

November 19, 2015

Columbia Containers Ltd.  
2775 Commissioner Street,  
Vancouver, B.C. V5K 1A1

## **Commissioner's Decision**

### **Columbia Containers Ltd. (CTC Decision No. 1/2015)**

#### Introduction

1. Columbia Containers Ltd. ("Columbia") is a licensee within the meaning of the *Container Trucking Act* (the "Act"). Under Sections 22 and 23 of the Act, minimum rates that licensees must pay to truckers who provide container trucking services are established by Regulation, and a licensee must comply with those statutorily established rates. In particular, 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.

2. Under Section 26 of the Act, any person may make a complaint to the British Columbia Container Trucking Commissioner (the "Commissioner") that a licensee has contravened a provision of the Act. Under Section 29, the Commissioner reviews such complaints and, under Section 31, may conduct an audit or investigation to ensure compliance with the Act, the Regulation or a licence. (I note the Commissioner has authority under Section 31 to conduct such audits and investigations whether or not the Commissioner has received a complaint).
3. Section 27 of the Act provides, in essence, that complaints may be made confidentially to the Commissioner. That is, if a complaint is made on a confidential basis, the Commissioner "must make best efforts to avoid disclosing any identifying information respecting the complainant" unless disclosure becomes necessary for purposes of the Act.

#### Facts

4. The Act and the Regulation came into effect on December 22, 2014, and a Commissioner was appointed on February 16, 2015. The Commissioner's office received a confidential complaint in February 2015, alleging that Columbia had not implemented the increased fuel surcharge ("FSC") rates which became effective retroactive to March 27, 2014 by virtue of Sections 21 and 22 of the Container Trucking Regulation (the "Regulation").
5. Columbia was alleged to have continued to use the pre-March 27, 2014 multiplier of 1% to calculate FSC payments to its independent operators instead of the multiplier of 2% which was required by Sections 21 and 22 of the Regulation.

6. An audit was conducted with respect to the complaint. In the course of the audit, Columbia was asked to provide documentation for audit purposes for the period March 27, 2014 to January 31, 2015. Columbia complied with the auditor's requests. It provided documentation with respect to each of its 14 independent operators which listed each pay period from March 15, 2014 to January 31, 2015, and showed gross pay, FSC amount paid, deductions and net pay for each pay period. The auditor requested further documentation for audit purposes and Columbia complied.
7. Based on the information and documentation provided, the auditor sent Columbia an interim report to review in March 2015. The interim report calculated that a total of \$106,501.33 was owing to the 14 independent operators.
8. Columbia did not dispute the auditor's calculations as indicated in the interim report. In early April 2015, Columbia advised that it had paid the calculated FSC adjustment to its independent operators for the period December 22, 2014 to January 31, 2015, and that from February 1, 2015 it had been paying the correct multiplier of 2%. Later the same month (April 2015), Columbia advised it would pay the outstanding FSC adjustment calculated by the auditor.
9. The auditor investigated Columbia's claims with respect to payment and was satisfied that Columbia had paid the calculated FSC adjustment for the entire period, first by paying amounts totaling \$7,907.70 for the period December 22, 2014 to January 31, 2015, and then by paying the remaining calculated FSC adjustment, \$98,593.63, on April 28, 2015. The auditor also investigated and was satisfied that Columbia began paying the required 2% multiplier effective February 1, 2015.
10. The Office of the Commissioner asked Columbia to explain why it had paid the FSC at the multiplier of 1% rather than the required 2%. Columbia's written response stated in part:

During the period in question from March 27<sup>th</sup> 2014 to February 1<sup>st</sup> 2015 the company paid its owner operators in accordance with our federal collective agreement with Teamsters Local 31. The company and its advisors were not clear how the actions of the Province and the Port impacted our federal collective agreement.

### Decision

11. As described above, the circumstances of this case are that, within two months of receiving notice from the auditors of a complaint of non-compliance against Columbia, the company had:
  - a) undergone an audit, during which it cooperated fully with the auditor;
  - b) accepted the auditor's calculation of the amounts it owed under the *Act*;
  - c) paid the adjustment amounts calculated by the auditor as owing to its owner operators; and
  - d) corrected its non-compliant payment practice to bring it into compliance with the *Act*.
12. As Columbia has paid the amount owing under the *Act* and corrected its non-compliant payment practice, I find there is no need for me to issue an order pursuant to Section 9 of the *Act* requiring Columbia to comply with the *Act*.

13. 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.
14. 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 (*Act* and Regulation). Licensees must comply with the legislation, as well as the terms and conditions of their licences, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.
15. The *Act* does not, however, require penalties to be imposed for non-compliance in all cases. Rather, the Commissioner is granted a discretion to impose penalties in appropriate cases. There are many circumstances in which discretion to impose a penalty or penalties is likely to be exercised. These include, but are not limited to, where a licensee:
  - does not cooperate fully with an audit or investigation;
  - does not comply with orders or directions given by the Commissioner (or a delegate of the Commissioner, including an auditor);
  - engages in meritless dispute of, or delays in paying, amounts found to be owing;
  - engages in any form of fraudulent, deceptive, dishonest or bad faith behavior with respect to compliance with the requirements of the *Act*, the Regulation or a licence.
16. In the present case, Columbia cooperated fully with the auditor's investigation of the complaint. It complied with the directions given by the auditor, including disclosing records and promptly paying the amounts found to be owing. It did not engage in meritless dispute of the process or the amount calculated by the auditor to be owing under the *Act*.
17. In that regard, I note the amount found to be owing in this case was significant (more than \$100,000), and the auditor noted that Columbia indicated that payment of that amount could potentially have a severe impact on its business. Nonetheless, Columbia recognized its obligation to pay the amount owing under the *Act* as calculated by the auditor and did so promptly. It did not engage in any inappropriate behavior as described above.
18. When asked why it had not used the required FSC multiplier, Columbia explained it had paid its owner operators in accordance with its collective agreement, and it indicated the company was "not clear" how the legislation (which came into force in December) impacted its payment obligations.
19. In that regard, I note the minimum rates established by the *Act* and the Regulation are payable "despite any provision of a collective agreement to the contrary": Section 23(3) of the *Act*. I further note the rates established in the *Act* and the Regulation have retroactive application: see Section 19 ("Back pay") and Section 22 ("Back fuel surcharge for independent operators") of the Regulation.

20. I accept that Columbia may have been confused about the effect of legislation which imposed payment amounts that superseded its collective agreement obligations and had retroactive effect. However, I note Columbia properly did not rely on its confusion as an excuse for continuing to be non-compliant once it became aware of its payment obligations under the legislation. It rectified its non-compliance by immediately paying the retroactive pay it owed. In these circumstances, I exercise my discretion and find it is consistent with the purpose of the *Act* not to impose a penalty for non-compliance in this case.
21. With this decision, it should be clear to all licensees that the legislated rate and FSC payment obligations apply retroactively, as set out in Sections 19 and 22 of the Regulation, and despite any collective agreement provision. Any past confusion is no excuse for any further non-compliance. Immediate voluntary compliance is expected and, indeed, required.

#### Conclusion

22. In summary, as a result of a complaint to the Commissioner, Columbia was found to be owing \$106,501.33 to its 14 independent operators under the *Act*. It cooperated fully in the audit investigation process and paid the amount found to be owing promptly. It voluntarily corrected its non-compliant payment practice, so that within two months of the complaint the non-compliance was resolved. It did not rely on its confusion about what it owed under the legislation as an excuse for continued non-compliance. In these circumstances, while I record the fact of Columbia's non-compliance with the *Act* by way of this decision, as well as Columbia's prompt and appropriate actions to bring itself into compliance, I decline to exercise my discretion to impose a penalty on Columbia in this case.
23. This decision will be delivered to Columbia and published on the Commissioner's website ([www.bc-ctc.ca](http://www.bc-ctc.ca)).

Dated at Vancouver, B.C., this 19th day of November, 2015



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Vince Ready, Deputy Commissioner (Acting)