Pay attention to what's in the contract

TORONTO, Ont. – A good contract is key to a successful business relationship between an owner/operator and carrier. That's why it's important to know exactly what it says.

"Read the dang thing!" says Dave Raynsford, director of safety and compliance for the QuickX Group, who thinks too many owner/operators sign on to a contract without understanding the contents.

"What if you break down?" he asks. "Are you going to be paid per mile up to the point of breakdown? Or are you required to rent a tractor and continue the trip? There's nothing wrong with a company protecting itself in case of an interruption of service," says Raysnford, "but you have to be absolutely certain of your responsibilities for services rendered."

Joanne Ritchie, director of the Owner-Operators' Business Association of Canada, has looked at a lot of her members' contracts and she's surprised at what is often left out.

"Some contracts are silent on a lot of things. If a rate is enforced, how are you going to know if it goes up? There should be an allowance for increased costs. Are you getting paid for tarping? Picks and drops? All these things need to be spelled out in black and white."

Independent contractors should also consider what ends the relationship before signing on the dotted line. "What if you want to get out of a contract?" asks Ritchie. "The conditions under which you can leave or quit should be clear. And what happens if you refuse a load?"

Fuel surcharges are an important issue for every owner/operator. Unfortunately, Ritchie thinks that some owners rely on verbal agreements with their carrier. "At the very minimum the contract should specify how the surcharge is passed down."

She also thinks that hold backs should work a bit better. Typically, a carrier will keep back around $2,000-$4,000 from an owner/operator as security, but this can be as much as $7,500 in some cases. "Companies are holding millions of dollars of owner/operators' money and they're not even getting any interest."

Insurance is another key factor when shopping for a carrier. Owner/operators should be clear on who is insuring the truck and the amount of the deductible. And any clause that speaks to ownership of equipment should raise a red flag, according to Ritchie.

"The contract is a good business tool and it should work both ways," she says. "But too often they're a list of a company's rights and rules. And some drivers are asking for certain clauses to be put in."

Legal complications can arise when an owner/operator hires another driver to run his truck part time – this automatically makes him or her an employer. As such, the contractor then becomes accountable for paying the WCB premiums, and if no payments are made, the carrier itself could be held ultimately responsible.

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The waters get even murkier when an independent contractor buys a second truck and hires more drivers. When reviewed by Revenue Canada or the WCB, the contractor's status as a self-employed owner/operator might be challenged.

Clarity in language is essential when drafting a contractual agreement, according to transportation consultant Simon Strauss.

"The written working relationship must be the same as the actual working relationship, and hold up to scrutiny and audit. Everybody has to understand what role they have, what the working definition is, and what the regulatory body's take is on this," he says.

"We're not reinventing the wheel here," Strauss adds. "There are lots of definitions for owner/operator: legal, WSIB, taxation people to name a few. The question is: does one meet the requirements?"

A carrier, choosing to go with owner/operators exclusively, can also end up in hot water if an agency like the WCB (WSIB in Ontario) decides that the relationship is one of employer/employee rather than independent contractor.

In rough figures, for 100 owner/operators, the WSIB could make an assessment of $2,500 retroactively per driver per year against the carrier. And although this sum ($250,000) might be recouped on appeal, the transport company is still out thousands and the money could be tied up for years.

"Contracting parties are somewhat reluctant to ask for a pre-emptive ruling from the board and put on the books whether the relationship is one of independence rather than employment, but they should" says Les Liversidge, a Markham, Ont. lawyer who specializes in compensation issues. "It's a very common oversight."

Lastly, when shopping carriers, it's wise to do the math. "People need to sit down with their accountant and see what each contract has to offer considering all the costs and charge backs," says Scott Taylor, vice-president of operations for the Transport Financial Group in Waterloo, Ont. "Have a look at a typical month with one carrier and then compare it with the other packages." □

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