

From: Boyd, Justin TRAN:EX(Justin.Boyd@gov.bc.ca)
To: MacInnes, Glen CTC:EX (Glen.MacInnes@obcctc.ca); Jauhal, Karm CTC:EX (Karm.Jauhal@obcctc.ca)
Subject: Order to Comply - Simard Westlink Inc.
Sent: 06/07/2023 00:19:26
Attachments: 2023 05 26 OBCCTC Order to Comply - Simard Westlink Inc.pdf

Hey Glen and Karm

We received this from CP this afternoon, as Simard as contacted them about it. ^{s. 21}
s. 21 I have read through the attached order, but I was hoping we could discuss.

Thanks

Justin



May 26, 2023

Simard Westlink Inc.
16062 Portside Road
Richmond, BC V6W 1M1

Attention: Jerry Kimura

Re: Notice of Order requiring Simard Westlink Inc. to Comply with the Container Trucking Act and the Container Trucking Regulation.

Introduction

1. Simard Westlink Inc. ("Simard") is a licensee engaged in container trucking services ("CTS") and is subject to the requirements of the *Container Trucking Act* ("Act"), the *Container Trucking Regulation* ("Regulation") and the CTS license.
2. On April 18, 2023, I advised Simard of the following:

On March 15, 2023, Simard Westlink Inc. ("Simard"), appears to have been seen performing untagged container trucking services in the lower mainland. Truck Unit with licence plate PT2078 was transporting container EMCU8632562451G1 at or near Kennedy Road in Pitt Meadows. Truck Unit with licence plate RN6207 (Penske vehicle) was transporting a container TXGU5853257451G1 at or near Kennedy Road in Pitt Meadows.
3. Simard was reminded that the *Act* makes it an offence to carry out prescribed container trucking services within the Lower Mainland with an untagged truck.
4. In accordance with sections 25 and 32 of the *Act* and Appendix D of the CTS licence, I advised Simard that I required a copy of the payroll records and trip sheets for the driver(s) performing the work described above on March 15, 2023. I also extended an opportunity to Simard to provide a submission and/or additional information. Both the documents and the submission were due May 2, 2020.
5. On or around April 26, 2023, I received a submission from Simard regarding its position but not the payroll documents I requested.
6. On May 16, 2023, I provided Simard with an investigation report based on the evidence and submissions I had received and provided Simard with an opportunity to provide a further submission by May 25, 2023.
7. I did not receive any additional submissions from Simard within the specified period and conclude, in the absence of submissions or evidence to the contrary, that the investigation report is accurate. Because Simard has not made any further submissions or provided any further evidence, much of the assessment below is similar to the initial assessment provided to Simard on May 16, 2023.

Investigation Findings

8. As I understand it, Simard does not dispute that the two trucks in question are owned and/or operated by Simard and are untagged. Nor does it dispute that the two containers identified in the April 18, 2023, correspondence (the “Impugned Containers”) were moved within the Lower Mainland on March 15, 2023.
9. Simard argues its drivers were moving containers that arrived by rail from Montreal to the CP Rail intermodal rail yard in the Lower Mainland. It says that its drivers moved the Impugned Containers by truck from the CP Rail yard to an unidentified customer in Greater Vancouver. Simard argues that since the movement of the Impugned Containers did not involve any shipment of marine goods or require access to a marine terminal, the work performed by Simard on March 15, 2023 does not fall under the *Act*.
10. Based on the following, I find that the work performed by Simard on March 15, 2023 is within the scope of the *Act* and *Regulation*.
11. On May 18, 2022, the then-Commissioner issued an Industry Advisory (“Industry Advisory”) responding to some licensee submissions – like Simard’s position – that container moves between rail facilities and other facilities do not require licensed companies or tagged trucks to conduct the moves.
12. The *Act* defines “container trucking services”:

“container trucking services” means the transportation of a container by means of a truck.
13. The definition of a “container” is found in section 1(1) of the *Regulation*:

“container” means a metal box furnished or approved by an ocean carrier for the marine transportation of goods.
14. The Industry Advisory states that if a container meets the definition of “container” in the *Regulation* and moves between a rail facility and another facility in the Lower Mainland then the licensee is required to have a tagged truck move the container.
15. The Bureau of International Containers (“BIC”) is an international agency that oversees the standards for intermodal containers. The BIC has standardized the technical marking on containers such that container codes are comprised of:

An owner/operator code of three letters

- a) A fourth letter used as equipment identifier
- b) A serial number of 6 Arabic numerals
- c) A seventh digit that provides a means of validating the recording and/or transmission accuracy of data.¹

¹ <https://www.bic-code.org/bic-codes/>

16. The first three letters of each container code on the Impugned Containers identified the owners/operators as follow:²

EMC	Evergreen Marine Corp (Taiwan) Ltd
	6F, No. 163, Sec 1, HSIN-Nan Road
	Taoyuan County,
	Taiwan China
TXG	Textainer Equipment Management Ltd
	Century House 16 Par-La-Ville Rd
	Hamilton, Hm Hx
	Bermuda

17. According to its website, Evergreen Marine Group (Taiwan) Ltd. (“Evergreen”) is a marine shipping company established in 1968 which today boasts a fleet of over 160 “marine container vessels.” According to its website, Textainer Equipment Management Ltd. (“Tex”) is a large intermodal container lessor established in 1979 supplying containers to approximately 200 global customers including all the world’s shipping lines.³ The fact that the Impugned Containers are owned by companies that either ship containers by ocean or supply containers to companies that ship containers by ocean indicates that they have been furnished for the marine transportation of goods.
18. According to ShipmentLink.com, a global tracking system for containers, container EMCU8632562451G1 left loaded from Ningbo, China on May 1, 2023 on container vessel Ever Lunar 0624-0623E. Container TXGU5853257451G1 left Yantian, China loaded on container vessel CMA CGM 1TU22S1MA on May 2, 2023. The fact that the Impugned Containers have recently travelled on the ocean indicates that they have been approved by an ocean carrier for the marine transportation of goods.
19. I also reviewed photos taken by a delegate of the Commissioner of the containers being moved by Simard’s trucks on March 15, 2023. The Impugned Containers have a safety approval plate issued under the Convention of Safe Containers (“CSC”), issued in accordance with the United Nations 1977 Convention that certifies they meet international safety standards for intermodal transportation, including marine transportation. My understanding is that the federal *Safe Containers Convention Act* and the *Safe Containers Convention Regulations* require each container used for international transportation, except air transportation, to display a CSC approved safety plate (“CSC Safety Plate”). The presence of the CSC Safety Plate on the Impugned Containers indicates that both containers are approved by CSC for the marine transportation of goods. I have been provided with no evidence that an ocean carrier would require anything more than a CSC Plate on a container in order to approve the

² <https://www.bic-code.org/bic-codes/emcu> and <https://www.bic-code.org/bic-codes/txgu/>

³ <https://www.textainer.com/company/about-textainer>

container for the marine transportation of goods.

20. The Impugned Containers are clearly capable of being “approved by an ocean carrier for the marine transportation of goods” based on their CSC Plates approving them for international transport. The fact that both containers have recently been transported by marine vessels on May 1 and May 2, 2023 indicates they were in fact approved by an ocean carrier for the marine transportation of goods.
21. Based on the evidence that the Impugned Containers are either owned by an ocean carrier engaged in the marine transportation of goods or furnished by a company who supplies containers for the marine transportation of goods, are affixed with a CSC Safety Plate, and were recently transported on an ocean carrier, I am satisfied that the Impugned Containers were furnished and/or approved by an ocean carrier for the marine transportation of goods.
22. Turning to Simard’s argument that the impugned work is not captured under the *Act* because the container movement was between a Lower Mainland rail yard and a Lower Mainland customer, the Industry Advisory notes, and I agree, that the absence of a container’s direct link to a marine terminal in the Lower Mainland is not necessarily determinative of whether a container movement is captured under the *Act*.
23. The *Act* and the *Regulation* contemplate container movements between two or more locations or facilities within the Lower Mainland that do not access a marine terminal such as the work performed by Simard on March 15, 2023.
24. The *Regulation* defines “off-dock trips” to mean:

“off-dock trip” means one movement of one or more containers by a trucker from one facility to a different facility in the Lower Mainland, but does not include:

 - (a) an on-dock trip, or
 - (b) a movement of a container from one location in a facility to a different location in the same facility.
25. The *Regulation* defines “facility” to mean:

“facility” means a location in the Lower Mainland where containers are stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping, but does not include a marine terminal.
26. The *Regulation* continues by setting out certain rates of pay to be paid to independent operators – including rates for specified off-dock trips between facilities within the Lower Mainland that never access a marine terminal. In *Forfar Enterprises Ltd.* (CTC Decision No. 20/2016) Commissioner MacPhail found that the inclusion of off-dock rates in the *Regulation* was consistent with his interpretation that the *Act* applied to the movement of containers that did not arrive or depart from a marine terminal. I adopt this analysis.
27. A rail yard where containers are stored, loaded, unloaded, etc., in the Lower Mainland is not exempt from the definition of a “facility” – only a marine terminal is exempt. Simard did not provide any more particulars concerning the Impugned Containers’ destinations other than saying they went to a

customer in Greater Vancouver. Simard did not dispute the investigative report's assertion that the rail yard and the container's destinations were Lower Mainland and would fit within the definition of a "facility." I find that the rail yard and the customer to whom the Impugned Containers were delivered were both "facilities" within the Lower Mainland and that the movement between the two facilities fits the definition of an "off-dock trip."

28. Sections 6.8 and 6.9 of the CTS License require CTS work to be performed using only Truck Tags allocated by the Commissioner. It was not disputed that the two vehicles owned and/or operated by Simard that moved the Impugned Containers on March 15, 2023 did not have truck tags. I find that Simard did not use tagged trucks on March 15, 2023 to move the Impugned Containers and that this is in contravention of s. 16(1)(b) the Act and its CTS licence.

Orders

29. Based on the evidence, I am satisfied that the Impugned Containers were furnished and/or approved by an ocean carrier for the marine transportation of goods and I find Simard performed untagged off-dock trips on March 15, 2023 when it moved the Impugned Containers with untagged trucks between two facilities within the Lower Mainland in contravention of its CTS licence and the Act.

30. Pursuant to s. 9 of the Act, I order the following:

- a. Simard is to cease and desist performing untagged container trucking services work in contravention of its CTS licence and the Act; and
- b. Simard is to provide the OBCCTC copies of the payroll records and trip sheets for the driver(s) performing the work described above on March 15, 2023 no later than June 2, 2023.

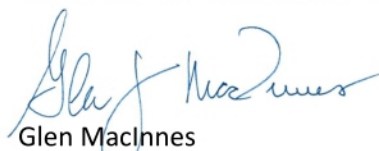
(collectively, the "Orders")

31. If the Commissioner intends to propose an administrative penalty based on Simard's failure to comply with the Act, Regulation, and/or Licence, a penalty will be proposed in accordance with section 34 of the Act after June 2, 2023.

32. These Orders will be delivered to Simard and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C. this 26 day of May, 2023.

OFFICE OF THE BC CONTAINER TRUCKING COMMISSIONER


Glen MacInnes
Commissioner

cc: Registrar

From: Macnaughton, Jason MOTI:EX(Jason.Macnaughton@gov.bc.ca)
To: Ahn, Sohee MOTI:EX (Sohee.Ahn@gov.bc.ca)
To: Boyd, Justin MOTI:EX (Justin.Boyd@gov.bc.ca)
Subject: RE: Orde to Comply - Simard Westlink Inc.
Sent: 06/15/2023 22:22:23

Hi Sohee,

s. 13, s. 14, s. 21

Let us know if you'd like to discuss further – otherwise there is no action required.

Jason

From: Macnaughton, Jason TRAN:EX
Sent: Tuesday, June 6, 2023 4:40 PM
To: Ahn, Sohee TRAN:EX <Sohee.Ahn@gov.bc.ca>
Subject: FW: Orde to Comply - Simard Westlink Inc.

FYI on below email from s. 21 – will let you know what we learn from Greg.

s. 13, s. 21

From: Jauhal, Karm CTC:EX(Karm.Jauhal@obcctc.ca)
To: Boyd, Justin MOTI:EX (Justin.Boyd@gov.bc.ca)
Subject: RE: Simard Westlink
Sent: 08/14/2023 18:18:44

Hi Justin.

Call me when you get a chance and I'll update you on the happenings with Simard 😊😊

Sincerely,

Karm

Office of the British Columbia Container Trucking Commissioner

Tel: 604-660-6051 Fax: 604-660-6045

Email: karm.jauhal@obcctc.ca | obcctc.ca | [Facebook](https://www.facebook.com/obcctc)



OFFICE OF THE
BRITISH COLUMBIA CONTAINER
TRUCKING COMMISSIONER

The OBCCTC respectfully acknowledges the Katzie, Semiahmoo, Kwantlen, Musqueam, Squamish, Tsleil-Waututh and other Coast Salish Peoples on whose shared and unceded traditional territories our office is located.



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From: Boyd, Justin MOTI:EX <Justin.Boyd@gov.bc.ca>
Sent: Monday, August 14, 2023 10:20 AM
To: Jauhal, Karm CTC:EX <Karm.Jauhal@obcctc.ca>
Subject: Simard Westlink

Hey Karm

Have you met with ^{s. 21} or received any meeting requests from them regarding the Simard Westlink issue? Also, do we have any update on ^{s. 13}

Thanks

Justin

