



January 31, 2025

Smart Choice Transport Ltd.
34565 Delair Road
Abbotsford, BC V2S 2E1

Smart Choice Transport Ltd. (CTC Decision No. 01/2025) – Decision Notice

Introduction

1. In [Smart Choice Transport Ltd.](#) (CTC Decision No. 01/2025) (“Commissioner’s Decision”), I found that Smart Choice Transport Ltd. (“Smart Choice”) failed to comply with section 23 of the *Container Trucking Act* (“Act”) when it underpaid some of its drivers during the Audit Period¹ - specifically when it failed to pay the regulated rates to its drivers in July 2023 (totaling \$705.91) and failed to pay the regulated overtime rates in August 2023 and January 2024 (totaling \$6,450.96). I also found Smart Choice breached its CTS licence by failing to maintain payroll records for July 2022 as required under Appendix D s. 4(f) and failing to equip its company vehicles with the required equipment to record the number of CTS hours and/or trips performed as required by section 6.7. Smart Choice was the subject of an investigation regarding contracting container trucking services work to a non-licensee, but it was determined that it was not in breach of the 2022 CTS license for the reasons set out in paragraphs 26 and 27 of the Commissioner’s Decision. An administrative penalty of \$12,000 was proposed.
2. Consistent with s. 34(2) of the *Act*, Smart Choice was given (7) days to provide written response setting out why the proposed penalty should not be imposed.
3. Smart Choice provided a written response to the proposed penalty within the specified timeframe. I have considered Smart Choice’s response to the Commissioner’s Decision and provide the following Decision Notice.

Smart Choice Response

4. Smart Choice does not dispute the factual findings of the Commissioner’s Decision but seek a reduction of the proposed administrative penalty to \$4,000 – or, alternatively, to pay in three installments over the next “few months” because most of the breaches occurred while the new ownership team was “gaining a comprehensive understanding of the firm regulations.”
5. Smart Choice states that it was co-operative during the audit process and took immediate steps to correct any deficiencies, including immediately paying its drivers the owed amounts and proactively introducing an electronic tracking system in its company vehicles.

¹ April and October of 2020, March and May of 2021, July and December of 2022, February and August 2023 and January 2024.

Consideration of Licensee's Response

6. I accept that Smart Choice has taken full responsibility for its non-compliant behavior and the actions of its team. I recognize Smart Choice's efforts and, while it is important that licensees accept and take action to correct non-compliance, the OBCCTC considers the actions of licensees, not the owners of the company under licence, when assessing administrative penalties. In Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018) – Decision Notice the then-Commissioner stated that:

A company is its own person. A licensed company must comply with the terms and conditions of the Licence, Act and Regulation and may be penalized if it does not. This is regardless of who owned or managed the company under licence during the period under audit. The penalty is directed at the company.

7. I agree with this analysis, and I reinforced that it is Smart Choice being penalized, not the new owners, at paragraph 37 of the Commissioner's Decision. Smart Choice must comply with its obligations under the Act and its licence, including its obligation to pay its drivers the regulated rates. Any owner, including a new owner, has access to publicly available decisions, bulletins, industry advisories, reports and rate orders that elaborate on the requirements in the Act, Regulations and the CTS licence. I am therefore not persuaded that I should overlook Smart Choice's breaches under previous ownership. Smart Choice's previous \$8,000 administrative penalty (also for failing to pay the regulated rates) is therefore also relevant.
8. As for Smart Choice's request to pay the administrative penalty in installments, I am not certain the legislation allows for installment payments and I would not allow them in this case in any event. Smart Choice has not provided sufficient reasons for the request.

Conclusion

9. I am not persuaded to refrain from imposing an administrative penalty based on the submission provided by Smart Choice. Having carefully considered Smart Choice's submission, and for the reasons set out here and in the Commissioner's Decision, I hereby order Smart Choice to pay an administrative fine of \$12,000.00.
10. Section 35(2) of the Act requires this fine to be paid within 30 days of the issuance of this Decision Notice.
11. Finally, I note that Smart Choice may request a reconsideration of this decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after the company's receipt of this Decision Notice. A Notice of Reconsideration must be:
- a) made in writing;
 - b) identify the decision for which a reconsideration is requested;
 - c) state why the decision should be changed;
 - d) state the outcome requested;
 - e) 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; and

f) signed by the applicant or the applicant's counsel.

12. Despite the filing of a Notice of Reconsideration, the above order remains in effect until the reconsideration application is determined.

13. This Decision Notice along with the Commissioner's Decision will be published on the Commissioner's website.

Dated at Vancouver, B.C. this 31st day of January 2025.



Glen MacInnes
Commissioner