



November 19, 2015

Amalgamated Transport Systems Inc.
8438 148 Street
Surrey, B.C. V1M 1R1

Commissioner's Decision

Amalgamated Transport Systems Ltd. (CTC Decision No. 2/2015)

Introduction

1. Amalgamated Transport Systems Ltd. ("Amalgamated") 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. Further, 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 alleging that Amalgamated had not paid its employee container trucking drivers (commonly known as "company drivers") the minimum hourly rates required by Section 13 of the Regulation. An audit was conducted with respect to the complaint.
5. The auditor sent a letter to Amalgamated on June 11, 2015, noting the general nature of the complaint and requesting records pertaining to its company drivers for each pay period from

April 1, 2014 to May 31, 2015, by June 19, 2015. Amalgamated sought and received a short extension of time for providing the records. All requested records were received by June 29, 2015.

6. Based on the information and documentation provided, the auditor sent Amalgamated an interim report to review on July 16, 2015. The interim report noted that the Regulation sets a minimum wage rate of \$25.13 per hour, inclusive of benefits, for company drivers who have performed less than 2,340 hours of container trucking services for any licensee, and \$26.28 per hour for company drivers who have performed 2,340 or more hours of container trucking services for any licensee.
7. The audit report attached a detailed spreadsheet of calculations for each company driver, and a summary table which showed the total owed to each driver, and the grand total owing, which was \$9,264.84.
8. In the final audit report to the Commissioner's office, the auditor noted that the payroll records provided by Amalgamated appeared to be in good order. They showed that two of the 12 company drivers were employed by Amalgamated at the beginning of the audit period and paid \$26.28 per hour. The remaining 10 company drivers had commenced employment during the audit period and were paid \$25.13 per hour.
9. The auditor noted that, as Amalgamated had provided no information to justify using the lower rate (that is, to substantiate that the driver had worked less than 2,340 hours for any licensee), she had conducted the audit using the \$26.28 per hour rate. On that basis, she found wages owing to the 10 of the 12 drivers who had been paid at the lower rate. That is, the amount found owing in the audit was the difference between the two wage rates for the 10 drivers who were paid at the lower rate during the audit period.
10. Amalgamated did not dispute the auditor's calculations as indicated in the interim report, and it provided the auditor with copies of cheques payable to each of the 10 drivers in question in the amounts the auditor had calculated in the interim report. The cheques were dated July 22, 2015.

Decision

11. As described above, the circumstances of this case are that, within six weeks of receiving notice from the auditor on June 11, 2015 that a complaint had been received, Amalgamated had:
 - a. undergone an audit, during which it promptly provided detailed payroll records for its company drivers for the period April 1, 2014 to May 31, 2015 as requested by the auditor;
 - b. accepted the auditor's calculation of the amounts it owed under the *Act* and *Regulation*; and
 - c. paid the adjustment amounts calculated by the auditor as owing to its company drivers by cheques dated July 22, 2015.

12. As Amalgamated has paid the amount owing under the *Act*, I find there is no need for me to issue an order pursuant to Section 9 of the *Act* requiring Amalgamated 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. As noted in *Columbia Containers Ltd.*, CTC Decision No. 1/2015 ("*Columbia*"), 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. As further noted in *Columbia*, 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, Amalgamated 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*. Within six weeks of Amalgamated having been advised of the complaint, it had paid the amounts it owed to its company drivers.
17. With this decision, it should be clear to all licensees that, under the legislation, \$26.28 per hour is the current applicable wage rate for all company drivers except those who have not yet worked a total of 2,340 hours for any licensee.

Conclusion

18. In summary, as a result of a complaint to the Commissioner, Amalgamated was found to owe a total of \$9,264.84 to 10 of its 12 company drivers under the *Act*. Amalgamated cooperated in the audit investigation process and paid the amount found to be owing by the Commissioner's auditor promptly. It voluntarily corrected its non-compliance, so that within six weeks of the complaint, the wages owing were paid. It did not rely on any confusion about what it owed under the legislation as an excuse for continued non-compliance. In these circumstances, while I record the fact of Amalgamated's non-compliance with the *Act* by way of this decision, as well as its prompt and appropriate actions to bring itself into compliance, I decline to exercise my discretion to impose a penalty in this case.
19. This decision will be delivered to Amalgamated and published on the Commissioner's website (www.bc-ctc.ca).

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



Vince Ready, Deputy Commissioner (Acting)