



December 12, 2024

Canada West Warehousing Ltd.
Unit 114 - 1750 Coast Meridian Rd
Port Coquitlam, BC V3C 6R8

Commissioner's Decision
Canada West Warehousing Ltd. (CTC Decision No. 17/2024)

Introduction

1. Canada West Warehousing Ltd. ("CWW") 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 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 ("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. Section 24 of the *Act* prohibits a licensee from soliciting or receiving a financial set-off, commission, rate deduction or rebate from a trucker. Section 2 of Appendix E to Schedule 1 of the 2022 CTS License prohibits a licensee from setting off or deducting Business Costs from a trucker's compensation or wait time. Business Costs are defined in the licence as "the costs of operating a business for which a licensee is responsible."
5. On December 1, 2022, section 6.7 was added to the 2022 CTS License, requiring licensees to equip trucks performing container trucking services with an electronic device or technology to record the truckers' hours of work or trips performed.
6. Under section 31 of the *Act*, the Commissioner may conduct an audit or investigation to ensure compliance with the *Act*, the *Container Trucking Regulation* (the "*Regulation*") or a licence.

7. As part of the random audits initiated by the Commissioner, an auditor was directed to audit CWW's records to determine if its independent operators and directly employed operators (also known as company drivers) were being paid the required minimum rates.
8. CWW has been subject to one previous audit in March 2019 and it was determined that it was compliant with the Act.

Audit Report

9. On December 15, 2023, the auditor advised CWW that an audit had been initiated for the period of December 2019 to October 2023¹ ("Audit Scope"). The auditor randomly selected and requested driver records for pay periods in December of 2019, March and September of 2020, February and June of 2021, January and April 2022 and May and October 2023 ("Audit Period").
10. CWW provided payroll records and trip sheets by the deadline. CWW did not provide electronically generated records of container trucking services hours and trips for January and April 2022 and May and October 2023 and explained that it was still recording drivers' hours manually after determining its GPS tracking system was inadequate and was sourcing a new alternative. CWW provided the auditor with an invoice dated March 1, 2024 with a new electronic tracking system provider and indicated that it has been compliant with sections 6.7 of its CTS license since then but that the "kinks are still being worked out."
11. The auditor reviewed the company driver payroll records and determined that each trucker was paid in accordance with the Rate Order.
12. The auditor reviewed the independent operator payroll records and determined that each trucker was paid in accordance with Rate Order for each container movement but noted certain payroll deductions. In particular, the auditor noted that certain truckers were deducted various amounts for parking fees and one trucker was deducted a fine of \$175.00 issued in January 2022.
13. The auditor accepted that the parking deductions were permissible under the Act and the CTS license.
14. However, the auditor determined that the \$175.00 fine issued by a terminal and subsequently deducted from the trucker's compensation was a Business Cost and not permissible. Upon receiving the auditor's opinion, CWW repaid the trucker the \$175.00 fine.
15. On June 24, 2024, the auditor prepared a report ("Audit Report") that concluded CWW had improperly deducted \$175.00 from one trucker's payroll on January 22, 2022 and was not compliant with section 6.7 of its CTS license for the audit periods of January and April 2022 and May and October 2023.
16. On June 26, 2024, CWW was provided with a copy of the Audit Report and invited to provide a

¹ The June 23, 2024 Audit Report indicated the Audit Scope ended in March 2023 but this was a typographical error and October 2023 records were requested and received.

submission by July 26, 2024. CWW did not provide a response by the deadline.

Decision

17. I accept the undisputed Audit Report and I find that CWW improperly deducted a Business Cost from one trucker's wages on January 22, 2022 in breach of section 24 of the *Act* and section 2 of Appendix E of the 2022 CTS license. Furthermore, I find that CWW failed to comply with section 6.7 of its 2022 CTS license until at least March 1, 2024, when it failed to equip its trucks with electronic devices or technology to track a trucker's hours or trips.
18. The auditor accepted that payroll deductions for parking trucks on CWW's property overnight were permissible. Generally, such a practice is not a breach of the *Act* or previous CTS licenses (see Cannan Shipping Co. Ltd. (CTC Decision No. 3/2019 at para. 13). While deductions for parking have generally been considered acceptable, I note that the 2024 CTS License only permits two types of payroll deductions and parking fees are not one of them. Effective December 1, 2024, then, the deduction of parking fees from payroll is no longer permitted and the licensee must recover any parking fees it wishes to charge through other means.
19. 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.
20. 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.
21. 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.
22. 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)
23. I agree with the reasons in the decision referenced above and have considered them in this case. Electronically generated hours and trips performed by truckers reduces the likelihood of inadvertent errors or misrepresentation of container trucking services work and ensures that the auditors can verify the accuracy of the payroll records and ensures that truckers are paid the regulated rate for all the hours worked.
24. I find that deductions made in contravention of the *Act* and/or CTS license are similar to underpayment of wages in that the trucker has not been paid the regulated minimum rate and are a serious breach.
25. While I understand that CWW eventually came into compliance with section 6.7 of its 2022 CTS License, I considered that the absence of electronic tracking system for hours worked or trips performed over a one-year period is significant period of time to be in breach of its CTS licence. Furthermore, while I understand that the improper deduction involved one trucker during one pay period and a relatively by a small amount and since has been paid, CWW’s deduction was not compliant with the *Act* or its CTS licence.
26. I have decided that an administrative penalty of \$6,000 is appropriate. In assessing the appropriate penalty, I am mindful that CWW has not had a previous administrative penalty. As CWW has repaid the trucker for the improper deduction, I do not find it necessary to order payment under section 9 of the *Act*.
27. In the result and in accordance with section 34(2) of the *Act*, I hereby give notice as follows:

- a) I propose an administrative fine against CWW in the amount of \$6,000.00.
28. Should it wish to do so, CWW 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 CWW provides a written response in accordance with the above, I will consider its response and I will provide notice to CWW 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, CWW 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 improperly deducting a Business Cost from a trucker's compensation, I have proposed a penalty of \$6,000.00.
31. This decision will be delivered to the licensee and published on the Commissioner's website (www.obcctc.ca) after the deadline for CWW's written response has expired.

Dated at Vancouver, B.C. this 12th day of December 2024.



Glen MacInnes
Commissioner