

December 4, 2018

Sandhar Trucking Ltd.
8391 No. 5 Road
Richmond, BC V6Y 2V5

Via email
Original via mail

Sandhar Trucking Ltd. (CTC Decision No. 18/2018) – Decision Notice

A. Overview

In Sandhar Trucking Ltd. (CTC Decision No. 18/2018) (the “Original Decision”), I determined that Sandhar Trucking Ltd. (“Sandhar Trucking”) failed to comply with the minimum rates and fuel surcharge required under the *Container Trucking Act* (the “Act”) and the *Container Trucking Regulation* (the “Regulation”), did not pay all the amounts owing to its drivers under the audit and violated section 24 of the Act and section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence (the “Licence”).

An administrative fine of \$60,000.00 was proposed and, consistent with s. 34(2) of the Act, Sandhar Trucking was given 7 days to provide a written response setting out why the proposed penalty should not be imposed. Sandhar Trucking provided a written argument in response to the proposed penalty within the specified timeframe (dated June 21, 2018) and subsequently requested that the Commissioner obtain and review video footage of the transaction at the Royal Bank between the Complainant and Mr. Paramjit Sandhar (“Sandhar”) before issuing a Decision Notice.

The Office of the BC Container Trucking Commissioner (“OBCCTC”) requested the video surveillance footage from the Royal Bank on July 20, 2018. The footage was received on November 2, 2018 and Sandhar Trucking was provided an opportunity to make an additional submission. I have considered Sandhar Trucking’s submissions, reviewed the video surveillance footage and provide the following Decision Notice.

B. Sandhar Trucking’s Response

Sandhar Trucking’s arguments are as follows:

- a. The Sandhar Trucking investigation was biased and not sufficiently thorough and the Commissioner did not meet his statutory duty to render an independent decision. Sandhar Trucking argues that the investigator retained by the Commissioner to conduct the investigation into Sandhar’s alleged conduct did not seek out all “significant and relevant” information and, as a result, the Commissioner “relied on incomplete and inaccurate information” when reaching a decision. Sandhar Trucking also argues that the Commissioner accepted the investigator’s “findings and conclusions without question” and as such the Commissioner’s decision-making was fettered.
- b. Sandhar Trucking did not breach the Licence or section 24 of the Act. It is Sandhar Trucking’s position that a voluntary transaction of money occurred and therefore

neither section 24 of the *Act* nor the prohibition in the Licence against threatening, harassing, coercing, or attempting to influence a trucker in any way, either directly or indirectly, regarding a trucker's right to retain compensation were breached. Sandhar argues that there were no breaches because "a voluntary payment does not constitute a financial set off" and the Complainant was not threatened, harassed, coerced or influenced by Sandhar Trucking.

- c. The portion of the proposed penalty relating to the audit findings is disproportionate to the findings of the audit and the portion of the proposed penalty relating to the breaches of the Licence and section 24 of the Act is also disproportionate.

Sandhar Trucking argues that the portion of the proposed penalty for failure to pay the legislated rates (\$10,000.00) should either not be imposed or significantly reduced because Sandhar Trucking attempted to comply with the legislation when it sought advice from the Commissioner's office prior to January 22, 2016 that its fuel surcharge calculations were in compliance.

Sandhar also argues that the proposed penalty of \$50,000.00 is disproportionate to the amount owing to the Complainant and should not be imposed because "Sandhar did not intend to contravene the *Act* and was merely accepting the Complainant's gesture."

C. Consideration of Sandhar Trucking's Response

OBCCTC investigators are tasked with collecting information which the Commissioner can use in determining if there have been breaches of the *Act*, *Regulation* and/or Licence. Investigator reports detail the information collected and may or may not include an analysis of this information. It is the responsibility of the Commissioner to determine if an investigator's account, findings and analysis are relevant and the weight that should be given to them when making a determination. The Original Decision is not a direct reflection of the investigator's report. Rather, it is based upon the Commissioner's own assessment of the investigation report.

As to the scope of the investigation, I am satisfied with the number of witnesses interviewed. Sandhar Trucking points out that Sandhar's son, Aaron Sandhar, was not interviewed and notes that Aaron Sandhar could have corroborated Sandhar's version of events relating to the phone call Sandhar made to his son on the night in question. Specifically, Aaron Sandhar could have confirmed that he provided the Complainant's driver's license number to Sandhar. That Sandhar made the phone call to his son and that his son provided the Complainant's driver's license number is not in dispute by either party and was accepted as fact in the Original Decision. Further, the weight given to the witness statements collected from the Complainant's cousin, friend and a former employee of Sandhar was addressed in paragraphs 30 and 37 of the Original Decision.

Sandhar Trucking relies on the video surveillance footage from the Royal Bank when arguing that the Complainant's evidence lacks credibility. At Sandhar Trucking's request, video surveillance footage from the Royal Bank was requested and has been reviewed. With regards to the transaction at the Royal Bank in which the \$6,306.40 cheque was cashed, it is the Complainant's assertion that the teller gave Sandhar the money from the cashed cheque and, as the Complainant and Sandhar were leaving the bank, Sandhar counted out \$1,000.00 and offered it to the Complainant. The Complainant refused at first, then accepted the \$1,000.00, but afterwards returned the money following a phone call with his cousin. The Complainant's cousin did not corroborate the Complainant's statement that the

Complainant returned the money to Sandhar.

Sandhar on the other hand states that the Complainant told him to take the money from the teller and then give him \$2,000.00 of the money back. Sandhar says he counted out \$2,000.00, gave it to the Complainant, and then walked away. The video surveillance footage shows Sandhar reaching for the money from the teller, who then hands all the money to Sandhar at the till. Both men walk away from the till. At the entrance/exit of the bank, footage shows Sandhar counting out a sum of money and handing it over to the Complainant. Both men are seen walking out of the bank and walking away.

The video surveillance footage confirms that Sandhar was handed the money from the teller and that Sandhar handed an unknown sum of money to the Complainant. There is no video evidence that the Complainant returned any money to Sandhar and the Complainant's cousin does not corroborate this. In the Original Decision it was found, on the balance of probabilities, that the Complainant did not receive the money found to be owing to him under the audit from Sandhar. After reviewing the video surveillance footage, I accept that the Complainant did receive some money back from Sandhar. On a balance of probabilities and based on the Complainant's testimony, I find that the Complainant received \$1,000.00 from Sandhar.

Sandhar Trucking argues that the Complainant's version of events is not credible but does not address the inconsistencies in its version of events (noted in paragraph 39 of the Original Decision) or the alleged events detailed in paragraph 40 of the Original Decision. The video surveillance footage confirms that the Complainant received money and raises some concern about the veracity of the Complainant's version of events (specifically, the Complainant's assertion that he returned money to Sandhar on his cousin's advice). However, it does not demonstrate that the transaction was voluntary. I remain of the view that there was an element of coercion involved in the transaction and the inconsistencies in the Complainant's version of events highlighted by Sandhar Trucking do not warrant a reversal of the finding that Sandhar Trucking violated its Licence and section 24 of the *Act*.

Further, the Original Decision was based, in part, upon facts that are not in dispute. Specifically, that following a visit to Sandhar Trucking on May 7, 2018 to pick up his cheque, the Complainant, Sandhar and the Complainant's cousin travelled to four banks in order to cash the Complainant's cheque and that Sandhar received money from the cashed cheque. It is the receipt of that money which constitutes a breach of section 24 of the *Act*, regardless of whether that transaction was voluntary or not. To find otherwise would be to read into section 24 of the *Act* actions or intentions which are not explicitly accounted for in that section.

As to Sandhar Trucking's argument that section 24 of the *Act* does not apply because Complainant was not an employee at the time of the transaction, section 24 of the *Act* prohibits a licensee from soliciting or receiving set offs from a trucker, and "trucker" is defined in the *Act* as including "an employee, within the meaning of the *Employment Standards Act*, of a licensee performing container trucking services." The *Employment Standards Act* defines an "employee" as including "a person, including a deceased person, receiving or entitled to wages for work performed for another." Under the *Employment Standards Act*, there is no expectation that the person must be currently employed in order to be entitled to compensation. In the case before me, because the Complainant was entitled to compensation under the *Act* even though he was no longer employed by Sandhar Trucking, the Complainant was still an employee within the meaning of the *Employment Standards Act* and was still a trucker within the meaning of the *Act*.

With regards to the \$10,000 portion of the proposed penalty, the onus to become and remain compliant with the requirements of the *Act* rests entirely with the licensee (see Olympia Transportation (CTC Decision No. 02/2016) and Seaville Transportation Ltd. (CTC Decision No. 12/2016)). Licensees should not rely on Commissioner auditors to determine whether or not they are compliant. Similarly, licensees should not rely on the Commissioner or the Commissioner's staff to confirm compliance. That is why Sandhar Trucking was directed to the OBCCTC website by an OBCCTC staff member when Sandhar Trucking inquired about calculating the fuel surcharge and why OBCCTC staff cannot review Sandhar Trucking's calculations. Further, the \$10,000 portion of the penalty in the Original Decision was proposed because Sandhar Trucking failed to comply with the fuel surcharge and minimum rate requirements under the *Act* – not simply for failure to correctly calculate the fuel surcharge.

The \$50,000.00 portion of the proposed penalty is not intended to be proportionate to the amount owing to the Complainant, rather it is intended to be proportionate to the violation(s) which occurred. In this case, there have been violations of section 24 of the *Act* and section 1(h) of Appendix A to Schedule 1 of the Licence.

D. Conclusion

Having carefully considered Sandhar Trucking's submissions and the additional video evidence, and for the reasons outlined above and in my Original Decision, I will not refrain from imposing a monetary penalty.

I have, however, decided to amend the Order in the Original Decision and order Sandhar Trucking, pursuant to section 9 of the *Act*, to deliver to the OBCCTC, by no later than December 11, 2018 a money order (not cheque) made out to the Complainant in the amount of \$5,306.40.

In the result, I hereby order Sandhar Trucking Ltd. to pay an administrative fine in the amount of \$60,000.00. Section 35(2) of the *Act* requires that this fine be paid within 30 days of the issuance of this Notice. Payment should be made by delivering to the Office of the BC Container Trucking Commissioner a cheque in the amount of \$60,000.00 payable to the Minister of Finance.

Finally, I note that Sandhar Trucking Ltd. may request a reconsideration of the Commissioner's Decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after the company's receipt of this Decision Notice. A Notice of Reconsideration must be:

- a. made in writing;
- b. identify the decision for which a reconsideration is requested;
- c. state why the decision should be changed;
- d. state the outcome requested;
- e. include the name, an address for delivery, and telephone number of the applicant and, if the applicant is represented by counsel, include the full name, address for delivery and telephone number of the applicant's counsel; and
- f. signed by the applicant or the applicant's counsel.

Despite the filing of a Notice of Reconsideration, the above order remains in effect until the reconsideration application is determined. This order will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 4th day of December 2018.

A handwritten signature in blue ink, appearing to read "Michael Crawford", written in a cursive style.

Michael Crawford, Commissioner