Owner-Operator's Business Association of Canada

Association professionnelle des routiers autonomes du Canada

...from the director's chair

To tell the truth

Joanne Ritchie: OBAC executive director

How much are you paying for the insurance coverage on your truck? How much of a fuel surcharge are you collecting? And perhaps the more important question, is the carrier making an undisclosed – and unfair – profit on these transactions? You'll never know. There's nothing in Canadian trucking-related regulation that calls for disclosure of terms like these. That's why we need some sort of truth in leasing law here in Canada.

When fuel surcharges are collected, the contract should require the carrier to disclose the amount collected and the amount to be paid to the owner/op. When insurance is charged back to the owner/op, there needs to be disclosure of what the real cost of insurance is and what kind of coverage you're getting for your money. And the list goes on. With some straightforward and transparent rules in place, owner/ops would have a clearer picture of who is playing fair – or not.

In the US, the so-called "truth in leasing" rules drafted in the 1970s are now wrapped up in the DoT's Code of Federal Regulations (CFR 49 – Part 375 – Lease and Interchange of Vehicles). In a nutshell, it's a set of regulations governing owner/operator contracts, covering the various aspects of the lease relationship between the company and the owner/operator.

Carriers don't particularly like the rule (there are many areas subject to interpretation by various state courts), and owner/operators seldom take advantage of the protection it offers, but it carries the force of law. It's been used effectively and repeatedly by OOIDA to correct certain inequities in various owner/operator contracts.

So, with all the recent talk of level playing fields, I'm suggesting that we need a mechanism to help owner/ops make better choices when choosing a carrier.

Like our colleagues at the CTA, we want to do all we can to purge the bad apples from the business. If something like the truth in leasing rules could be implemented here in Canada, owner/ops would have a tool to level the playing field between the good and bad carriers. And since the good carriers would presumably have little to hide in their contracts, I can't imagine why the carrier associations wouldn't get behind such an initiative. With nothing to hide, and with a means of exposing the unscrupulous operators, the rules could force certain carriers to either clean up their act or fold up their tents due to the lack of drivers willing to be shafted.

There is no down side to this one, folks, except for those unprincipled carriers that see owner/ops as both a means of moving freight and a lucrative profit centre.

The American rules don't speak to rates or terms and conditions; they simply require the terms of the contract be spelled out clearly, and they impose certain requirements that keep carrier-owner/op contracts fair for everyone. As the name implies, "truth in leasing" rules demand transparency, and that's more than we have now in many instances.

For example, I like to see something that forces carriers to disclose how holdback monies are handled; how much is retained, what interest is paid on the money, and when the owner/op might expect to see the money after parting ways with the carrier. It should also require detailed statements be issued explaining the disbursement of the holdback upon quitting if any portion of the money is retained by the carrier.

We should no longer accept carriers telling contractors that all the money was owed to cover non-existent or dubious fuel bills or freight claims. We don't want to dictate the terms of the holdback account – rates, and so on – but we do want to see a plain language explanation of how those accounts are handled.

I've seen several owner/op contracts I'd call slanted, to say the least. One, for example, took away the owner/op's right to challenge an error on the statement simply by cashing the cheque. Or if the contractor took issue with mileage paid or an omitted loading fee, the carrier could hold the cheque 'til the following month pending an investigation of the error. Clearly, that's unfair, but with no framework on which to challenge a clause like that, owner/ops had little choice but to accept the statement or go without for another month.

Markups on chargeback items like fuel and insurance are appropriate provided the amounts billed are disclosed in the contract, but we're in murky territory here. If they're charged back to the owner/op, fuel and insurance costs need to be disclosed and itemized on the statement. If the carrier is marking them up to cover administration costs, that's okay. But if they're trying to make a profit from the reselling of fuel and insurance, that's another story.

Then there are the surcharges. Carriers often bill accessorial charges such as after-hours delivery, special handling, and of course, fuel. What portion of those charges flow through to the person who does the work? Who knows. That's why we need transparency in the contracts we sign. Some variation on the "truth in leasing" theme is long overdue here in Canada.

This article first appeared in the July 2006 edition of *TRUCK NEWS* and *TRUCK WEST* magazines