



August 10, 2016

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Attn: Shinda Aheer

### **Commissioner's Decision**

#### **Aheer Transportation Ltd. (CTC Decision No. 14/2016)**

##### **Introduction**

1. Aheer Transportation Ltd. ("Aheer") is a licensee within the meaning of the *Container Trucking Act* (the "Act"). Under Section 16(1)(b) of the Act a licensee is required to carry out container trucking service in compliance with the Act, the *Container Trucking Regulation* (the "Regulation") and its licence.
2. Under Section 31 of the Act, the Commissioner may initiate an audit or investigation to ensure compliance with the "Act, the regulations and a licence..." whether or not a complaint has been received by the Commissioner. Under Section 26 of the Act, any person may make a complaint to 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.
3. The Office of the British Columbia Container Trucking Commissioner ("OBCCTC") has received a complaint from a former Aheer independent operator, Mr. Balwinder S. Grewal. In his complaint Mr. Grewal alleges:
  - non-payment of his retroactive rate adjustments for off-dock work during the period April 3, 2014 to April 30, 2015; and
  - non-payment of earnings for work performed for Aheer during September, 2015. More particularly Mr. Grewal claims he is owed \$4,648.64
4. Following receipt of the complaint the then Acting Commissioner directed an OBCCTC auditor to investigate the complaint.

5. On January 6<sup>th</sup>, 2016 the auditor advised Aheer of Mr. Grewel's complaint.
6. The auditor reports that Mr. Grewel has now received his retroactive rate adjustments and that the only outstanding issue at this time is the non-payment of his final pay for work performed in September of 2015.

### **The Facts**

7. Mr. Grewel is an independent operator. He last worked for Aheer on Sept. 24<sup>th</sup>, 2015.
8. The audit report discloses that Aheer deducted \$4,648.64 from Mr. Grewel's final pay. Payroll records describe the deduction as a "Chassis Repair Invoice." Aheer does not dispute making the deduction claiming that the monies were deducted to cover the cost of repairing a chassis damaged by Mr. Grewel.
9. Mr. Grewel claims that he did not damage the chassis.
10. In my view, the central issue in this case is not whether Mr. Grewel was responsible for the damage to the chassis (and I offer no opinion on this issue). The issue here is simply whether or not Aheer is entitled under the *Act* and/or its licence to deduct the monies from Mr. Grewel's earnings as it did.

### **Decision**

11. I find for the reasons which follow that Aheer did not have the right to deduct the Chassis Repair amount from Mr. Grewel's final earning regardless of whether or not he was responsible for the damage and that Mr. Grewel is owed these monies.

12. Under Section 24(2) of the *Act*:

"A licensee must pay remuneration, wait time remuneration or fuel surcharge owed to an independent operator no later than 30 days after the end of the calendar month in which the independent operator performed the container trucking services for which the remuneration, wait time remuneration or fuel surcharge is owed."

13. Under Appendix E to Schedule 1 of the licence the following obligations are found:

1. The Licensee must remunerate all Truckers who either directly or indirectly provide Container Trucking Services on behalf of the Licensee in accordance with the Container Trucking Legislation.
2. The Licensee must not set off or deduct Business costs from Compensation or Wait Time Remuneration owe to a Trucker.

14. In the licence Business Costs are defined as including but not limited to:

“...chassis rental, wear and tear on tires, cargo insurance, Smart Phone costs, bridge or road tolls, loading fees, Access Agreement charges, fees related to the Terminal Gate Compliance Initiative, GPS-related expenses, (unless the Sponsored Independent Operator has unreasonably failed to cooperate in the return of the GPS unit to the Commissioner or the Licensee).”

15. On May 26<sup>th</sup>, 2016 the OBCCTC issued a bulletin addressing Owner Operator Remuneration Hold Backs. In that bulletin the Commissioner provided the following direction:

“The OBCCTC considers insurance claim costs to be a Business Cost under the Licence. Therefore, the holding back of remuneration to cover potential, future insurance claim costs after an Owner Operator has left the company is prohibited.”

16. In my view, the holding back of remuneration to cover the cost of repairing a chassis is analogous to holding back monies to cover potential, future insurance claim costs. Accordingly, and consistent with the OBCCTC’s position as stated in the aforementioned Bulletin, I find that the “Chassis Repair Invoice” deduction is a Business Cost and therefore under Aheer’s licence cannot be deducted from Mr. Grewel’s compensation.

17. In the result Mr. Grewel did not receive the full amount of remuneration owed to him within 30 days after the end of the calendar month in which he earned it. Put simply Mr. Grewel is entitled to receive a further payment from Aheer of \$4,648.64.

18. Finally I note that if Aheer wishes to pursue recovery of the costs of the chassis repair from Mr. Grewel it must advance its damage claim in other forums. This decision is not intended to interfere in any way with that right. What licensees cannot do is secure their positions by withholding claimed amounts from driver compensation. I also wish to make it clear that disputes related to damaged equipment fall outside of the jurisdiction of the OBCCTC.

19. As a result of my findings as recorded above I hereby make the following orders pursuant to Section 9 of the Act:

- a. I order Aheer to pay Mr. Balwinder S. Grewal the sum of \$4,648.64 by no later than August 24, 2016; and
- b. I further order Aheer to provide the OBCCTC with proof of payment by no later than August 29, 2016.

20. It is so ordered.

**Conclusion**

21. With the publication of this decision I have reminded industry that licensees are prohibited from deducting Business Costs from remuneration and made clear that claimed chassis repair costs fall within the definition of Business Costs.

This decision will be delivered to Aheer and published on the Commissioner's website ([www.bc-ctc.ca](http://www.bc-ctc.ca)).

Dated at Vancouver, B.C., the 10 day of August, 2016.

A handwritten signature in blue ink, appearing to read "Michael Crawford". The signature is fluid and cursive, with a prominent initial "M" and "C".

Michael Crawford, Deputy Commissioner