Owner-Operator's Business Association of Canada

Association professionnelle des routiers autonomes du Canada

...from the director's chair

Clause for concern

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Tell me one more time, folks, that owner/operators don't need contracts. Over the past few weeks I've had dozens of calls – and I mean dozens – from members and friends of OBAC outlining troubles they're having with carriers. The problems range from undisclosed hikes in insurance rates to fuel surcharges to rate reductions. I've heard from a few, too, claiming that fleets they work for have arbitrarily changed the mileage paid to given destinations. I'm not sure how that works, except that some routing program must have calculated a shorter distance between two points – regardless of how impractical the new route might be. These calls are nothing new, of course. I'm often on the receiving end of diatribes about unexpected deductions from monthly statements, or holdbacks that never seem to materialize after an owner/op leaves a carrier.

I've said many times here in this space that the only mechanism an owner/op has to "regulate" the business relationship with his or her carrier is the contract, but I still get calls asking if carriers "are allowed" do this or that, or if they are violating some regulation or another in making a change to the working conditions.

Here's the bottom line on the carrier-owner/operator relationship: carriers and owner/ops are two commercial entities that agree to do business together. No rules or regulations exist anywhere to govern that relationship – except your contract or owner/operator agreement.

And since owner/operators are not employees of the carrier, the terms and conditions imposed on employers by Part III of the Canada Labour Code don't apply to owner/ops. Actually, this subject is fodder for a thesis or two because certain terms in the CLC Part III that bind federally-regulated employee drivers to specific statutes, such as working hours, overtime, vacation pay, etc. are sometimes applied to owner/operators too, even though they do not have the force of law.

Other statutes, such as those prohibiting unauthorized deductions and withholding of earnings, do not apply to owner/ops. Therefore, when questions arise concerning monies missing from statements, for example, the CLC Part III is of no use to an owner/operator.

So, what's wrong with current custom and practice that has so many owner/operators unhappy with their business partners?

I'm not about to label all carriers as the bad guys here, but some – maybe more than a few – use rather one-sided, self-serving contracts. But why shouldn't they? They are, after all, simply protecting their interests. And to be utterly fair, some owner/ops must shoulder their share of the blame for signing such contracts, or for agreeing to work under terms and conditions of contracts they either do not understand or have never read.

Some contracts I've seen give the carrier sole discretion in rate adjustments, fuel surcharge terms, and some even allow the carrier to make changes to the contract without the consent of the owner/operator. Sounds underhanded, doesn't it? But, it's a contract, and one of the signatures on the dotted line is yours.

No matter how one-sided a contract might be, if you sign it, you're bound by it. It's up to owner/operators to look after their interests too.

First, read and understand the contract. If you have to, get your lawyer to go over it with you. If the carrier will not allow you to review the contract, walk away. Period.

There isn't an excuse on the planet that I would accept for not being allowed to review a contract that will govern my business and my livelihood.

Go through the contract clause by clause and determine where you might stand in any given situation, because the contract alone determines the outcome of a dispute. When some aspect of the relationship goes off the rails, you will probably have to resort to the courts for a resolution, and the first thing a judge will look at is the contract. If the contract grants the carrier some right – even one that just doesn't seem fair – the judge will side with the carrier because of the terms of the contract.

The carrier-owner/op relationship is a strange one, and probably unprecedented in its structure. Even though we're looking at two companies doing business together, the carrier is clearly the dominant player – very much in the fashion of a boss and a worker.

For obvious reasons, carriers like it that way, but there's really no reason that an owner/operator should be subservient to the carrier from a contractual point of view. It has stayed that way because owner/ops haven't bothered to question the boundaries of the relationship, and haven't pushed hard enough for fairer, more transparent contracts.

The best tool you have at your disposal is simply to refuse to sign a contract that doesn't protect your interests.

And – I can't stress this enough – fundamental to the whole process is arming yourself with the business savvy to know what your interests are. When's the last time you tried bargaining with a carrier for changes to certain clauses of a contract? I rest my case.

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