



January 21, 2016

A.G. Transport Ltd.
8970 River Road
Delta, BC V4G 1B5

Commissioner's Decision

A.G. Transport Ltd. (CTC Decision No. 01/2016)

Introduction

1. A.G. Transport Ltd. ("AG 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 *Container Trucking Regulation* (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 July 28, 2015, complaints were filed with the Office of the Commissioner against several licensee companies, including AG Transport. The complaint against AG Transport alleged the company's payments to its owner operators for numerous trips from April 3, 2014 were not in compliance with the retroactive on-dock and off-dock rates that came into effect with the passage of the legislation in December of that year ("retroactive pay").
5. The Commissioner directed an audit to begin with respect to complaint. The auditor requested and received pertinent records and documentation from AG Transport with respect to the payment of its owner operators for the period April 1, 2014 to May 31, 2015.

6. The auditor reviewed the records and found that AG Transport was in substantial compliance with the on-dock rates effective April 3, 2014. With respect to the off-dock rates, the auditor found AG Transport began paying the correct off-dock rates effective May 1, 2015 and was in substantial compliance with the legislation from that date forward. However, for the period April 3, 2014 to April 30, 2015, the auditor concluded AG Transport was in contravention with the minimum rates of remuneration statutorily required for off-dock rates.
7. The auditor completed an audit of AG Transport's records from April 1 to December 31, 2014, and sent her calculations to the company, affording it an opportunity to review for errors. In a covering letter she asked the company to explain why it had not paid the correct minimum off-dock rates effective April 3, 2014. In its reply, AG Transport stated it had not made retroactive adjustments to its off-dock rates due to conflicting directives and general confusion in the industry.
8. AG Transport identified some minor errors in the auditor's calculations, which were corrected. It also argued that certain "overpayments" it had made (amounts greater than the minimum rates statutorily required) should be set off against underpayments to bring the off-dock rates it paid into compliance. However, the auditor noted the legislation establishes a minimum rate of pay and does not prevent a company from paying higher rates. The auditor accordingly declined to set off higher than minimum amounts paid against underpayments. Her revised calculations indicated the eight owner operators employed by AG Transport were owed a total of \$17,031.11 for the period April 1, 2014 to April 30, 2015 (after which she found AG Transport's rates of pay were in compliance with the legislation).
9. AG Transport also had one company driver employed during the audit period. The auditor reviewed the records regarding the company driver and concluded all on-dock moves made by the company driver were paid in compliance with the legislation. However, she found off-dock moves were paid in contravention for the period up to April 30, 2015. During this period the minimum off-dock rate was \$40 per container, but the company driver was paid only \$37 per container for off-dock moves. The auditor calculated how much was owed to the company driver as a result of this underpayment.
10. AG Transport began to pay its company driver an hourly rate effective May 1, 2015. It paid the company driver \$25.13 per hour, but provided the auditor no information to establish the driver had worked fewer than 2340 hours in the drayage industry for any licensee. In these circumstances, the auditor applied the rate of \$26.28 per hour set out in Section 13 of the *Regulation*, which applies for company drivers except those who have worked fewer than 2340 hours in the industry. The auditor noted that, effective May 16, 2015, the company began to pay the driver \$26.28 per hour, bringing it into compliance with the legislation.
11. The auditor concluded the company driver was owed an adjustment of \$1,372.47. With the \$17,031.11 found to be owing to the eight owner operators, the total adjustment amount the auditor found AG Transport owed was \$18,403.58.
12. AG Transport indicated to the auditor that it disagreed with the approach she had taken on some audit issues; nonetheless, it promptly paid the requested adjustment amount. Half of the amount was paid to drivers on December 15, 2015 and the balance was paid on December 31, 2015. Copies of the adjustment cheques were provided to the auditor.

13. The auditor noted that the company had been helpful and courteous throughout the audit process and provided all requested records and information in a timely manner. She concluded that, based on the records provided, AG Transport was in substantial compliance with the legislation from May 1, 2015 onwards, and with the adjustment payments made, was in compliance retroactive to April 3, 2014.

Decision

14. As described above, the circumstances of this case are that AG Transport has:

- undergone an audit, during which it cooperated fully with the auditor;
- raised an argument, but then accepted, the auditor's calculation of the amounts it owed under the *Act*;
- promptly paid the adjustment amounts calculated by the auditor as owing to its eight owner operators and one company driver.

15. As AG Transport has paid the amount owing under the *Act* and corrected its non-compliant payment practices, I find there is no need for me to issue an order pursuant to Section 9 of the *Act* requiring AG Transport to comply with the *Act*.

16. 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.

17. 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.

18. 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.

19. In the present case, AG Transport 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 after receiving an interim report from the auditor; however, the company's argument was not accepted. AG Transport then paid that adjustment amount calculated by the auditor to its employees. The auditor is satisfied its payment practices are now in compliance with the legislation.

Conclusion

20. In summary, AG Transport was found to be owing a total of \$18,403.58 to its eight owner operators and one company driver under the *Act*. It cooperated in the audit process and paid the amount found to be owing. In these circumstances, while I record the fact of AG Transport's non-compliance with the *Act* by way of this decision, as well as AG Transport's actions to bring itself into compliance, I decline to exercise my discretion to impose a penalty on AG Transport in this case.

21. Although I have exercised my discretion not to impose a penalty in this case, I note once again that immediate voluntary compliance with the *Act* and *Regulation* is required, including on the issue of retroactive pay. As stated in the Commissioner's December 11, 2015 Bulletin to the TLS Community:

"It is expected that all companies pay the retroactive pay owing to drivers immediately, and that the industry will be in full compliance of retroactive pay owing by January 22, 2016 at the latest. After January 22, 2016, the imposition of a penalty pursuant to s. 34 of the *Act* will be highly likely for any company found in non-compliance with the retroactive provisions of the legislation."

22. This decision will be delivered to AG Transport and published on the Commissioner's website (www.bc-ctc.ca).

Dated at Vancouver, B.C., this 21st day of January, 2016



Corinn Bell, Commissioner (Acting)