



January 20, 2025

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

Commissioner's Decision **Smart Choice Transport Ltd. (CTC Decision No. 01/2025)**

Introduction

1. Smart Choice Transport Ltd. ("Smart Choice") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. Manney Transport Ltd. ("Manney") is a Related Person (as defined in the *Container Trucking Regulation* ("Regulation")) and the container trucking licence of Smart Choice and performs container trucking services but is not a licensee.
3. Section 16(1)(b) of the *Act* states that a licensee must carry out the container trucking service in compliance with:
 - (i) this Act and the regulations,
 - (ii) the license, and
 - (iii) if applicable, an order issued to the person under the Act.
4. 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 via a Rate Order, and a licensee must comply with those rates. Section 23(2) 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.

5. Section 6.3 was added to the 2022 CTS licence and prohibits a licensee from subcontracting out Container Trucking Services to any party who is not a Licensee.
6. Section 6.7 was added to the 2022 CTS licence and requires licensees to equip trucks performing container trucking services with an electronic device or technology to record the hours of work or trips performed.
7. Under section 31 of the *Act*, the Commissioner may conduct an audit or investigation to ensure compliance with the *Act*, the *Regulation* or a licence.

8. As part of the random audits initiated by the Commissioner, an auditor was directed to audit Smart Choice's records to determine if its independent operators and directly employed operators (also known as company drivers) were being paid the required minimum rates.
9. During the random audit, the OBCCTC received a complaint that Smart Choice's Related Person, Manney Transport, was moving containers in contravention of the Act and/or Smart Choice's licence. Some of the photographs provided by the complainant did not show the container numbers but container number GCXU5961657 (the "Impugned Container") is shown being moved by a truck that appears to be owned by Manney Transport. According to a website container search, the Impugned Container was delivered by an unidentified company to Deltaport terminal on or around August 24, 2024 by an unidentified company.
10. Smart Choice has been the subject of two previous audits in 2016 and it was determined that it failed to pay the regulated rates to drivers in each audit. In Smart Choice Transport Ltd. (CTC Decision No. 03/2016), Smart Choice was ordered to pay its drivers \$55,175.00 and the Commissioner exercised his discretion and did not impose a penalty. In Smart Choice Transport Ltd. (CTC Decision 21/2016), Smart Choice was ordered to pay \$91,848.00 in wages and to pay an administrative fine of \$8,000.00.

Audit Report

11. On April 16, 2024, the auditor advised Smart Choice that an audit had been initiated for the period of April 1, 2020 to March 31, 2024 ("Audit Scope"). The auditor randomly selected and requested driver records for pay periods in April and October of 2020, March and May of 2021, July and December of 2022, February and August 2023 and January 2024 ("Audit Period").
12. Smart Choice provided payroll records as requested with the exception of timesheets and Electronic Fund Transfer ("EFT") statements for July 2022 which it claims were damaged due to a water leak.
13. Smart Choice provided electronic data for trips performed by its independent operators but was unable to provide electronically recorded hours of work for its company drivers. Smart Choice did not provide the auditor with any reasons as to why it had not installed the required technology but responded that it was in the process of implementing an electronic tracking system.
14. The auditor reviewed the company driver payroll records that were provided and determined that each trucker was paid in accordance with the Rate Order except for periods of time in July 2022, August 2023 and January 2024. The auditor determined that Smart Choice had not implemented the July 1, 2022 Rate Order until August 19, 2022 and therefore owed its company drivers \$705.91 for the month of July 2022. The auditor noted that Smart Choice likely owed additional wages for the period of August 1, 2022 to August 18, 2022, given Smart Choice's response that it only adjusted the rate in mid-August. The auditor also determined that Smart Choice failed to pay two

of its driver weekly overtime in August 2023 and January 2024 in the total amount of \$6,450.96.¹

15. The auditor reviewed the independent operator payroll records and determined that each trucker was paid in accordance with Rate Order for each container movement.
16. The auditor concluded the following:
 - a. Smart Choice failed to provide all of the requested payroll records for July 2022 and the auditor was therefore unable to verify the hours each driver worked each day for that month, or that they were paid for all hours worked;
 - b. Smart Choice failed to pay its company drivers the regulated rates between July 1 and 31, 2022 and owed its drivers \$705.91; and
 - c. Smart Choice failed to pay two of its drivers weekly overtime for work performed in excess of 45 hours per week in August 2023 and January 2024 and owed \$6,450.96; and
 - d. Smart Choice did not equip its company-owned trucks with the required equipment to record the number of CTS hours and/or trips performed by its company drivers but it did for its IO trucks.
17. On August 19, 2024, Smart Choice was provided with a copy of the Audit Report and on September 9, 2024 and a copy of a Supplemental Audit Report and was invited to provide a submission. Smart Choice provided its submissions by the required deadlines.

Response to Audit Reports

18. Smart Choice does not dispute the findings of the auditor but provides an update on the steps it has taken to bring itself into compliance.
19. Smart Choice provided copies of wage statements issued on September 20, 2024 to the two drivers who were not paid weekly overtime and provided wage statements showing the amount paid to the company drivers who did not receive the minimum regulated rate in July 2022.
20. Smart Choice agrees it did not have an electronic tracking system in its company trucks during the Audit Period but says that it has since installed a third-party electronic tracking system. Smart Choice does not say when it did so.
21. Finally, Smart Choice explains that most of these breaches occurred just following a change in ownership in 2022 and an accounting oversight and it is now compliant with the Act.

Response to Investigation

22. Smart Choice explained that Manney Transport generally provides intermodal container trucking services across Canada and Smart Choice provides port drayage access for Manney Transport.

¹ The auditor initially calculated the amount owing in overtime in her August 6, 2024 Audit Report but corrected the amount owing in her September 4, 2024 Supplemental Audit Report.

23. Regarding the Impugned Container, Smart Choice explained that a customer entered into contract with Manney Transport to pick up the container at CP Rail Yard in Port Coquitlam and deliver the container to Pitt Meadows where it was unloaded and then moved to Smart Choice's yard in Surrey, BC. On the same day, Manney Transport contracted Smart Choice to move the Impugned Container from Smart Choice's yard in Surrey to Coast 2000 terminal in Richmond, BC. Smart Choice and Manney Transport deny that either company delivered the container to Deltaport on August 27, 2024.
24. Smart Choice provided the customer's invoice showing that the customer had a contract with Manney Transport and payroll records indicating Smart Choice paid the regulated minimum rate to the driver for Smart Choice that moved the Impugned Container from its yard in Surrey to the Coast 2000 terminal in Richmond on August 6, 2024.

Decision

25. Much of the evidence in the Audit Report is undisputed and I find that Smart Choice: failed to maintain and provide records (for July 2022) in breach of section 4(f) of Appendix D of the 2022 CTS license; failed to pay the minimum regulated rates, including overtime rates, in breach of section 23(2) of the Act during some months of the Audit Period; and, failed to comply with section 6.7 of its 2022 CTS license when it failed to equip its company owned trucks with electronic devices or technology to track a trucker's hours or trips until at least January 31, 2024 (the last month of the Audit Period).
26. Regarding the complaint, Smart Choice may have been in breach of the intent behind section 6.3 of the CTS licence; however, I cannot find that it was in breach of section 6.3 of the 2022 CTS licence given the facts in this case. At the time these events occurred, the CTS licence was worded in such a way that it prohibited Smart Choice from contracting out its customers' container movements to Manney Transport but did not prohibit Manney Transport from contracting out its customer's container trucking services work to Smart Choice. Based on the evidence before me, Manney Transport contracted with a customer to move a container and Manney Transport contracted with Smart Choice to move the same container later that day. It cannot be said that Smart Choice subcontracted out the work to Manney Transport as contemplated by section 6.3 of the CTS licence. In HAP Enterprises Ltd. (CTC Decision No. 07/2024),² I noted that while this practice undermined the intent of section 6.3 of the CTS licence, it was not a breach, given the language of the licence at that time.
27. It does not matter that the Impugned Container did not transit through a marine terminal on August 6, 2024 and that is not the reason I do not find Smart Choice in breach of the Act or its license. Based on the facts before me, I have determined that the Impugned Container was a "container" under the Act and, had Smart Choice subcontracted with Manney Transport to move

² Paragraph 88.

the Impugned Container, it would have been in breach of its 2022 CTS licence. However, since Manney contracted with Smart Choice, Smart Choice was technically not in breach of its 2022 CTS licence. A change in 2024 CTS licence addressed this “loop-hole” and prohibits a licensee from engaging in this type of arrangement after November 30, 2024.

28. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act* or the terms of its licence, 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 may not exceed \$500,000 in cases relating to the payment of remuneration, wait time remuneration or fuel surcharge. In any other case an administrative fine may not exceed \$10,000.
29. The seriousness of the available penalties indicates the gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and independent operators in compliance with the rates established by the legislation. Licensees must comply with the legislation, as well as the terms and conditions of their licenses, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.
30. In keeping with the above-described purpose of the legislation, the factors which will be considered when assessing the appropriate administrative penalty include the following as set out in Smart Choice Transportation Ltd. (OBCCTC Decision No. 21/2016):
 - The seriousness of the respondent’s conduct;
 - The harm suffered by drivers as a result of the respondent’s conduct;
 - The damage done to the integrity of Container Trucking Industry;
 - The extent to which the licensee was enriched;
 - Factors that mitigate the respondent’s conduct;
 - The respondent’s past conduct;
 - The need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of having a CTS licence;
 - The need to deter licensees from engaging in inappropriate conduct; and
 - Orders made by the Commission in similar circumstances in the past.
31. In HAP Enterprises Ltd. (CTC Decision No. 17/2016) then-Commissioner MacPhail emphasized the importance of proper record keeping and I agree with the following:

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 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. (para. 22)

32. In Canada West Warehousing Ltd. (CTC Decision No. 17/2024), I specifically emphasized the importance of installing the required equipment in each tagged truck to track hours and trips as follows:

Electronically generated hours and trips performed by truckers reduces the likelihood of inadvertent errors or misrepresentation of container trucking services work and ensures that the auditors can verify the accuracy of the payroll records and ensures that truckers are paid the regulated rate for all the hours worked.

33. Olympia Transportation Inc., (CTC Decision No. 02/2016), HAP Enterprises Ltd. (CTC Decision No. 17/2016), MDW Express Transport Ltd. (CTC Decision No. 01/2017), and Hutchinson Cargo Terminal Inc. (CTC Decision 27/2018) all address the general importance of proper record keeping and confirm that licensees with deficient record keeping can expect to receive an administrative penalty.
34. I agree with the reasons in the decisions referenced above and have considered them in this case.
35. In this case, Smart Choice failed to provide only one month of records, but the fact remains that it did not produce the required information. Considering the evidence as a whole, I do not find that Smart Choice's explanation for the missing information was used to keep the auditor from determining the amount of money owed as was the case in Hutchinson Cargo Terminal Inc. Regardless, an administrative penalty for missing records is appropriate to ensure that licensees create and maintain records so that auditors can ensure that drivers are paid the minimum regulated rates. Smart Choice's failure to maintain and produce payroll records due to water damage is not acceptable and the result was that auditor was unable to verify that the truckers were paid the minimum regulated rate for the month in question.
36. While I understand that Smart Choice eventually came into compliance with section 6.7 of its 2022 CTS licence, over a year is a significant period of time to be in breach of its CTS licence in this regard and impacts the ability of the auditor ensure the regulated rates are paid. An administrative penalty is also warranted for this breach.
37. Finally, while the amount of money owing because of Smart Choice's failure to pay the updated minimum regulated rate is relatively small, the overtime owed is substantial considering it only applies to two drivers over a two-month period. While the identified amounts were eventually

paid, Smart Choice cannot avoid responsibility because of a change in ownership. Smart Choice was previously found in breach of the *Act* for failing to pay the regulated rates and the new owners would or should have known this. Regardless, it is Smart Choice that is being penalized, not the new owners of the licensee.

38. I have decided that an administrative penalty of \$12,000 is appropriate. In assessing the appropriate penalty, I am mindful that Smart Choice has had a previous administrative penalty for failing to pay the minimum regulated rates. As Smart Choice has repaid the truckers the difference owed for the months involved in the Audit Period, I do not find it necessary to order payment under section 9 of the *Act*.
39. My understanding from the Audit Report is that Smart Choice had not paid the minimum regulated rates adjusted on July 1, 2022 for July 2022. I understand the auditor confirmed that Smart Choice had paid the minimum regulated rates in December 2022. The auditor also appears to accept that Smart Choice implemented the July 1, 2022 rates on August 19, 2022. I am unclear whether Smart Choice paid those rates between August 1 and August 19, 2022 since that period was not covered in the Audit Period. I am also unclear if Smart Choice has reviewed its payroll records outside of those months covered by the Audit Period to ensure each driver was paid the minimum regulated rates for weekly overtime between April 1, 2020 and March 31, 2024.
40. As a result and in accordance with section 9 of the *Act* I order Smart Choice, no later than 30 days from the date of this Decision, to:
 - a) review its payroll records between August 2022 and November 2022 to ensure that it has paid the minimum regulated rates that went into effect on July 1, 2022 and make any necessary adjustments; and
 - b) review its payroll records between May 1, 2023 (the date the overtime rate came into effect) and December 31, 2024 (except for February and August 2023 and January 2024) to ensure that it has paid overtime and make any necessary adjustments; and
41. I also propose an administrative fine against Smart Choice in the amount of \$12,000.00 in accordance with s. 34(2) of the *Act*.
42. Should it wish to do so, Smart Choice has 7 days from the receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed.
43. If Smart Choice provides a written response in accordance with the above, I will consider its response and I will provide notice to Smart Choice of my decision to either:
 - i. refrain from imposing any or all of the penalty; or
 - ii. impose any or all of the proposed penalty.

Conclusion

44. In summary, Smart Choice has been found in violation of the *Act*, the *Regulation* and its license for failing to maintain the required payroll records, failing to pay regulated rates, and not having an electronic tracking system. I have proposed a penalty of \$12,000.00.

45. This decision will be delivered to the licensee and published on the Commissioner's website (www.obcctc.ca) after the deadline for Smart Choice's written response has expired.

Dated at Vancouver, B.C. this 20th day of January 2025.



Glen MacInnes
Commissioner