required a licensee to pay the regulated rate and/or use tagged trucks.
8. Four specific scenarios were put to the then-Commissioner:

***Scenario 1***

- a. Truck driver picks up a container at a customer location or a container terminal in the Lower Mainland
- b. Container is moved by truck to CDI property in Port Coquitlam
- c. Container is unloaded at CDI property in Port Coquitlam and is then reloaded
- d. Container is moved by truck to Canadian Pacific Rail's ("CP") Intermodal Facility at 17900 Kennedy Road in Pitt Meadows and is put on rail bound for a location in eastern Canada

***Scenario 2***

- a. Truck driver picks up a container at CP Rail's Intermodal Facility at 17900 Kennedy Road in Pitt Meadows
- b. Container is moved by truck to a customer location in the Lower Mainland
- c. Container is unloaded at customer location in the Lower Mainland
- d. Empty container is moved by truck to CP Rail's Intermodal Facility at 17900 Kennedy Road in Pitt Meadows or to an off-dock container storage facility in the Lower Mainland
- e. The container is then moved from CP Rail's Intermodal Facility at 17900 Kennedy Road in Pitt Meadows (by rail) or from an off-dock container storage facility in the Lower Mainland by truck to a port terminal (via pick up and reload) for transport by an ocean carrier on the ocean

***Work Type 1***

- a. Container Freight Station ("CFS") warehouse containers arrive by rail at CP Rail's Intermodal Facility at 17900 Kennedy Road in Pitt Meadows<sup>1</sup>
- b. Truck driver picks up the CFS warehouse container at CP Rail's Intermodal Facility at 17900 Kennedy Road in Pitt Meadows
- c. CFS warehouse container is moved by truck to CDI property in Port Coquitlam where the CFS warehouse container is unloaded and returned to CP Rail's Intermodal Facility at 17900 Kennedy Road in Pitt Meadows

***Work Type 2***

- a. Containers arrive by rail at CP Rail's Intermodal Facility at 17900 Kennedy Road in Pitt Meadows
- b. Truck driver picks up the container at CP Rail's Intermodal Facility at 17900 Kennedy Road in Pitt Meadows

---

<sup>1</sup> The then Commissioner's March 21 letter "CFS" stands for container freight station. A container freight station is "a warehouse that specializes in the consolidation and deconsolidation of cargo."

- c. Container is moved by truck to a location in the Lower Mainland where the container is unloaded and returned to CP Rail's Intermodal Facility at 17900 Kennedy Road in Pitt Meadows.  

(collectively the "Disputed Container Scenarios")
9. On March 21, 2022, the then-Commissioner wrote to the Parties and advised that in his preliminary view the containers and the container movements identified in Disputed Container Scenarios all satisfied the definition of "containers" and "container trucking services" respectively and attracted the regulated rates.
10. CDI then provided the then-Commissioner with additional details around the Disputed Container Scenarios and ultimately the then-Commissioner determined he could not provide an opinion in the abstract and advised that he would issue a general industry advisory rather than a preliminary view.
11. On May 18, 2022, the then-Commissioner published an industry advisory regarding container movements between facilities, including railyards, and specifically stating the following:

The OBCCTC does not accept that container trucking services moves between rail and other facilities in the Lower Mainland are not regulated because they are dispatched by unlicensed companies or performed by untagged trucks. Among other reasons, this would be inconsistent with the fact that railway facilities are included in the off-dock rate table.
12. On August 5, 2022, after the OBBCTC received a complaint and at the request of CDI and Teamsters Local 31, the OBCCTC initiated an audit of CDI to determine if certain work performed by CDI qualifies as container trucking services work. CDI was required to provide payroll records for company drivers and independent operators ("IOs") for August 2021 and January 2022 (the "Audit Period").
13. On January 30, 2023, the auditor completed an audit report ("Audit Report") which determined the following:
  - a. CDI divided its operations into three separate categories: a CTS division, a CP Rail division, and work under a Fastfrate contract.
  - b. CDI IOs moved containers for all three divisions.
  - c. IOs were paid the regulated rate for moving containers on behalf of its CTS division.
  - d. CDI IOs were paid less than the regulated rate for moving containers for the Fastfrate division for January 2020. The auditor found that the 18 IOs working over January 2020 were underpaid by \$7,734.46 for that month and additional amounts would be owed because had CDI advised that Fastfrate work was performed January – March of 2022.
  - e. CDI inappropriately deducted \$75.00 from an IO working in its CTS division in January 2022.

- f. Although CDI did not provide all of the required information for its CP Rail division due to CDI's opinion that those services were not captured by the Act, it was clear on payroll records that were provided that IOs were paid less for the CP Rail division work.
  - g. The containers moved by CDI as part of the CP Rail division work and as Fastfrate work during the Audit Period met the regulated definition of a "container" and were captured under the Act.
14. CDI was provided with a copy of the Audit Report and an opportunity to respond. On March 8, 2023 CDI submitted that work performed by truckers in its CP Rail and Fastfrate divisions is not covered by the Act because the containers moved by those divisions do not transit through a marine terminal. Furthermore, CDI argues that railyards are not captured by the regulated on-dock rate table and are therefore outside the scope of the Act. CDI did not provide a response to the improper deduction of \$75.00 from one driver in January 2022.
15. I find that CDI is the single legal entity with a license and while CDI may organize itself into three "divisions," that does change that fact that CDI is the licensee and must adhere to the Act, *Container Trucking Regulation* and its CTS license.
16. CDI's argument that Fastfrate is a non-licensee that is exempt from the regulatory requirements and that exemption should apply to CDI when it moves the same containers on behalf of Fastfrate ignores an important fact – CDI is a licensee because it accesses the marine terminals and for this reason when CDI moves containers off-dock, it must adhere to its license and pay the regulated rates.
17. I have considered the containers moved by CDI IOs on behalf of Fastfrate<sup>2</sup> and I agree with the auditor that they are "containers." I have reviewed the relevant trip sheets and agree that those containers have the indices of containers that transit through a marine terminal. As stated in Forfar Enterprises Ltd. (CTC Decision No. 20/2016), Simard Westlink Inc. (CTC Decision No. 16/2022; and KD Truckline (CTC Decision No. 16/2024) the fact that a container does not transit through a marine terminal on any given trip does not mean it is not a "container" under the legislation.
18. As stated in the then-Commissioner's bulletin dated May 18, 2022, a licensee is not exempt from the requirements of the legislative scheme simply because that licensee was dispatched by a third party or moved a container as the result of an emergency. If a licensee performs an "on-dock trip" or an "off-dock trip" as those are defined in the *Regulation*, the licensee must adhere to the regulatory requirements, including using tagged trucks and paying the regulated rates. I agree with that analysis.
19. Furthermore, I am unclear how the absence of railyards on the on-dock table assist CDI as railyards are considered "facilities" under the *Regulation* and subject to the off-dock rates.

---

<sup>2</sup> I am unclear how CDI or the auditor distinguish between Fastfrate and Fastfrate division. I have taken both to mean that the work performed by CDI was generated and/or dispatched by Fastfrate.

20. I find that the container moves performed by CDI on behalf of either the Fastfrate division or Fastfrate have the indices of a container and were moved by CDI and therefore attract the regulated rate.
21. I am unable to determine if the containers moved by CDI in its CP Rail division meet the definition of containers as CDI did not provide the required information as set out in the August 5, 2022 letter.
22. Finally, I accept the auditor's undisputed finding that CDI improperly deducted \$75.00 from a driver's wages in January 2022.

### **Orders**

23. Based on the above and pursuant to section 9 of the *Act*, I order CDI to:
  - a. Pay the driver identified in the Audit Report \$75.00 for the improper deduction; and
  - b. pay its drivers the regulated rates for containers moved as either part of Fastfrate contract or on behalf of Fastfrate for January 2020 (i.e. \$7,734.46) and all other months including February and March 2020 during which CDI moved containers as either part of its Fastfrate contract or on behalf of Fastfrate; and
  - c. provide the auditor with records for the Audit Period of CDI's CP Rail division as set out in the August 5, 2022 correspondence.
24. I require CDI to comply with these orders no later than 30 days from the date of these orders.
25. The Commissioner may propose an administrative penalty based on CDI's failure to comply with the *Act*, *Regulation*, or licence. Any such penalty will be proposed in accordance with section 34 of the *Act* once the total amount of money owing by CDI for the Audit Period has been determined.
26. This Order will be delivered to CDI and published on the OBCCTC's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C. this 29<sup>th</sup> day of November 2024.



Glen MacInnes  
Commissioner