



June 18, 2024

HAP Enterprises Ltd.
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Commissioner Decision - Supplemental 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 the 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 licence when it moved containers EITU1827403, and CMAU9276539 between facilities on January 26 and January 30, 2024 respectively without using a tagged truck.
2. As I was unable to determine the hourly rate paid to the drivers when they moved containers SMCU450407, EITU1827403, and CMAU9276539 or the cumulative hours each driver had worked (relevant to the hourly rate required), I provided HAP an opportunity to provide payroll records for each driver.
3. On May 23, 2024, HAP provided payroll records for Mr. Singh and Mr. Chohan along with a submission that container SMCU450407 was not a part of its contract with [REDACTED].

Preliminary Matter

4. On May 22, 2024, counsel for HAP objected to the inclusion of its client names in the Original Decision as it considered the information “highly confidential” and requested that the Original Decision not be published or, in the alternative, that the client names be redacted.
5. It is unclear to me if HAP is concerned only about its client’s names or is also concerned about the names of the clients of its Related Persons.
6. As this is a supplemental decision, I will continue to use the client names but will address HAP’s request further below.

SMCU450407

7. HAP disputes that it contracted with [REDACTED] on May 9, 2023 to move container SMCU450407 between its yard and the facilities in Abbotsford. It states that HAP contracted with [REDACTED] to move container SMCU450407 from Fraser Surrey Dock to the HAP transload yard and then return the container empty back to Fraser Surrey Dock. HAP explains that the contract with [REDACTED] was to move a railway-owned container from the rail yard to two locations in Abbotsford but since container SMCU450407 was not being used on May 9, 2023, HAP loaded contents from the railway-owned container onto SMCU450407 complete its contract with [REDACTED] to move the products to its final destinations in Abbotsford.
8. The fact that HAP's contract with [REDACTED] resulted in two different containers being used to complete the contract does not negate the fact that HAP subcontracted some or all the work to KAPA. KAPA moved a metal box "furnished" or "approved" for the marine transportation of goods (i.e. container SMCU450407) between two facilities in the Lower Mainland to complete HAP's contractual obligation to [REDACTED] and this is a breach of section 6.3 of the CTS license.

Payroll Information

9. Mr. K. Chouhan was identified as the driver for container SMCU450407 on May 9, 2023.
10. HAP provided a copy of Mr. Chouhan's application for employment with Thunder Bal Distributors Ltd. ("Thunder Bal") dated November 23, 2022, which indicated that he had recently moved from outside the province and did not have previous experience performing container trucking services with another licensee.
11. HAP did not provide the hourly rate paid to Mr. Chouhan. My review of Mr. Chouhan's wage statement for the pay period of May 1-15, 2023, indicates he worked 122.5 hours and was paid a \$3,393 gross. Although Appendix D of the CTS licence requires it, the wage statement provided by HAP does not record the hourly rate paid to Mr. Chouhan. I have calculated the hourly wage for Mr. Chohan by dividing the hours recorded by the daily wages recorded on the timesheet provided by HAP:

Date	Hours Recorded on Timesheet	Daily Wages Recorded Wage Statement	Hourly Wage Calculation
May 1, 2023	15	\$414.00	\$27.60
May 2, 2023	11.5	\$313.00	\$27.22
May 3, 2023	14	\$380.00	\$27.14
May 4, 2023	12.5	\$335.00	\$26.80

May 5, 2023	15	\$446.00	\$29.73
May 6, 2023	7.25	\$201.50	\$27.72
May 8, 2023	14.5	\$385.00	\$26.55
May 9, 2023	10.75	\$332.50	\$30.93
May 10, 2023	11.5	\$313.00	\$27.22
May 11, 2023	10.5	\$273.00	\$26.00
Total	122.50	\$3,393.00	

12. The regulated minimum rate for directly employed operators (“company drivers”) prior to July 1, 2023 was \$27.62 per hour if a company driver had performed less than, and \$28.88 per hour if a company driver has performed more than (or equal to), 2340 collective hours of container trucking services for any licensee or licensees (hourly rates are inclusive of benefits).
13. Mr. J. Singh was the driver of the truck that moved containers EITU1827403 and CMAU9276539 on January 26 and January 30, 2024 respectively.
14. HAP provided Mr. Singh’s employment application with HAP Trucking Ltd. (“HAP Trucking”) dated January 14, 2024 which identified he had previous trucking experience but none of his previous employers was a licensee. HAP Trucking was not identified in the Original Decision but is not a licensee.
15. Mr. Singh’s payroll record for the pay period of January 23, 2024 to January 30, 2024 states that he was paid an hourly rate of \$30.33 per hour.
16. Based on the information provided, I am satisfied Mr. Chohan and Mr. Singh did not have any experience with another licensee when they were hired and, given that were moving containers less than a few months after being hired, it is reasonable to conclude that each driver was entitled to be paid only the minimum regulated rate for drivers with less than 2,340 hours of experience at the time they moved the disputed containers.
17. The absence of any hourly rate on Mr. Chohan’s wage statement makes it difficult to determine if he was paid in accordance with the Rate Order given what appear to be unusual changes in the daily wage. I note that directly employed operators (“company drivers”) who performed container trucking services were entitled to be paid an overtime rate effective May 1, 2023 and Mr. Chohan worked in excess of 9 hours that day. I was not provided any evidence of the work Mr. Chohan did on May 1, 2, 3, 4, 5, 6, 8, 10 and 11, 2023 so I am unable to determine if he performed container trucking services for a licensee or received the minimum regulated rate. However, I was also not provided with any of the contracts for the other containers Mr. Chohan moved on May 9, 2023 to determine if they too were moved on behalf of HAP. Assuming Mr. Chohan was performing container trucking work on May 9, 2023, he would have been entitled to a minimum of $(\$27.62/\text{hour} \times 9 \text{ hours}) + (\$41.43/\text{hour} \times 1.75 \text{ hours})$ for a total of \$321.08. As HAP’s wage

statements show Mr. Chouhan was paid \$332.50 for work he performed on May 9, 2023, it appears he was paid at least the minimum regulated rate.

Decision

18. As described above, I find the following:

- HAP contracted with [REDACTED] to move container SMCU450407 between facilities in the Lower Mainland and subcontracted off-dock container movements to KAPA in breach of section 6.3 of its CTS license.
- Mr. Chohan and Mr. Singh had each performed less than 2,340 hours of container trucking services at the time they moved the respective containers.
- Mr. Singh was paid the regulated rate for the container moves EITU1827403 and CMAU9276539.
- HAP failed to identify on the wage statement the hourly rate paid to Mr. K. Chohan for the pay period of May 1-15, 2023.
- It appears Mr. Chouhan was paid the minimum regulated rate for work performed on May 9, 2023.

19. In addition, in the Original Decision, I found HAP moved containers EITU1827403 and CMAU9276539 between facilities without a tagged truck in breach of section 6.15 and 6.16 of its CTS licence.

20. The purpose of the *Container Trucking Act* is to maintain stability in the drayage sector by controlling those activities that led to previous labour disruptions. Two key causes of instability were the oversupply of trucks and the failure to pay a regulated rate for off-dock container moves, both of which led to severe undercutting of driver's wages in the drayage sector. The introduction of truck tags and an off-dock minimum rate payable by licensees was meant to prevent undercutting from continuing in the future.

21. In 2021, the then-Commissioner noted that some licensees were working with non-licensed companies to avoid paying the regulated rates and/or the requirement to use tagged trucks:

Off-dock issues canvassed in the Off-Dock Drayage Insights report have arisen, in part, because companies have adapted their practices to avoid the existing regulatory requirements, not because the Act or Regulation are unclear or their applicability has not been properly communicated.

It is now clear that drivers at licenced companies are continuing to lose work to lower paid drivers at unlicensed companies, undermining the intent of the Joint Action Plan and destabilizing the industry.

Increasingly, CTS Licence holders are setting up secondary, unlicensed transport operations in order to complete off-dock drayage trips at lower rates.¹

22. To prevent licensees from using non-licensed companies to avoid using tagged trucks or paying the regulated rates, changes were made to the CTS license on December 1, 2022, to prohibit licensees from subcontracting with non-licensed companies.²
23. HAP is a licensee who entered into a contract with [REDACTED] to provide container trucking services in the Lower Mainland and then subcontracted some or all of that work to KAPA, in breach of its container trucking licence. Although HAP appears to have paid Mr. Chohan the required rate for work performed on May 9, it has failed to provide necessary information – specifically the hourly rate of Mr. Chohan -- as required by Appendix D section (B)(4)(f) of its CTS license. I am certain that KAPA did not have a tagged truck as it is not a licensee. The result is that HAP has hindered the ability of the OBCCTC to manage the ratio of trucks to containers through a tag system and to ensure that a driver received the minimum regulated rate for moving the container.
24. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee’s licence or imposing an administrative fine. Under section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000.
25. As I noted very recently in Supersonic Trucking Ltd. (CTC Decision No. 11/2023), citing to HAP Enterprises Ltd. (CTC Decision No. 19/2016), prior Commissioners have stressed the importance of proper recording-keeping since the *Act* has been in force:

The requirement to keep complete, accurate and up-to-date records is a fundamentally important obligation flowing from the legislation and the Container Trucking Services Licence (the “licence”). The maintenance of complete, accurate and up-to-date records by licensees is absolutely essential to the OBCCTC’s fulfillment of its rate compliance mandate and its ability to properly perform audits in a timely and fulsome way. Failure to keep proper records, including those required under both Paragraph 3 of Appendix D to

¹ Off-Dock Drayage in the Lower Mainland Recommendation Report, OBCCTC, May 2021, page 1-2.

² As discussed at paragraph 88 of the Original Decision.

Schedule 1, and under Schedule 2 of the licence, directly interferes with the audit process, will not be tolerated, and will be regarded as a serious violation of licensees' obligations under the legislation and their licence.

26. In the Original Decision, I reiterated the importance of licensees using tagged trucks when performing container trucking services, including ensuring that the work performed is accounted for in the performance assessment of the licensee. See for example: Tri-R Transport Ltd. (CTC Decision No. 03/2023); Goodrich Transport Ltd. (CTC Decision No. 06/2023); Ferndale Transport Ltd. (CTC Decision No. 07/2023). The absence of recorded information about untagged trips also hinders the OBCCTC's ability to ensure drivers are correctly paid and its ability to ensure that there is a balance between the number of trucks/drivers and the amount of work available.
27. While HAP was communicating with the OBCCTC during the investigation, it failed to provide the required documentation in a timely manner, resulting in repeated requests for records and separate investigations into the identity of container trucks after HAP denied any knowledge of certain allegations. HAP was not fully cooperative or responsive and its assertion that there was no integration between its Related Persons was not supported by the eventual disclosure of documents. All of this unnecessarily prolonged the investigation.
28. HAP used untagged trucks to move containers. HAP also subcontracted out container trucking services to a non-licensee and failed to provide the hourly rate for Mr. Chouhan. Cumulatively, these breaches undermine the purposes of the *Act* for the reasons outlined above, and I have concluded that an administrative fine is appropriate and I propose a fine of \$8,000.00.
29. While the size of this fine is higher than those decisions involving only the use of untagged trucks, it is consistent with other decisions for first time record-keeping offences and is meant as a general deterrent against subcontracting out work to non-licensees. If I had determined that any driver was not paid the regulated rate, the fine would have been significantly higher.
30. Finally, I invite HAP to provide a submission as to why its client's name(s) should be redacted or anonymized in the Original Decision, this Supplemental Decision and the Decision Notice before the publication of those decisions on the OBCCTC website.
31. In the result and in accordance with section 34(2) of the *Act*, I hereby give notice as follows:
 - a. I propose to impose an administrative fine against HAP in the amount of \$8,000.00.
 - b. HAP may provide a submission on redacting or anonymizing its client's names no later than June 26, 2024.
32. Should it wish to do so, HAP has 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed.

33. If HAP provides a written response in accordance with the above, I will consider its response and I will provide notice to HAP of my decision to either:
- Refrain from imposing any or all of the penalty; or
 - Impose any or all of the proposed penalty.
34. This decision will be delivered to HAP and will be published on the OBCCTC's website after HAP's response period has closed (www.obcctc.ca).

Dated at Vancouver, B.C., this 18th day of June 2024.



Glen MacInnes
Commissioner