



December 9, 2015

Unique Trucking Ltd.
9920 Gilbert Road
Richmond, BC V7E 2G9

Commissioner's Decision

Unique Trucking Ltd. (CTC Decision No. 5/2015)

Introduction

1. Unique Trucking Ltd. ("Unique") 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 Unique's payment of wages to its 27 employee container trucking drivers (commonly known as "company drivers"). The auditor requested and received payroll records from Unique for the period April 1, 2014 to May 31, 2015.
5. Unique also provided the auditor with a copy of the collective agreement between the company and the Canadian Owner-Operator Workers' Association, Local 2001 ("COOWA"), which represents its company drivers. Unique advised that in the first months of the audit period the company had continued to pay its company drivers in accordance with the rates set out in the collective agreement. Later, the rates were increased to \$25.13 per hour in an attempt to comply with the

minimum hourly rates required by Section 13 of the *Regulation*.

6. As no information was provided to cause the auditor to audit to the lesser rate in Section 13 of the *Regulation*, the auditor audited the company's record for the drivers to a benchmark rate of \$26.28 per hour. During the audit period the drivers had been paid rates ranging from \$21.00 to \$25.13 per hour, and no benefits were provided. The auditor provided Unique with a summary of the balance owing to each driver and a copy of the audit spreadsheet.
7. Unique asked for and was granted an opportunity to review these documents. It then supplied the drivers' hire dates. The auditor explained that the *Regulation* sets minimum rates based on the length of service in the industry ("on behalf of any licensee"), not length of service with the company.
8. Unique then provided additional information, and it was determined that 15 of its drivers had accumulated less than 2,340 hours of container trucking service on behalf of any licensee, and two others had accumulated that number of hours during the audit period. The remaining 10 drivers had accumulated that number of hours before the audit period.
9. Using this information, the auditor re-calculated the amounts owing each driver, based on the two rates of minimum pay in Section 13 of the *Regulation* (\$25.13 for company drivers with less than 2,340 hours of container trucking service for any licensee and \$26.28 per hour for all other company drivers). The auditor determined that wages were owing to 22 of the 27 drivers, totally \$108,598.71.
10. Unique did not dispute the auditor's calculations of this amount owing, and agreed to provide copies of adjustment cheques to the 22 company drivers in the amounts determined by the auditor to be owing to each driver. The auditor subsequently received evidence in the form of copies of cancelled cheques which showed the required amounts totaling \$108,598.71 had been paid to the 22 company drivers.
11. Unique advised the auditor that it now understood the minimum statutory rates are based on industry hours of container driving services, not the length of service with the company. Unique informed the auditor that it was now monitoring its drivers' hours, and that since the end of the audit period two more drivers were approaching 2,340 industry hours and their hourly rate would be adjusted to \$26.28 when that occurred.

Decision

12. As described above, the circumstances of this case are that Unique has:
 - a) undergone an audit, during which it cooperated fully with the auditor;
 - b) accepted the auditor's re-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) advised it would ensure that pay rates were determined in accordance with the legislation (that is, based on hours of service for any licensee, not just the company).

13. As Unique 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 Unique to comply with the *Act*.
14. 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.
15. 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.
16. 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.
17. In the present case, Unique 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-calculate the amounts owing. Unique then paid that significant adjustment amount to its employees. It did not engage in meritless dispute of the process or the amount calculated by the auditor to be owing.

Conclusion

18. In summary, Unique was found to be owing \$108,598.71 to 22 of its 27 company drivers under the *Act*. It cooperated in the audit process and paid the significant amount found to be owing to its company drivers. It has indicated the steps it has taken to ensure it pays the correct minimum hourly rate to its company drivers in future. In these circumstances, while I record the fact of Unique's non-compliance with the *Act* by way of this decision, as well as Unique's appropriate actions to bring itself into compliance, I decline to exercise my discretion to impose a penalty on Unique in this case.

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

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



Corinn Bell, Commissioner (Acting)