



December 9, 2015

Damco Distribution Canada Inc.
d.b.a Hudd Transportation Canada
8400 River Road, Delta, BC V4G 1B5

Commissioner's Decision

Damco Distribution Canada Inc. (CTC Decision No. 4/2015)

Introduction

1. Damco Distribution Canada Inc. ("Damco") 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. On June 5, 2015, an audit was begun with respect to Damco's payment of its 10 employee container trucking drivers (commonly known as "company drivers"). The auditor requested and received payroll records from Damco for the period April 1, 2014 to May 31, 2015.
5. Damco explained to the auditor that its 10 company drivers were covered by a collective agreement between the company and the Retail Wholesale Union, Local 517 (the "Union"), and had been paid in accordance with that agreement.

6. Based on the information and documentation provided, the auditor determined the company drivers had not been paid the wages rates required by Section 13 of the *Container Trucking Regulation* (the "*Regulation*") during the audit period.
7. The auditor provided Damco with a summary of the balance owing to each driver and a copy of the audit spreadsheet. Damco reviewed the information provided and raised the issue of non-taxable benefits it paid to company drivers that were not itemized on their pay statements. After discussion of this issue, the auditor re-determined the amount owing each driver.
8. The total amount found to be owing the 10 company drivers was \$28,174.09. Damco did not dispute the auditor's calculations of this amount owing, and issued adjustment cheques to the 10 company drivers in the amounts determined by the auditor to be owing.
9. Damco advised the auditor that it was having discussions with the Union to reach a Letter of Understanding that would set out appropriate hourly rates, inclusive of benefits, for company drivers, consistent with the minimum hourly rates required by the *Act* and the *Regulation*. Damco agreed to provide a copy of that agreement when it was reached. Subsequently, Damco provided the auditor with a copy of the Letter of Understanding.

Decision

10. As described above, the circumstances of this case are that Damco has:
 - a) undergone an audit, during which it cooperated fully with the auditor;
 - b) after raising an issue of merit with respect to the payment of non-taxable benefits, 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 company operators; and
 - d) entered into an agreement (Letter of Understanding) with the Union to ensure rates for its company drivers that comply with the *Act* and *Regulation*.
11. As Damco 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 Damco to comply with the *Act*.
12. 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.
13. 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.

14. 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.
15. In the present case, Damco cooperated fully with the auditor's investigation of the complaint. It complied with the directions given by the auditor, including disclosing records. It raised an issue of merit after receiving an interim report from the auditor, which caused the auditor to re-determine the amounts owing. Damco then paid that adjustment amount to its employees and took steps to ensure future compliance. It did not engage in meritless dispute of the process or the amount calculated by the auditor to be owing.
16. With this and previous Commissioner's decisions published on the Commissioner's website, it should be very clear to all licensees that 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*. It should also be clear that rates established in the *Act* have retroactive application: see Section 19 and 22 of the *Regulation*. Any past confusion regarding the legislation is not an excuse for continued non-compliance. Immediate voluntary compliance is required.

Conclusion

17. In summary, Damco was found to be owing \$28,174.09 to its 10 company drivers under the *Act*. It cooperated in the audit process and paid the amount found to be owing. It negotiated a Letter of Understanding with the Union representing its company drivers to bring the collective agreement pay rates into compliance with the *Act*. In these circumstances, while I record the fact of Damco's non-compliance with the *Act* by way of this decision, as well as Damco's appropriate actions to bring itself into compliance, I decline to exercise my discretion to impose a penalty on Damco in this case.
18. This decision will be delivered to Damco and published on the Commissioner's website (www.bc-ctc.ca).

Dated at Vancouver, B.C., this 9th day of December, 2015



Vince Ready, Deputy Commissioner (Acting)