



July 22, 2020

HAP Enterprises Ltd.  
7954 Webster Road  
Delta, B.C.  
V4G 1G6

**Commissioner's Decision**  
**HAP Enterprises Ltd. (CTC Decision No. 08/2020)**

Introduction

1. HAP Enterprises Ltd. ("HAP") is a licensee within the meaning of the *Container Trucking Act* (the "Act"). Under sections 22 and 23 of the Act, minimum rates that licensees must pay to truckers who provide container trucking services are established by the Commissioner, and a licensee must comply with those statutorily established rates. In particular, section 23(2) of the Act states:

A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

2. Under section 26 of the Act, any person may make a complaint to the Commissioner that a licensee has contravened a provision of the Act. Under section 29, the Commissioner reviews such complaints and, under section 31, may conduct an audit or investigation to ensure compliance with the Act, the *Container Trucking Regulation* (the "Regulation") or a licence. The Commissioner may also initiate an audit or investigation under section 31 whether or not a complaint has been received.
3. The Commissioner received two complaints about HAP together alleging the following:
  - a. HAP was not paying the correct hourly rates;
  - b. HAP was not paying for pre and post trip inspections;
  - c. HAP was deducting amounts to pay for medical/dental benefits without the consent of the drivers;
  - d. HAP was requiring drivers to prepare logbooks that differed in hours from the drivers' timesheets;
  - e. HAP drivers were required to sign a letter when they collect their pay cheques; and
  - f. HAP was deducting amounts paid out as a result of a previous OBCCTC audit from subsequent driver pay cheques.
4. In response, the Commissioner directed an auditor to audit HAP's records. The auditor was directed to audit the months of June 2018 and July 2019 (together, the "Initial Audit Period") to determine compliance.

### Initial Audit Period

5. Records for all drivers in the Initial Audit Period were requested on April 3, 2020 for delivery to the OBCCTC by no later than April 20, 2020. HAP supplied the requested records by the deadline.
6. The auditor reviewed the records and determined that during the Initial Audit Period, HAP paid its drivers the correct hourly rates. The auditor reports that three drivers were paid the lower of the two hourly rates during the Initial Audit Period because these drivers had not reached the 2340 hours of container trucking services required to receive the higher of the two rates.
7. HAP was required to provide supporting documentation to establish that the three drivers had not reached 2340 hours of container trucking services. HAP provided job applications which indicated that the three drivers did not have previous container trucking services experience. The auditor contacted two of the three drivers (the third could not be reached) and confirmed the accuracy of the job applications.

### Additional Audit Procedures

8. As HAP was paying the correct hourly rates to its drivers during the Initial Audit Period, the auditor did not expand the audit and review additional pay periods.
9. However, the auditor did investigate the other allegations made by the complainants:

### ***Non-payment of pre and post trip inspections***

10. The auditor asked HAP if it required its drivers to complete pre and post-trip inspections. HAP responded by email on June 15, 2020 and stated that its drivers were not required to perform inspections because HAP employed mechanics to perform those duties.
11. Per the *Motor Vehicle Regulations*, Division 37 Safety Code, Part 4 Trip Inspections, section 37.22 (Pre and Post Inspections), a driver or a person specified by the carrier must ensure that the commercial motor vehicle is in safe operating condition. In this case, the HAP mechanics are the persons specified to conduct the pre and post-trip inspections and HAP was able to provide the auditor with "Daily Pre-trip Inspection and Maintenance Logs" for 17 units from July 28 – August 4, 2019, each signed by a HAP mechanic.
12. The auditor contacted eight HAP drivers who all confirmed that they perform the pre-trip inspections on their trucks. The auditor also inquired if the drivers were paid for the time it took them to perform their pre-trip inspections and the auditor reports that the drivers' answers were inconsistent.
13. Two drivers claimed that they were paid for the time they spend doing their inspections. The other six drivers claimed that they were told verbally by HAP to not to record their time until they left the yard, after they performed their inspections.

14. The auditor asked HAP about the drivers' claims that they perform pre-trip inspections and in response, HAP provided time stamped video surveillance footage of five drivers entering the cabs of their trucks in the HAP yard on the mornings of June 9, 2020 and June 12, 2020 and leaving the yard for their first dispatch. The footage showed the drivers spending 5-10 minutes in their truck cabs before the trucks exited the yard despite a number of pre-trip inspection duties requiring inspection of the vehicle outside the cab.
15. The auditor therefore concludes that HAP utilizes its mechanics to conduct pre and post-trip inspections and the HAP drivers are not entitled to be paid for trip inspections, rather only for the time recorded on their timesheets.

***Medical/dental benefits deducted without consent***

16. The auditor inquired about HAP's benefits package and was advised by HAP that:

About 3 years ago, a benefits program was initiated through AMC Insurance who is our primary insurance provider and established a benefits program for our employees. The program covered medical, dental, massages, death insurance policies within the premium. Before initiating the program, the drivers' majority voted in favor and the program was launched. As you are aware, employees must have coverage elsewhere or through a spouse to opt out, and all other remaining employees must go with the program and cannot be exempt. After a few months, the majority of the drivers are young and single or have spouse coverage, and thought the program was not worthwhile, and majority voted to get rid of the program. At that time, the program was terminated. The start date of the program was approx. August/September 2016, till the end of 2016.

17. The auditor contacted five drivers regarding the benefits deduction and four drivers confirmed HAP's explanation noting that a majority vote was taken in approximately 2016 and shortly afterwards the drives voted again and opted out of the benefits package. It was also noted by the drivers that prior to the implementation of the benefits package, the drivers received vacation pay but after the benefits package was implemented vacation pay ceased. It was further noted that after the benefits package was terminated, HAP did not re-implemented the drivers' vacation pay.
18. The auditor concludes that there is no merit to the complaint that HAP was deducting medical/dental benefits without the drivers' consent.

***Incorrect driver logbooks***

19. One complainant alleged that HAP told its drivers to prepare logbooks that did not exceed 8 hours per day and prepare a separate timesheet that reflected actual time worked for the purpose of demonstrating National Safety Code hours of service requirements.
20. The auditor reports that the hours on the drivers' timesheets match the number of hours the drivers were paid. The auditor confirms that HAP does not use the logbooks to calculate money owing to its drivers.

21. The complainants also alleged that they were often not paid for the correct number of hours worked. One of the complainants provided two yearly calendars for 2018 and 2019, in which he documented his daily hours worked. Upon review of these calendars, the auditor reports that the number of hours recorded on the calendars matched the number of hours the driver was paid during the Initial Audit Period. The second complainant did not provide any documentation demonstrating that he worked additional hours for which he was not paid.
22. Further, HAP was asked to provide GPS reports for July 31, 2019 to test the complainants' allegation. The auditor reviewed the GPS reports and confirms that the start and finish times on the GPS report match the times listed on the drivers' timesheets.

***Driver signature required to collect pay cheques***

23. HAP was asked to provide an explanation regarding the letter drivers are allegedly asked to sign when picking up their pay cheques. HAP advised that:

This letter was initiated almost 7-8 years ago, the purpose of this letter is so the driver himself signs off that he has received the cheque and has viewed the details of what was paid out in the cheque. Also, if the drivers had a discrepancy on their cheque, they could let the accounting department know within 5 days, so they could reprint the cheque if there is any difference, if drivers brought up anything after 5 days it would be adjusted in the following pay period. Additionally, prior to this letter we noticed that some drivers would send in their friends or workmates to collect their pay cheques, and the person collecting would misplace the cheque or would hand it over to the driver a day or so late, and then it would complicate who has taken their cheque if it went missing. Once we began with this letter, the same driver would collect his own cheque on payday and sign off that he has received it, and it would leave us with a record that he has taken his cheque, we disregard the letter after 30 days after payday.

24. The auditor reports that the letter contains a disclaimer that HAP is not responsible for any complaint regarding hours or wages after five days has lapsed and a clause which states that the employer and employee agree that there will be no further disputes or obligations in the future.
25. The auditor also notes that the drivers' pay stubs do not contain information about hours worked or rate paid. It is the auditor's opinion that HAP could avoid confusion on the part of its drivers if it provided each driver with a pay statement that details the driver's pay, including hourly rates and hours worked within each pay period. Therefore, I direct HAP to revise its payroll stubs to better and more clearly report driver income and deductions.

***Previous audit payments deducted from future earnings***

26. In HAP Enterprises Ltd. (CTC Decision No. 17/2016), HAP was found to have attempted to collect overpayments it perceived to be owing from its drivers by demanding cash payments (equaling the amount of the perceived overpayment) in return for receipt of the company driver's audit adjustment cheque. When this practice was discovered, it was immediately brought to an end by the auditor.

27. In this case, a complainant alleged that upon the conclusion of HAP's 2016 audit, the company attempted to claw back money from him again by making two deductions from his subsequent pay cheques. The driver was unable, however, to provide evidence of the subsequent claw back and was not certain in what pay periods the alleged deductions had been made.
28. HAP was asked to provide the complainant's pay stubs, including a breakdown of the amount paid (since the pay stubs did not contain those details), for the three subsequent pay periods after the previous audit was concluded. The records did not show any indication of an irregular deduction.
29. The auditor spoke with two drivers that were employed during the last audit and neither reported that HAP tried to claw back money a second time.

### **Conclusion**

30. The auditor concludes by noting that HAP is in compliance with its rate payment requirements, was cooperative during the audit and provided information on a timely basis.
31. The auditor also records that HAP drivers do not appear to be getting paid overtime, vacation pay or statutory holiday pay. These entitlements are outside the jurisdiction of the Container Trucking Commissioner.
32. HAP was provided a copy of the auditor's report on July 17, 2020 for review and was provided an opportunity to respond. HAP responded by the required deadline noting that they had reviewed the report and concurred with its findings.

### **Decision**

33. As described above, the circumstances of this case are:
  - a. The Commissioner ordered an audit of HAP's drivers which disclosed that HAP is paying its drivers the correct hourly rate;
  - b. Five allegations were investigated by the auditor, none of which were found to have merit;
  - c. HAP requires its drivers to sign a letter when they pick up their pay cheque confirming receipt of the cheque but also waiving their right to dispute the cheque amounts in the future;
  - d. HAP appears not to pay its drivers overtime, vacation pay or statutory holiday pay;
  - e. HAP was cooperative during the audit; and
  - f. HAP has reviewed and accepted the auditor's findings.
34. HAP is in compliance with the *Act*, was cooperative during the audit and the complaints received by the Commissioner were investigated and determined to be meritless. As such, the imposition of a penalty is not warranted.

35. I note, however, that the lack of detailed pay information on HAP's driver pay stubs has created confusion amongst its drivers and future complaints could be avoided if HAP provides each driver with a pay statement that details the driver's pay, including hourly rates and hours worked within each pay period. I have directed HAP to take steps to change its payroll stub to make it more informative and more understandable.
36. HAP may also wish to better communicate expectations to its drivers regarding the duties its drivers are paid for, specifically pre-trip inspections and time spent in the yard prior to their first dispatch.
37. HAP should also be advised that the commitments in the letter it requires each driver to sign when picking up their pay cheque do not supersede HAP's responsibilities under the *Act*, *Regulation* and its Container Trucking Services Licence, a driver's ability to file a complaint with the OBCCTC, or the Container Trucking Commissioner's ability to pursue an audit or investigation or make an order under the *Act*.
38. Finally, I note that enforcement of the overtime, vacation pay, or statutory holiday pay provisions of the *Employment Standards Act* are outside jurisdiction of the Container Trucking Commissioner. Any matters relating to these issues should be raised with the Employment Standards Branch. Likewise, concerns regarding the falsification of logbooks for the purpose of meeting National Safety Code requirements should be directed to the Commercial Vehicle Safety and Enforcement Branch of the BC Ministry of Transportation and Infrastructure.
39. This decision will be delivered to HAP Enterprises Ltd. and may be published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 22<sup>nd</sup> day of July, 2020.



---

Michael Crawford, Commissioner