



January 31, 2025

Unique Trucking Ltd.
16268 River Road
Richmond, BC V6V 1L6

Commissioner's Decision
Unique Trucking Ltd. (CTC Decision No. 04/2025)

Introduction

1. Unique Trucking Ltd. ("Unique") is a licensee within the meaning of the *Container Trucking Act* (the "Act").
2. 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.

3. 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.

4. 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.
5. 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.
6. As part of the random audits initiated by the Commissioner, an auditor was directed to audit Unique's records to determine if its independent operators and directly employed operators (also known as company drivers) were being paid the required minimum rates.
7. Unique has been the subject of two previous audits. In Unique Trucking Ltd. (CTC Decision No. 05/2015), Unique was ordered to pay its drivers \$108,589.71 and the Commissioner exercised

his discretion and did not impose a penalty. In 2020, it was determined that Unique was compliant with the Act and its CTS license.

Audit Report

8. On April 17, 2024, the auditor advised Unique 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 October and December of 2020, April and May of 2021, September and November of 2022, August and December 2023 and January 2024 (“Audit Period”).
9. Unique provided payroll records as requested by the deadline with the exception of electronic data from its trucks recording the hours worked.
10. Unique explained that it did not have electronic device or technology to record the hours of work or trips performed until June 2024 because its drivers were not initially receptive to a new system and it trialed a variety of programs. The auditor was able to verify that Unique had an electronic tracking system in place starting in June 2024 after reviewing an electronic report provided by Unique and receiving confirmation from six drivers in August 2024 that they were using an electronic system.
11. The auditor reviewed the company driver payroll records that were provided and determined that each trucker was paid in accordance with the Rate Order during the Audit Period.¹
12. The auditor concluded the following:
 - a. Unique paid the regulated rates during the Audit Period.
 - b. Unique did not equip its trucks with the required equipment to record the number of CTS hours and/or trips performed until June 2024.
13. On August 13, 2024, Unique was provided with a copy of the Audit Report and on November 14, 2024 Unique was provided with a copy of a Supplemental Audit Report and was invited to provide a submission. Unique provided its submission by the required deadlines.

Response to Audit Reports

14. Unique does not dispute the findings of the auditor but provides an update on the steps it has taken to bring itself into compliance.
15. Unique agrees it did not have an electronic tracking system in its company trucks during the Audit Period but says that it has installed a third-party electronic tracking system as of June 2024.

¹ The auditor initially determined that Unique failed to pay weekly overtime during the Audit Period but in a supplemental audit she determined that Unique had paid the weekly overtime during the Audit Period.

Decision

16. Much of the evidence in the Audit Report is undisputed and I find that Unique 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 between December 2022 and June 2024.
17. 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.
18. 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.
19. 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.
20. 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)

21. 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.

22. I agree with the reasons in the decisions referenced above and have considered them in this case.
23. While I understand that Unique eventually came into compliance with section 6.7 of its 2022 CTS licence, 18 months is a significant period of time to be in breach of its CTS licence and impacts the ability of the auditor ensure the regulated rates are paid. Additionally, I do not accept that the alleged reluctance of Unique’s drivers to adopt the required technology or delays due to testing a variety of different programs are acceptable excuses. Licensees were provided with plenty of notice of the obligation to implement new technology and had the opportunity to train staff and find the appropriate service provider. An administrative penalty is also warranted for this breach.
24. I have decided that an administrative penalty of \$4,000.00 is appropriate. In assessing the appropriate penalty, I am mindful that Unique has not had a previous administrative penalty.
25. As a result, I propose an administrative fine against Unique in the amount of \$4,000.00 in accordance with s. 34(2) of the Act.
26. Should it wish to do so, Unique 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.
27. If Unique provides a written response in accordance with the above, I will consider its response and I will provide notice to Unique 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

28. In summary, Unique has been found in violation of the *Act*, the *Regulation* and its license for not having an electronic tracking system. I have proposed a penalty of \$4,000.00.
29. This decision will be delivered to the licensee and published on the Commissioner's website (www.obcctc.ca) after the deadline for Unique's written response has expired.

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



Glen MacInnes
Commissioner