



August 2, 2018

Aheer Transportation Ltd.
8970 River Road
Delta, BC V4G 1B5

Via email
Original via mail

Harjinder Badh

Via email
Original via mail

Harjinder Badh (the “Complainant”) and Aheer Transportation Ltd. (CTC Decision No. 17/2018) – Decision Notice

A. Overview

In Harjinder Badh and Aheer Transportation Ltd. (CTC Decision No. 17/2018) (the “Original Decision”), I determined that Aheer Transportation Ltd. (“Aheer”) violated section 28(a) of the *Container Trucking Act* (the “Act”) by refusing dispatch to a driver as a result of a complaint lodged with the Office of the BC Container Trucking Commissioner (“OBCCTC”). An administrative fine of \$50,000.00 was proposed and, consistent with s. 34(2) of the Act, Aheer was given 7 days to provide a written response setting out why the proposed penalty should not be imposed. Aheer provided a written argument in response to the proposed penalty within the specified timeframe (dated June 13, 2018) and the Complainant (with assistance from Unifor) provided a response to Aheer’s submissions dated June 21, 2018. Aheer, in turn, provided a response to the Complainant’s submissions on June 29, 2018.

I have considered Aheer and the Complainant’s submissions and provide the following Decision Notice.

B. Aheer’s Responses dated June 13 and June 29

Aheer argues that the proposed penalty should not be imposed. Its arguments are as follows:

- a. The facts regarding a March 4, 2018 Unifor meeting cited in the Original Decision are incorrect. In the Original Decision, the question of Aheer’s attendance at a March 4, 2018 Unifor meeting is discussed and it is noted that Aheer had stated that he was in attendance at the meeting whereas the Complainant asserted that he was not. Aheer now states that he was not in attendance.
- b. The facts regarding the Complainant’s return to work date require clarification. Aheer argues that the Complainant was not returned to work on April 10, 2018 following a medical clearance to return. Rather, an unfair labour practice was filed by Unifor (since withdrawn) in response to Aheer’s refusal to return the Complainant to work. Aheer put the Complainant back to work on or about April 22, 2018 even after being advised by the Complainant that a claim was being initiated with the OBCCTC. Aheer argues that it did not violate section 28(a) of the Act as the Complainant was returned to work with Aheer’s knowledge that a complaint had been filed with the OBCCTC.

- c. The Complainant was suspended on May 2, 2018 by Aheer management while Mr. Aheer was on vacation and for reasons unrelated to his complaint with the OBCCTC.
Aheer argues that the Complainant's suspension on May 2, 2018 was the result of action taken by Aheer management in response to Aheer driver concerns and, due to Mr. Aheer's absence, was not rectified until Mr. Aheer's return from vacation. Aheer also maintains that the Complainant was returned to work on May 22, 2018 contrary to the Complainant's statement to the OBCCTC that he had not worked for Aheer since May 1, 2018. Aheer's June 13, 2018 submission includes Daily Trip Sheets indicating the Complainant was dispatched May 22-25 and 28-31, 2018 and a letter to Aheer dated April 27, 2018 from three of its drivers voicing concerns about the Complainant's behaviour.
- d. Aheer was not advised of Unifor's intervention in this matter and should have the right to respond to Unifor's allegations as well as those of the Complainant.
Aheer argues that the process which underpins the Original Decision will be tainted if Aheer is not given the opportunity to respond to allegations by Unifor representatives that Aheer believes have been made.
- e. The proposed penalty is disproportionate to the circumstances of the case.
Aheer argues that there should be no sanction relating to the Complainant's wage claim or for a refusal to dispatch because "the order of events are contrary to the rational [sic, rationale] underlying the fine as the initial reinstatement was after Aheer knew of the claim and the second refusal to dispatch came after the letter from the truckers" (submission of June 29, 2018).

C. Unifor's Response

Unifor, on behalf of the Complainant, argues that Aheer's account is inconsistent and therefore not credible. It also argues the Complainant should be entitled to a remedy which compensates him for lost remuneration between the period May 2, 2018 and May 22, 2018. Unifor also asks that it be added as a complainant.

D. Consideration of Aheer's Response

The Complainant submits that the *Act's* reconsideration provisions do not provide an opportunity for a new hearing in an audit/case. The Complainant suggests that Aheer's written response to the Original Decision should be dismissed on the basis that Aheer is proffering new and amended submissions and evidence available when Aheer responded initially to the Complainant's allegations. Aheer's submissions are made under section 34 of the *Act*, not under section 38 (reconsideration), but I will address the Complainant's submissions as they apply to section 34.

Section 34(2)(e) of the *Act* provides licensees the opportunity to respond to proposed penalties, in writing, by setting out why the proposed penalty should not be imposed. The purpose of this section is to ensure that there is a fair process which accounts for the possibility that, in making a decision, a Commissioner may not have all the facts or that there are mitigating circumstances which the Commissioner may wish to consider that could impact the quantum of the proposed penalty. However, section 34(2) does not provide an opportunity for licensees to introduce new facts which could have

been introduced during an audit or investigation or, after considering the proposed penalty, to alter or add evidence in an effort to reduce the proposed penalty.

Despite Aheer's attempt to introduce new facts and versions of events which were available to it before the issuance of the Original Decision, I will not dismiss Aheer's submissions in this instance as the application of section 34(2) has not been addressed in previous decisions. Rather, the following is a consideration of Aheer's response.

Aheer states that contrary to the summary in the Original Decision, the issue of Mr. Aheer's attendance at a March 4, 2018 Unifor meeting is not in dispute. It is now Aheer's position that Mr. Aheer was not in attendance at the meeting. This is despite Aheer's previous statement to the Commissioner that he was in attendance and a Notice of Civil Claim filed in the Supreme Court of British Columbia which also states that the Plaintiff (Mr. Aheer) was in attendance. The question of Mr. Aheer's attendance at this meeting has little impact on the decision and it would seem that this argument is being raised by Aheer in order to cast aspersions on the veracity of the Complainant's story and the facts which underpin the Original Decision. The events of the March 4, 2018 meeting form the genesis of the dispute between the Complainant and Aheer and I find it unlikely that Mr. Aheer would not know the status of his participation in the meeting or that he would have, on two occasions, incorrectly articulated that status. For these reasons, I am not inclined to accept Aheer's revised evidence on this matter.

Aheer further seeks to clarify the version of events detailed in the Original Decision by noting that the Complainant was not returned to work on April 10, 2018 following a medical clearance to return. Rather, Aheer notes that an unfair labour practice was filed by Unifor in response to Aheer's refusal to return the Complainant to work and that the unfair labour practice has since been withdrawn. Aheer then submits that on April 22, 2018, Mr. Aheer and the Complainant met, and when advised that an OBCCTC claim for missing wages was being lodged, Mr. Aheer immediately put the Complainant back to work. Aheer notes that he then went on vacation and that the Complainant was dispatched (consistent with the findings in the Original Decision) until May 2, 2018 when a dispatcher at Aheer chose to suspend the Complainant in order to avert a walkout threatened by drivers upset by the Complainant's behavior. Finally, Aheer contends that upon Mr. Aheer's return to work from vacation, the matter of the Complainant's suspension was settled and the Complainant was returned to work on May 22, 2018, contrary to a statement made by the Complainant that he had not received a dispatch from Aheer since May 1, 2018. (To put things in context, I note that the Complainant gave this evidence on May 15, 2018).

Once again, I am not inclined to accept Aheer's revised evidence on this matter. The question of the Complainant's initial return to work date is not in dispute. The Original Decision notes in paragraph 9 that "Aheer did not approve the Complainant's return to work [on April 10, 2018]." Aheer wrote to the Complainant on April 20, 2018 and advised him that his return to work date would be April 25, 2018, and the Complainant was dispatched between April 25 and May 1, 2018. However, the Complainant ceased being dispatched by Aheer on May 1, 2018.

In the Original Decision, I found that "the Complainant's lack of dispatches following May 1, 2018 was not a result of ongoing censure on the part of Aheer following the alleged events of March 4, 2018 as Aheer suggest[ed]" and rather that the "timing of the OBCCTC's investigation letter and the cancelled dispatch is such that, when considered with the facts before me, I find that on the balance of probabilities, a violation of section 28(a) of the Act has occurred."

Aheer's revised version of events suggests that rather than ceasing all dispatches following the March 4, 2018 dispute, Aheer returned the Complainant to work in recognition of a claim filed at the OBCCTC (thereby not violating section 28(a) of the Act) and that it was an Aheer employee who suspended the Complainant for reasons unrelated to the OBCCTC complaint and that Aheer had simply not mentioned earlier.

Aheer's submission is not credible and I do not accept Aheer's revised version of events. A suspension of the Complainant by an Aheer employee in response to written driver concerns regarding the Complainant is a key event relating to this case and I cannot find that it was an oversight on Aheer's part that these events were not mentioned when Mr. Aheer was interviewed by the Commissioner, particularly given the fact that Aheer was in possession of the driver's letter 17 days before Aheer's interview.

Regarding Aheer's submission that it was never advised of Unifor's intervention on behalf of the Complainant and that it has a right, as a matter of procedural fairness, to respond to any allegations made by Unifor, I note that on May 10, 2018, prior to Aheer's meeting with the Commissioner, Aheer was in receipt of a letter from Unifor regarding the Complainant's complaint. Further, on June 13, 2018 in correspondence from Aheer's counsel to the OBCCTC, Aheer advised the OBCCTC of its settlement agreement with Unifor which included an agreement regarding the Complainant. The Complainant is entitled to have an advocate. Unifor did not make submissions or allegations apart from those on behalf of the Complainant and there is nothing before me to which Aheer did not have an opportunity to respond. Aheer's concerns may arise out of Unifor's request that it be added as a party with a direct interest in this matter. This is addressed in more detail below.

Finally, in response to the proportionality of the proposed fine, I note paragraph 21 of the Original Decision in which I declined to make a finding that Aheer owes the Complainant money as alleged. Therefore, no sanction was proposed in conjunction with the claim that Aheer withheld money from the Complainant, although Aheer's submissions appear to suggest otherwise.

The sanction was proposed for violation of section 28(a) of the Act and the considerations which impacted the size of the proposed fine were outlined in paragraph 31 of the Original Decision. Aheer's submissions do not alter my views on this.

E. Consideration of Unifor's Response

Unifor seeks an order from the Commissioner which compensates the Complainant for lost remuneration between the period May 2, 2018 and May 22, 2018 based on an approximation of the amount of remuneration the Complainant would have received had he been dispatched between May 2, 2018 and May 22, 2018.

Unifor suggests that section 18 of the Act allows the Commissioner to impose conditions when issuing a licence under section 16(4)(a). Unifor submits that an order for full reimbursement for loss of remuneration as a result of Aheer's retaliation should be made a condition of Aheer's licence. I am not convinced that section 18 authorizes me to order that Aheer compensate the Complainant for lost wages. Section 18 permits the Commissioner to impose conditions on a licence and section 19 permits the Commissioner to amend a licence only in order to impose a condition respecting wait time

remuneration. There is no authority in the *Act* to amend a licence to impose a condition respecting payment of lost wages.

However, the authority to order compensation for lost wages where a licensee has violated section 28(a) of the *Act* flows from the nature of an order under s. 9 of the *Act* to comply with the requirements of section 28(a). Section 9 sets out the express authority for the Commissioner to order compliance with s. 28 of the *Act* and, to be meaningful, that authority must come with the implied authority to order reinstatement to the date of non-compliance. Ordering reinstatement as of a specific date and compensation for wages lost from that date forward are logically necessary to enforcing an order that a licensee comply with the requirements of section 28(a).

In this case, Aheer was ordered, pursuant to section 9 of the *Act*, to cease refusing to retain the Complainant's services, and to immediately resume dispatching the Complainant at a level commensurate with the container trucking services previously provided by the Complainant to Aheer. I am now advised that the Complainant was returned to work on May 22, 2018; therefore, I find that the Complainant is entitled to reimbursement for lost remuneration between the period May 2, 2018 and May 22, 2018.

I will not order Aheer to compensate the Complainant for lost remuneration between the period May 2, 2018 and May 22, 2018 until such time as the Complainant has provided me with evidence which can be used to determine a suitable monetary award based on thirteen working days of lost remuneration. Specifically, the Complainant must provide me with pay slips for three recent pay periods and a submission outlining the amount the Complainant believes to be owing in order to determine an average rate of remuneration for a thirteen working day period. Aheer will be given an opportunity to respond.

Unifor has also requested that it be added as a party with a direct interest in this matter. Unifor's submission of June 21, 2018 asserts that because Unifor submitted the complaint of retaliation on the Complainant's behalf, Unifor should be listed not only as his representative but also as a "party with a direct interest in this matter." Unifor also states that it has recently been declared the certified bargaining agent for Aheer drivers. Section 26 of the *Act* allows "any person" to make a complaint and here the Union has assisted the Complainant in bringing his. Unifor has not brought its own independent complaint. Nor has Unifor made any submissions that would convince me to grant it standing (as an intervenor or public interest standing). Unifor could not be added as a complainant at this stage of the process in any event. I have already issued a decision and have invited submissions from the parties regarding the penalty.

F. Conclusion

Having carefully considered Aheer's submission, and for the reasons outlined above and in my Original Decision, I will not refrain from imposing a monetary penalty. In the result, I hereby order Aheer Transportation Ltd. to pay an administrative fine in the amount of \$50,000.00. 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 \$50,000.00 payable to the Minister of Finance.

Finally, I note that Aheer Transportation 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 2nd day of August, 2018.



Michael Crawford, Commissioner