



November 14, 2024

Team Transport Services Ltd.
8970 River Road
Delta, BC V4G 1B5

Commissioner's Decision **Team Transport Services Ltd. (CTC Decision No. 16/2024)**

Introduction

1. At the time of the audit underlying this decision, Burton Delivery Service Ltd. ("Burton") was a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. As per a BC Company Summary, Burton (along with other amalgamating companies) was amalgamated into Team Transport Services Ltd. (BC Incorporation Number 1489914) ("Team Transport") effective July 1, 2024.
3. Burton was the licensee during the Audit Period (defined below) and I will therefore reference Burton in this decision. However, I will reference Team Transport, the amalgamated company, for any orders or requirements pursuant section 9 and 34(2) of the *Act* as the amalgamated company continues to be liable for the obligations of each amalgamating corporation as per s. 282(1)(h) of the *BC Business Corporations Act*.
4. 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.
5. Section 18 of the *Act* allows the Commissioner to impose any conditions on a license that the Commissioner considers necessary.
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.

7. On May 1, 2023, the Rate Order was amended to include a requirement that company drivers be paid a higher minimum rate for hours worked in excess of 9 hours per day or 45 hours in a work week (“Overtime Rate”).
8. 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.
9. Section 6.10 states that the licensee must ensure that payroll records and wage statements for all drivers performing container trucking services are created and maintained electronically.
10. On December 19, 2023, Burton 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.
11. Burton has been the subject of one previous audit in 2016 and was determined to be compliant.

Audit Report

12. The OBCCTC requested and Burton provided payroll records for December 2019, January and June 2020, September and November 2021, May and August 2022, and April and September 2023 (“Audit Period”).
13. The auditor confirmed Burton paid Overtime Rates to drivers in September 2023 but learned that it did not implement the Overtime Rate until July 1, 2023 – two months after the Overtime Rate became effective.
14. Burton also failed to provide electronically generated payroll records for April and September 2023 and explained that its leased vehicles were not equipped with technology to track hours or trips until December 1, 2023. After Burton provided the auditor with payroll records for December 2023, the auditor confirmed that Burton did have an electronically generated payroll records system as of that date.
15. On May 24, 2024, the auditor completed an audit report (“Audit Report”) and summarized her conclusions as follows:

- a) Burton did not implement the Overtime Rate for its drivers between May 1, 2023 (the effective date of the Overtime Rate) and June 30, 2023.
- b) Burton was not compliant with section 6.7 and 6.10 of its CTS licence for the period of December 1, 2022 to November 30, 2023.

16. On May 24, 2024, the OBCCTC sent a copy of the Audit Report to Burton and provided an opportunity to submit a response no later than June 23, 2024. Burton did not provide a response by the deadline.

Decision

17. I accept the uncontroverted findings of the Audit Report and I find that Burton 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 and November 30, 2023. While I accept Burton did not begin to pay its driver the Overtime Rates until July 1, 2023, I was provided no evidence that its one company driver worked in excess of 9 hours per day or 45 hours in work week in May or June 2023 and therefore cannot determine if a breach of section 23 of the *Act* occurred.
18. 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.
19. 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.
20. 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.

21. 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)

22. 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.
23. I agree with the reasons set out in the two decisions cited above and have considered them in this case.
24. Burton failed to properly equip its trucks with electronic tracking equipment and failed to maintain electronically generated payroll records for one year either. While Burton has now equipped its trucks with electronic tracking and implemented electronic record keeping, one year is a significant period of time to be in breach of its CTS licence.
25. Regarding Burton's acknowledgement that it did not start paying the Overtime Rates until July 1, 2023, I will order Team Transport to review Burton's payroll records for May 2023 (when the Overtime Rate went into effect) and June 2023 to ensure that Overtime Rate was paid to company drivers where applicable. As I am unable to determine at this time if Burton failed to pay overtime as required in May and June 2023, this does not factor into the administrative penalty proposed.
26. I have decided that an administrative penalty of \$6,000 is appropriate. In assessing the appropriate penalty, I am mindful that Burton 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 Team Transport to review Burton's payroll records for May and June 2023 to ensure it is compliant with the Rate Order and report its findings to the OBCCTC no later than 30 days following the date of this decision; and
 - b) I propose an administrative fine against Team Transport in the amount of \$6,000.00.
28. Should it wish to do so, Team Transport 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 Team Transport provides a written response in accordance with the above, I will consider its response and I will provide notice 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, Burton, now amalgamated into Team Transport, has been found in violation of the *Act*, the *Regulation* and its license for failing to have the proper tracking equipment in its trucks and not having an electronically generated payroll system. I have proposed a penalty of \$6,000.00.
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 14th day of November 2024.



Glen MacInnes
Commissioner