

IN THE MATTER OF A DISPUTE  
PURSUANT TO THE MEMORANDUM OF AGREEMENT

BETWEEN:

TRUCKING COMPANIES (OWNERS/BROKERS)

AND:

VANCOUVER CONTAINER TRUCKERS' ASSOCIATION (VCTA)

ARBITRATOR:

Vincent L. Ready and  
Peter Cameron

APPEARANCES:

Richard Longpre for  
the Owners/Brokers

Ken Halliday for  
the VCTA

Victor Leginsky for  
the British Columbia  
Truckers' Association

Don Davies for  
Teamsters Local 31

HEARING:

August 15, 2005  
Vancouver, BC

PUBLISHED:

August 19, 2005

3066.arb#1

This is an application under the Memorandum of Agreement (“MOA”) initiated by the British Columbia Truckers’ Association (“BCTA”). The application concerns the applicability of the MOA to certain BCTA members.

The hearing was held on August 15, 2005, and was attended by representatives of the BCTA, the Vancouver Container Truckers’ Association (“VCTA”), the Owner Brokers, and Teamsters Local 31 (“Teamsters”).

All parties present agreed that the board was properly constituted under the MOA, and has the jurisdiction to make a determination of the applicability of the MOA to the members of the BCTA. In addition, the Vancouver Port Authority, by email to Counsel for the BCTA, expressed its support for this process to determine the issues raised by the BCTA as follows: “The Vancouver Port Authority supports the arbitration and supports the parties in using the arbitration process as a means to determine the interpretation and application of the MOA”.

The BCTA represents over 800 truck fleets, and many of its members provide local and long-haul services to and from Lower Mainland ports. It applied to this arbitration board on behalf of its members who, it says, “are impacted by the terms of the MOA, but were not part of the Dispute that the MOA attempts to solve, were not part of the ‘Owners/Brokers’ group, and whose business models are not ones to which the MOA refers. In essence, on

its surface and by its wording, the MOA does not apply to these companies. But they are being denied access to the Ports until and unless they sign the MOA”.

The BCTA application was supported by three statutory declarations of members who signed the MOA in order to access the arbitration process. The statutory declarations were all from companies who declare that they have been in the container trucking business for many years, pay their drivers on a basis other than per-trip, and do not intend to change their mode of operation as a consequence of the dispute.

In its presentation, the BCTA noted that, under Section 13 of the MOA, disputes about the *application* of the MOA are referred to this arbitration process for resolution. The BCTA seeks an order that the MOA does not apply to three categories of “companies or other business entities that require motor vehicle access to the Ports”. Those three categories are companies/entities that:

1. Transport containers with the use of owner-operators who are paid other than by per-trip;
2. Transport containers with the use of company-owned equipment and employee drivers; and

3. Transport containers with origins and destinations outside the Lower Mainland.

*[Note: these categories are numbered here for convenience of reference in this award, and were not numbered in the BCTA's submission.]*

The BCTA also seeks an order that the above companies/entities “do not have to be signatories to the MOA”.

Finally, the BCTA asks that these orders be made retroactive to August 2, 2005.

### **APPLICABILITY OF THE MOA**

None of the other parties took serious issue with the BCTA's position that the MOA should not apply to companies operating in categories 2 and 3 – provided they operate exclusively in one or both of those categories.

With respect to employee drivers: the VCTA had sought to include them under the MOA during the recent dispute, but ultimately was not successful and acknowledged at this hearing that the MOA doesn't cover them. With respect to long-haul drivers: as Counsel for the BCTA pointed out, the grid of rates included as Schedules 1 and 2 to the MOA simply does not provide rates

for long haul trips – implicitly excluding those companies and owner-operators transporting containers outside the Lower Mainland.

(Counsel for the Teamsters noted that the union’s position on the applicability of the MOA simply acknowledges the result of the negotiations that lead to the memorandum. The union does not necessarily agree with the BCTA’s position that compensation arrangements are adequate for drivers in categories 2 and 3.)

From the perspective of all the parties except the BCTA, there would be a major problem if companies in category 1 were allowed to avoid the terms of the MOA while operating in the Lower Mainland. If the MOA did not apply to some companies who use owner-operators to transport containers locally, those companies would have a competitive advantage (potential or present) relative to MOA signatories, based on lower labour costs. The predictable result would be progressive undermining of the terms of the MOA and, before long, the return of industrial relations instability to the ports which gave rise to the recent dispute.

The BCTA says that companies “using owner operators, but calculating compensation on other than a per-trip basis, [if required to sign the MOA] would have to change their rate structure to conform with the MOA’s rate schedule. This would cause these owner operators to change from a stable and

predictable compensation model to one that places greater risks on them for factors that are beyond their control (e.g., port terminal congestion)”. In addition, the BCTA contends that other matters which the MOA addresses “are not contentious issues for the companies for which exemptions are being sought, or for their owner-operators...”.

This board has very little evidence about the prevalence or adequacy of various types of compensation paid to truckers by BCTA members on other than a per-trip basis, and the board has no evidence at all with respect to the contentiousness for owner-operators of other issues addressed by the MOA. There may well be arrangements between BCTA members and owner-operators that, despite inconsistency with the MOA, are fair and adequate for the owner-operators. The fact remains, however, that if two companies were competing for the same business, where one is a signatory to the MOA and the other one isn't, only the non-signatory would have the ability to adjust truckers' compensation downward in order to get the business. (This assumes that the non-signatory company is not unionized. With respect to unionized companies, paragraph 11 of the MOA applies.) In such circumstances, the MOA could not continue to be effective for long.

The above observations about the potential competitive advantage of non-signatories apply whether *all* or *only part* of the company's business is moving containers in the Lower Mainland using owner-operators. For

competition to be fair, all companies using owner-operators to move containers in the Lower Mainland must be covered by the MOA for those activities.

Having regard to all the evidence and arguments presented at the hearing, the board makes the following declarations with respect to the applicability of the MOA:

- The provisions of the MOA do not apply with respect to employee drivers;
- The provisions of the MOA do not apply with respect to owner-operators insofar as they are engaged in transporting containers to or from destinations outside the Lower Mainland; and
- The provisions of the MOA apply to all owner-operators transporting containers from and to points within the Lower Mainland, whether or not (before the application of the terms of the MOA) they were paid on a per-trip basis.

#### **OBLIGATION TO SIGN THE MOA**

The BCTA also seeks an order that companies/entities to whom the MOA does not apply do not have to be signatories to the MOA.

This is a different question than the applicability of the MOA. This question relates to the obligations of companies seeking access to the Port of Vancouver in the context of the licensing system established in accordance with PC 2005-1365 (the amended Order in Council (OIC) pursuant to section 47 of the *Canada Transportation Act*).

The referenced OIC appears to contemplate that (1) all “trucks and other road transportation equipment” must be licensed in order to have access to the Ports for the purpose of delivering or picking up containers; and (2) as a condition of that licence, all applicants must sign the MOA.

The OIC does not imply that signing the MOA means its terms must be given effect, regardless of their applicability. Thus subsection 3.1(3) of the OIC states that nothing in the Order is intended to affect any collective agreement (i.e., the OIC does not impose specific provisions of the MOA to replace provisions in collective agreements) – yet trucks driven by persons covered by a collective agreement must nevertheless have a licence, and therefore unionized trucking companies must sign the MOA.

In other words, the OIC contemplates that any company seeking access to the Port must sign the MOA, whether or not the provisions in the MOA with respect to driver compensation and working conditions are applicable. The MOA may have no practical impact at all, if the company has no owner-

operators moving containers within the Lower Mainland. However, the MOA is still meaningful because it gives assurance to the Lower Mainland owner-operators, and the companies they work for, that another company with access to the Ports cannot change the scope of its business and undercut them on the basis of lower compensation to its owner-operators.

The effect of an order exempting a person from signing the MOA but still having access to the Ports would be contrary to the licensing regime required under the OIC. This board therefore does not have the jurisdiction to make such an order, and in any event it declines to do so.

### **RETROACTIVITY**

In view of the specific declarations in this decision, the board declines to award retroactivity in the absence of more information and argument with respect to its impact. If there is a real and constructive purpose to make any of the above declarations retroactive, any party may apply to seek that result.

Dated at the City of Vancouver in the Province of British Columbia this  
19<sup>th</sup> day of August, 2005.

*Vincent L. Ready*

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Vincent L. Ready

*Peter Cameron*

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Peter Cameron