



April 6, 2017

Supreme Trucking Ltd.
16108 Blundell Road
Richmond, BC V6W 0A2
Attention: Mr. Tanjit Kalhar

Via email

Kuldip Kang

Via email

**Commissioner's Decision
Kuldip Kang (the "Complainant") and Supreme Trucking Ltd. ("Supreme")
(CTC Decision No.07/2017)**

I. NATURE OF THE COMPLAINT

1. The Complainant, an Independent Operator ("IO"), alleges that Supreme management created a hostile work environment, intimidated him and other IOs, and provided insufficient work. He further alleges that, as a result of this conduct, he was forced to terminate his Sponsorship Agreement with Supreme and seek work elsewhere.
2. The Complainant seeks a declaration that Supreme's conduct constituted a termination of the Sponsorship Agreement between himself and Supreme, thereby entitling him to take the Truck Tag assigned to his truck and use it to find another sponsor.

II. BACKGROUND

3. The Complainant was originally engaged to work as an IO by Supreme in June of 2015. At that time Supreme did not have a Container Trucking Services Licence ("CTS Licence").
4. In late 2015 and early 2016 Supreme obtained a Specialty/Dedicated Company Licence ("Specialty Licence").
5. Subsequently, on June 1, 2016 Supreme was granted a regular 2016/2017 CTS Licence.
6. Section 6.9 of the CTS Licence requires Licensees to use Truck Tags to carry out container trucking services, and Section 6.13 states that Licensees may only use either employee drivers or sponsored independent operators to carry out those services. Accordingly, Licensees allocate the Truck Tags they are allotted with their Licence to trucks driven by either employee drivers or sponsored IOs.

7. Schedule 3 to the CTS Licence is the Sponsorship Agreement which Licensees must fill out for each sponsored IO in order for the IO to be allocated one of the Licensee's Truck Tags and carry out container trucking services for the Licensee.
8. The Sponsorship Agreement states that either the "Sponsor" (Licensee) or the Sponsored IO may terminate the Sponsorship at any time upon notice to the other party and to the Commissioner. The Sponsorship Agreement further states:
 - "within forty-five (45) calendar days of termination:
 - a) If the Sponsor terminates, the Sponsored IO may secure an alternate Sponsor; and
 - b) If the Sponsored IO terminates, the Sponsor may either secure an alternate Owner Operator through Sponsorship or add an Approved Vehicle; and
 - c) If neither a) or b) occurs, the original Truck Tag is automatically subject to re-allocation by the Commissioner in his or her discretion;"
9. Supreme and the Complainant signed a Sponsorship Agreement on January 19th, 2016 and one of the Truck Tags allocated to Supreme under its Specialty Licence was assigned to the Complainant's truck.
10. As part of its 2016/2017 CTS Licence application, Supreme submitted a new Sponsorship Agreement signed by the Complainant dated April 11, 2016, with the result that one of the Truck Tags allocated to Supreme under its 2016/2017 CTS Licence was assigned to his truck. In this way, the Complainant continued to perform container trucking services on behalf of Supreme.
11. The Complainant alleges that beginning in March of 2016 his work place circumstances began to deteriorate and that Supreme began to cut back his hours. He recounts a number of incidents which he alleges occurred during the course of 2016, including meetings between some of the IOs (including the Complainant) and the owner of Supreme in June 2016 regarding the IOs' compensation, and another meeting in July 2016 which included all of Supreme's drivers and the owner. At the July meeting, among other things, the Complainant alleges the owner yelled at the Supreme IOs, said highly critical things about their work performance, and threatened to get rid of them if their performance did not improve.
12. Supreme's IOs are represented by the West Coast Truckers Union (the "Union"), and there is a collective agreement in place between Supreme and the Union. The Complainant does not indicate he informed the Union about the workplace issues he raises in his complaint, or asked for the Union's assistance in addressing them.
13. The Complainant alleges that, at the July 2016 meeting, one of the Owners said it would be "useless" going to the Commissioner because he has a close relationship there and at the Port and

could call the Commissioner and “have him remove the tags of the Supreme [IO] drivers and replace them with company trucks”.

14. The Complainant also alleges that in November 2016 he was called into the office by an Owner regarding a container move he had made. He says the Owner questioned him about the move and then sent him home and refused to give him any more dispatches. He says he never worked for Supreme again after that, and on December 13, 2016, after what he alleges was a threatening telephone call from the company, he tendered his resignation.
15. The Complainant says he has filed a WorkSafeBC complaint alleging bullying and harassment against Supreme.
16. Supreme denies the Complainant’s allegations of bullying, harassment and other misconduct. It confirms the Complainant resigned in mid-December 2016. It says that under the terms of the Sponsorship Agreement it has taken back the Truck Tag allocated to the Complainant’s truck. Supreme opposes the Complainant’s application for a declaration that he should be entitled in the circumstances to take the Truck Tag with him to find another Sponsor.

III. DECISION

17. The Complainant complains about his treatment as an IO engaged by Supreme. His complaints relate to his hours of work and working conditions. He also accuses Supreme of harassment (in regards to which he has filed a complaint with WorkSafeBC).
18. To entertain the complaint, I must first find that complaints relating to poor working conditions, unacceptable hours of work, or harassment are properly before me as the Container Trucking Commissioner.
19. The role of the Container Trucking Commissioner is to interpret, apply and enforce the *Act*, the *Regulation*, and the CTS Licence.
20. IOs are attached to the CTS Licence through the Sponsorship Agreement. The Sponsorship Agreement serves as the means by which IOs gain access to container trucking services work. It is also the mechanism by which IOs bind themselves to the CTS Licence. The primary function of the Sponsorship Agreement is to serve this essential licencing purpose.
21. Express terms and conditions relating to hours of work or working conditions cannot be found in the Sponsorship Agreement or the CTS Licence. Furthermore, I find such terms cannot be implied.
22. I cannot interpret the Sponsorship Agreement to support an argument that it was intended to serve the broader purpose of creating work related, or hours of work, terms and conditions of

engagement. I find such a purpose is not reflected on the face of the document or its role in the context of the CTS Licence or the container trucking legislation (Act and Regulation) generally.

23. As previously noted, the role of the BC Trucking Commissioner is focused on interpreting, applying and enforcing the *Act*, the *Regulation*, and CTS Licences. Having decided that the Sponsorship Agreement does not create terms of IO engagement relating to hours of work and working conditions (except for those imposed by the *Act* and the *Regulation*), it follows that work place disputes relating to hours of work, working conditions and/or claims of harassment fall outside of the BC Container Trucking Commissioner's jurisdiction. Where they have jurisdiction, tribunals such as arbitration boards, the Labour Relations Board, the Employment Standards Tribunal, Human Rights Tribunal and WorkSafeBC may address and resolve these disputes.
24. In that regard, I note the Complainant has taken his harassment complaint to WorkSafeBC. I further note that the Complainant is represented by a Union, and many of the issues raised in his complaint appear to be matters that might have been addressed through the grievance procedure. As noted in my Bulletin of January 30, 2017, "Complaints about Employment Related Matters Outside the Jurisdiction of the Commissioner":

The Office of the Container Trucking Commissioner receives complaints from truckers which sometimes concern matters outside the jurisdiction of the Commissioner under the *Container Trucking Act*. This bulletin is intended to remind those in the container trucking community that other regulatory bodies have jurisdiction over work-related matters such as terms and conditions of work (other than the remuneration mandated by the *Container Trucking Act*), collective bargaining and representation, workplace health and safety, and non-discrimination.

25. Accordingly, I find that the work place issues raised by the Complainant in his complaint, including his claims of harassment, are not properly before me to determine on their merits. For this reason, I dismiss this aspect of his complaint.
26. The complaint raises one potential issue under the CTS legislation: the references to the Commissioner's office allegedly made at the July 2016 driver meeting.
27. Section 28 of the *Act* prohibits the mistreatment of a trucker because of a complaint, inspection or investigation:

Trucker not to be mistreated because of complaint, inspection or investigation

28 A licensee must not do any of the following because a complaint, inspection or investigation may be or has been made under this Part, because other action may be or has been taken under this Part or because information may be or has been supplied under this Part:

- (a) refuse to employ or retain or refuse to continue to employ or retain a trucker;
- (b) threaten a trucker;

(c) discriminate against or threaten to discriminate against a trucker with respect to container trucking services;

(d) intimidate or coerce or impose a monetary or other penalty on a trucker.

28. The statutory protections afforded to truckers under Section 28 are not limited to circumstances where a complaint has been filed or an inspection or investigation is underway. Section 28 is intended to protect truckers from mistreatment relating to both the filing or potential filing of a complaint and participating in an inspection or investigation. It serves a very important purpose and must be given a broad and liberal interpretation.

29. The Complainant alleges that at a meeting on July 10th, 2016, the Owner made the following comment to the Supreme drivers:

“He also said that it would be useless going to the Commissioner because he has close relationships there and at Port Metro and if we went to a lawyer, he would call the Commissioner to his office and have him remove the tags of all the Supreme drivers and replace them with company trucks.”

30. The Owner of Supreme denies the allegation. His denial is supported by another member of Supreme management in attendance at this meeting.

31. A statement like that alleged here, if proven, would violate the protections afforded by Section 28. It is a violation to threaten to discontinue the engagement of the Supreme drivers if they pursue a complaint. It would also be highly inappropriate for a Licensee to untruthfully suggest an improper relationship between the Licensee and the Commissioner, and an inappropriate ability to influence the Commissioner’s office. Needless to say, no such relationship or ability exists; nonetheless, it would be extremely inappropriate to falsely suggest anything of the sort.

32. In the present case, I have investigated the allegation by interviewing the Complainant, the Owner and a member of management about the allegation and have decided that further investigation is not warranted. Based on my investigation, I am not satisfied that the allegation has been proven. In these circumstances, I am not prepared to make a finding that Supreme has violated Section 28 as alleged. However, I have taken this opportunity to draw the attention of the container trucking community to Section 28 of the *Act* and the important protections it provides. Licensees should take care to ensure that their communications with, and treatment of, truckers do not fall afoul of this provision.

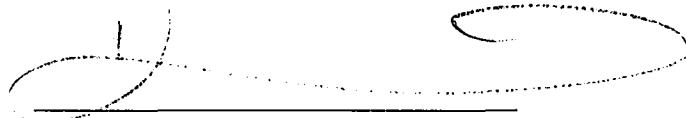
VI. CONCLUSION

33. In summary, and for the reasons stated, I have decided to dismiss the complaint. In doing so, I have drawn attention to the potential jurisdiction of other tribunals over employment related matters as outlined in my January 30, 2017 Bulletin. I have also highlighted the important protections contained in Section 28 of the *Act*.

34. In the present case, it is not disputed that the Complainant terminated the Sponsorship Agreement on December 13, 2016. It follows that, pursuant to Condition 8 of the Sponsorship Agreement, the Truck Tag remains with the Licensee. Having considered the complaint, I am not prepared to exercise my authority to award the Complainant the Truck Tag assigned to his truck by Supreme.

35. This decision will be delivered to the Complainant and to Supreme and published on the Commissioner's website. (www.obcctc.ca).

Dated at Vancouver, B.C., this 6th day of April, 2017

A handwritten signature in black ink, appearing to read 'Duncan MacPhail', written over a horizontal line.

Duncan MacPhail, Commissioner