



June 28, 2024

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

Commissioner's Decision Notice HAP Enterprises Ltd. (CTC Decision No. 07/2024)

Introduction

1. In HAP Enterprises Ltd. (CTC Decision No.07/2024) (“Original Decision”), I determined that HAP Enterprises Ltd. (“HAP”) was in breach of section 6.3 of its CTS license when it moved container SMCU450407 between facilities in the Lower Mainland on May 9, 2023 and was in breach of section 6.15 and 6.16 of its CTS license when it moved containers EITU1827403 and CMAU9276539 (collectively the “Impugned Containers”) between facilities on January 26 and January 29, 2024.
2. In a decision related to HAP Enterprises Ltd. (CTC Decision No. 07/2024) (“Supplemental Decision”), after HAP provided additional information, I accepted that HAP paid the drivers who moved the Impugned Containers the regulated rate. I also confirmed my finding in the Original Decision that HAP had a contract for the provision of container trucking services and subcontracted out the work to KAPA when KAPA moved container SMCU450407 between facilities in the Lower Mainland. Finally, I proposed an administrative penalty of \$8,000.00. Consistent with s. 34(2) of the Container Trucking Act (“Act”), I advised HAP that I would consider its written response to the proposed penalty if it was received within 7 days of the Supplemental Decision issued on June 18, 2024.
3. HAP requested and was granted an extension to provide its submission on the proposed penalty which was received on June 26, 2024.

Consideration of Licensee Response

4. HAP restates its prior argument that the Commissioner erred in his application of the term “facility” when determining the trucks that moved containers EITU1827403 and CMAU9276539 were engaged in off-dock trips and were required to be tagged in accordance with section 6.15 and 6.16 of its CTS licence. HAP’s submission merely expands on the circumstances that led to the containers stored at one “parking yard” being moved by a shunt truck to another “parking yard” where they were also stored. A so-called “parking yard” is a facility under the *Container Trucking Regulation*. As I explained at paragraph 99 of the Original Decision, I must apply the regulatory

definition of a facility. HAP appears to rely on a third-party report written for another purpose well after the *Act* came into effect. Additionally, that report itself appears to acknowledge that a facility includes a location where containers are stored. As I explained in the Original Decision, the reason for the move is not relevant -- the fact is that a container movement between two facilities is an off-dock trip. I am still not persuaded by HAP's submission and remain of the view that HAP was in breach of section 6.15 and 6.16 of its CTS licence for the reasons set out in the Original Decision and the Supplemental Decision.

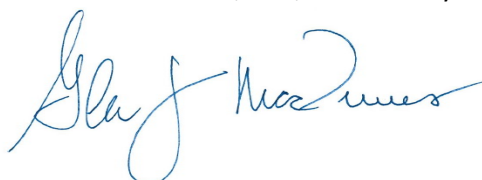
5. HAP restates many of its arguments as to why it was not in breach of section 6.3 when it moved container SMCU450407 on May 9, 2023. Furthermore, it now acknowledges that KAPA inadvertently used container SMCU450407 as part of its "straight truck (5 ton) deliveries" to Abbotsford. I am unclear what is meant by "straight truck delivery" and how its relevant and such an assertion is unsubstantiated by any evidence. Nothing in HAP's submission persuades me that HAP did not subcontract container trucking services work to a non-licensee. Even if I accepted that KAPA, a Related Person to HAP, transported a "container" by accident, it is the responsibility of the licensee to abide by its obligations under its license and this would still warrant an administrative penalty.
6. In the alternative, HAP maintains that an administrative penalty cannot be levied for the breach of section 6.3 because section 34(1) of the *Act* requires the Commissioner to issue a penalty within six months of becoming aware of the licensee's failure to comply. HAP maintains that the Commissioner became aware of the breach on either May 9, 2023, when the container was observed by the OBCCTC apparently being moved by an untagged truck, or on June 15, 2023, when the OBCCTC wrote HAP a letter regarding the investigation into the same.
7. Advising a licensee that the OBCCTC is investigating a possible breach and inviting a response does not mean that the Commissioner is "aware of the licensee's failure to comply." The investigation letter dated June 15, 2023 does not state that the Commissioner was aware of the licensee's failure to comply with its CTS license, but rather that HAP was alleged to be moving containers using an untagged truck which, if it were the case, would be a breach of the *Act*. As late as January 3, 2024, I advised HAP that the investigation into the alleged breaches was still ongoing.
8. Section 34(1) cannot be read as meaning that the six months begins "when an investigation begins." Nor can it be read to allow HAP to escape the consequences of a breach, especially in the context of an ongoing investigation. Here, there were repeated requests for information from HAP and there were subsequent complaints that HAP was engaging in similar conduct (using untagged trucks to move containers). The Commissioner's mandate is to ensure stability in the drayage sector by discouraging rate undercutting, including through the use of untagged trucks. Section 34(1) is not intended to be used by licensees to avoid penalization but to ensure that harmful conduct by licensees is addressed "in order to protect drivers and discourage renewed labour unrest. See: *Safeway Trucking Ltd. v Office of the British Columbia Container Trucking Commissioner*, 2023 BCSC 589 para 41. Given the complexity of HAP's corporate structure and the repeated complaints, the timeline is not unreasonable.

9. The Commissioner only becomes aware of a licensee's failure to comply after the Commissioner has reviewed all the reports and submissions and has come to a conclusion that there has been a failure to comply. See *AMK Carrier Inc. (CTC Decision No. 03/2020) Aheer Transportation Ltd. v The British Columbia Container Trucking Commissioner*, 2022 BCSC 1779, para 74. Therefore, I do not agree that either May 9 or June 15, 2023 are when the Commissioner became aware of the licensee's failure to comply.
10. HAP submits that I should redact certain statements and findings from the Original Decision and the Supplementary Decision. First, other than mere assertions, I have been provided with no evidence that the statements HAP wants redacted or removed are inaccurate or misleading. Additionally, even if I were to change my findings, I would do so in this Decision Notice, but I would not redact or remove a paragraph from the Original Decision.
11. In terms of HAP's request that I redact or anonymize customer names, the thrust of HAP's defense was that it did not subcontract out work to non-licensees and its supporting evidence included contracts between Related Persons and third parties. While I appreciate that some information may be sensitive, customer names may be relevant, especially if a license denies that a certain contract exists or is a certain contract is germane to the decision. Although HAP has only asserted, without establishing, that the customer names in question here are "proprietary information and therefore highly sensitive and confidential," I am prepared to give HAP the benefit of the doubt and anonymize customer names before publishing these decisions in this case.
12. Finally, I am not persuaded that HAP was as co-operative during the investigation process as HAP submits and appears to be glossing over certain facts. For the reasons set out in the Original Decision and the Supplemental Decision, HAP was more communicative than co-operative. I note that information sought by the Commissioner on June 15, 2023 was not initially delivered by HAP until after a follow up letter determining KAPA and Thunder Bal were related persons. Even then, the Commissioner had to again write to the HAP on August 25, 2023 regarding information that was not provided by HAP in response to its June 15, 2023 correspondence. I also found HAP's communication surrounding the initial identification of the driver involved in the December 6, 2023 complaint particularly uncooperative.
13. I also found HAP's use of the term "long haul" misleading; some of the container movements were clearly not "long haul" movements. I am not persuaded that HAP is simply confused about the term. The *Act* clearly defines on-dock and off-dock trips and these terms have been dealt with in many decisions and advisories. For HAP to suggest that the Commissioner should adopt a definition that would run contrary to the regulated definition is unacceptable. It is HAP's responsibility to know its obligations under the *Act* and if it relied on some other definition which resulted in a delay in providing the requested documentation to the OBCCTC, it did so at its own peril.
14. Finally, HAP's statement that it was largely in compliance with the regulatory framework is an overstatement. As is clear in the Original Decision, while the intent of section 6.3 of the CTS license

was to prohibit a licensee from handing off container work to a non-licensee, some of the contracts in question were structured such that they fell within a loophole with the result that HAP was not strictly in breach of its CTS license.

15. Based on the above, I order HAP to pay an administrative penalty fine in the amount of \$8,000.00. Section 35(2) of the *Act* requires these fines to be paid within 30 days of the issuance of this Decision Notice. Payment should be made by delivering to the OBCCTC a cheque in the amount of \$8,000.00 payable to the Minister of Finance.
16. Finally, I note that HAP may request a reconsideration by filing a Notice of Reconsideration with the Commissioner not more than 30 days after HAP's receipt of this Decision Notice. A Notice of Reconsideration must:
 - be made in writing,
 - identify the decision for which a reconsideration is requested,
 - state why the decision should be changed,
 - state the outcome requested,
 - include the name, an address for delivery, and telephone number of the applicant and, if the applicant is represented by counsel, include the full name, address for delivery and telephone number of the applicant's counsel,
 - be signed by the applicant or the applicant's counsel.
17. Despite the filing of a Notice of Reconsideration, the above order remains in effect until the reconsideration application is determined.
18. This Decision Notice along with the Commissioner's Decision will be published on the OBCCTC's website.
19. HAP also urges me to decide its November 2023 truck tag application, which has been held in abeyance because of the investigation underlying this Decision Notice. Although HAP still has the right to request reconsideration, it is no longer under investigation and HAP has asked me to decide its tag application "forthwith" and I will do so.

Dated at Vancouver, B.C., this 28th day of June 2024.



Glen MacInnes
Commissioner