



November 19, 2015

AC Transport Ltd.
7126 Brown Street
Delta, B.C. V4G 1G8

Commissioner's Decision

AC Transport Ltd. (CTC Decision No. 3/2015)

Introduction

1. AC Transport Ltd. ("AC Transport") 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 concerning wage payments to AC Transport's employee container trucking drivers (commonly known as "company drivers"). An audit was conducted with respect to the complaint. The auditor requested and received payroll records from AC Transport for the period April 1, 2014 to May 31, 2015.
5. During the audit period, AC Transport operated 43 trucks with 51 company drivers. The auditor reviewed the company's records and determined that 14 of those drivers had been paid the \$26.28 per hour minimum rate required by Section 13 of the Regulation. The remaining 37 drivers had been paid the lesser rate of \$25.13 per hour for some or all of the audit period.

Under Section 13, that rate applies to drivers who have performed less than 2,340 hours of container trucking services for any licensee.

6. In an interim audit report that the Commissioner's auditor sent to AC Transport on August 14, 2015, the auditor noted she had no information that would cause her to apply the lesser hourly rate, and accordingly she had audited to a benchmark of \$26.28 per hour for the 37 drivers who had not been paid that rate throughout the audit period. The audit report attached a detailed spreadsheet of calculations for each company driver, a summary table which showed the total owed to each driver, and the grand total owing, which was \$36,373.54. The adjustment amount was entirely attributable to the difference between the two rates of pay for the 37 drivers.
7. AC Transport did not dispute the auditor's calculations, and the next day provided the auditor with copies of adjustment cheques for company drivers in the amounts specified in the interim report, totaling the correct amount (\$36,373.54). The cheques were dated August 15, 2015.

Decision

8. As described above, the circumstances of this case are that, within 10 weeks of receiving notice from the auditor on June 11, 2015 that a complaint had been received, AC Transport had:
 - undergone an audit, during which it provided payroll records for its company drivers for the period April 1, 2014 to May 31, 2015 as requested by the auditor;
 - accepted the auditor's calculation of the amounts it owed under the *Act* and Regulation; and
 - immediately paid the adjustment amounts calculated by the auditor as owing to its company drivers by cheques dated August 15, 2015.
9. As AC Transport 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 AC Transport to comply with the *Act*.
10. 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.
11. 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.

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12. 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.
13. In the present case, AC Transport cooperated with the auditor's investigation of the complaint. It complied with the directions given by the auditor, including disclosing records, and it immediately paid 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 10 weeks of AC Transport being advised of the complaint, it had paid the amounts it owed to its company drivers under the *Act*.
14. In that regard, the auditor stated in the final audit report to the Commissioner that, when she asked AC Transport why it paid the lesser amount to some of its drivers, it explained that it understood the initial rate of pay was \$25.13 per hour, with an increase to \$26.28 per hour once the driver had worked for the company for one year. This is not correct. Under Section 13, the higher wage rate applies when a company driver has worked 2,340 hours for any licensee.
15. With this decision and *Amalgamated Transport Systems Ltd.*, CTC Decision No. 2/2015 ("*Amalgamated*"), 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 performed a total of 2,340 hours of containing trucking services for any licensee.

Conclusion

16. In summary, as a result of a complaint to the Commissioner, AC Transport was found to owe a total of \$36,373.54 to 37 of its 51 company drivers under the *Act*. AC Transport cooperated in the audit investigation process and paid the amount found to be owing by the Commissioner's auditor immediately. It voluntarily corrected its non-compliance, so that within 10 weeks of being advised of the complaint, it had paid the wage adjustments owed to its company drivers. 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 AC Transport'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.

17. I would add the following, however. This decision, as well as *Columbia* and *Amalgamated*, clarify licensees' payment obligations under the legislation, to the extent confusion or misunderstanding may have led to non-compliance. If similar confusion exists in the industry among other licensees who have yet to be audited, any resulting non-compliance should be rectified immediately. In light of the clarification provided in these decisions, companies should not wait to be audited but rather should act voluntarily and pro-actively to ensure they are in compliance with the *Act*.
18. This decision will be delivered to AC Transport and published on the Commissioner's website (www.bc-ctc.ca).

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



Corinn Bell, Commissioner (Acting)