



August 29, 2018

Aheer Transportation Ltd.
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Delta, BC V4G 1B5

via email: shinda@iheer.com
Original to follow via mail

Attention: Shinda Aheer

Dear Mr. Aheer

**Re: Harjinder Badh (the “Complainant”) and Aheer Transportation Ltd. (“Aheer”)
CTC Decision No. 23/2018 (Application for Reconsideration of CTC Decision No. 17/2018);
Decision Notice (CTC Decision No. 17/2018)**

I. Introduction

1. On August 21, 2018, the Office of the British Columbia Container Trucking Commissioner (“OBCCTC”) received an application dated August 20, 2018 filed on behalf of Aheer Transportation Ltd. (the “Applicant” or “Aheer”) pursuant to sections 38 and 39 of the *Container Trucking Act* (the “Act”). The application seeks the following:
 - a) A reconsideration of Harjinder Badh and Aheer Transportation Ltd. (CTC Decision No. 17/2018), dated June 12, 2018 (the “Original Decision”) and the Decision Notice (CTC Decision No. 17/2018) (the “Decision Notice”) dated August 2, 2018;
 - b) A decision that the Commissioner refrain from imposing the administrative penalty proposed in the Decision Notice; and
 - c) A stay of the order set forth in the Decision Notice pending a ruling on the reconsideration application.
2. In the Original Decision, I determined that Aheer “violated section 28(a) of the Act by refusing dispatch to a driver as a result of a complaint lodged with the OBCCTC ”and proposed to impose an administrative penalty against the Applicant in the amount of \$50,000.00” (paragraph 32).
3. In assessing the appropriate administrative penalty to be issued, I considered the seriousness of the violation and noted that the “statutory protections afforded to truckers under section 28 [of the Act] serve a very important purpose. The mistreatment of a trucker because of a complaint is one type of activity which led to the creation of the current regulatory regime and threatens to undermine the purpose of the OBCCTC if not sufficiently sanctioned” (para 31).
4. The issue of compensation owed to the Complainant for lost remuneration was addressed in the Decision Notice where I noted that I would 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” (section E). Aheer was given an opportunity to respond. The Complainant and Aheer have provided submissions on this matter which will also be addressed in this decision.

5. The Applicant seeks a reconsideration of the Original Decision and responds to the proposed administrative fine of \$50,000.00 by setting out reasons why I should refrain from imposing the penalty. Aheer summarizes its application as follows:

- a) Aheer argues that the Commissioner breached the requirements of procedural fairness, the duty to act fairly and the rules of natural justice by impugning Mr. Aheer's credibility without disclosing the information that the Commissioner used to make the decision or impugn his credibility; and
- b) Aheer argues that the Commissioner failed to consider the Complainant's credibility concerning the real motivation for the cancellation of his dispatch.

II. Decision

Breach of Procedural Fairness

6. In the Decision Notice (section D), I noted that:

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.

7. Aheer takes issue with my characterization in the Decision Notice of the Aheer submission as "revised" evidence and the subsequent decision to treat its submission as not credible. It is Aheer's position that this finding is unfair because at the time of his May 14, 2018 interview, "he was not advised by the Commissioner of the case that he was required to meet." Aheer also argues that the provision of additional information following the Original Decision regarding the Complainant's dispatch should have been considered relevant for the same reason -- i.e. it was not until the Original Decision that Aheer was made aware of the case he had to meet.
8. However, Mr. Aheer was asked at his May 14, 2018 interview whether an Aheer dispatcher ceased dispatching the Complainant on May 2, 2018, and, if so, why. Mr. Aheer was also asked how such an order to cease dispatching would be made. Mr. Aheer was also aware of the allegations against him before his interview with the Commissioner as a result Unifor's letter to the OBCCTC on behalf of the Complainant dated May 10, 2018 and copied to Mr. Aheer. That letter's "re" line includes these words: "Complaint – Retaliation", sets out a chronology of alleged events, and cites section 28 of the Act in full. Further disclosure of the case occurred in the Original Decision, after which Aheer was provided with an opportunity to respond.
9. Aheer did respond, both in the interview and after the Original Decision, and while Aheer's submission and evidence following the Original Decision is characterized as "revised" in the Decision Notice, Aheer is incorrect to suggest that I did not consider it. Rather, the submission was accepted and considered. In the Decision Notice, it was noted that (emphasis added):

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.

10. In other words, although I did not accept that Aheer's new submission was credible, I did accept the submission in the sense that I considered it. For these reasons I do not accept Aheer's argument that a breach of procedural fairness has occurred.

Complainant's Credibility

11. The Original Decision addressed an allegation by the Complainant that Aheer violated section 28(a) of the *Act* when he ceased dispatching him on May 1, 2018. It was the Complainant's position that a May 1, 2018 dispatch was cancelled by Aheer after receiving an investigation letter from the OBCCTC on the same day.
12. Aheer argues that in reaching my decision, I should not have easily believed the Complainant's argument regarding the cessation of his dispatch because the Complainant, at the same time, had argued before the Labour Relations Board ("LRB") that "Aheer's motivation for failing to dispatch [the Complainant] was retaliation for his being involved in a union certification campaign" (para 27). It is Aheer's position that I ought to have given more weight to the Complainant's differing descriptions of the motivations behind the cessation of his dispatch when considering my decision.
13. I will make two points in this regard. Firstly, Aheer has never put to me, until its submission of August 20, 2018, that the Complainant went before the LRB and stated that Aheer's motivation for failing to dispatch [him] was retaliation for his being involved in a union certification campaign. Additionally, Aheer's current submission in this regard is simply a statement without supporting evidence. Once again, Aheer is attempting to introduce a new version of events which could have been introduced in Aheer's response to the Decision Notice.
14. Secondly, the incompleteness of the information now being introduced by Aheer does not support its position that the Complainant is not credible. I am aware that Aheer has not provided all the facts in this matter as the issue of unfair labour practice complaints filed by Unifor at the LRB was raised in Unifor's June 21, 2018 reply to Aheer's June 13, 2018 submission (received by Aheer), in which Unifor notes that there were two unfair labour practices complaints filed at the LRB. One related to allegations of retaliation by Aheer against four drivers for involvement in a union organizing drive. The second unfair labour practice complaint was filed in regards to "a previous suspension/termination of [the Complainant] that was substantially resolved with his reinstatement,

prior to the subsequent suspension/termination giving rise to [the complaint made to the Commissioner].” (emphasis added).

15. Aheer has not, in his most recent submission, identified which unfair labour practices complaint the Complainant was arguing about at the LRB when he allegedly claimed that Aheer’s motivation for failing to dispatch [him] was retaliation for his being involved in a union certification campaign. If Unifor’s submission is to be believed, there was no unfair labour practices complaint before the LRB relating to the Complainant’s complaint lodged with the Commissioner.
16. This may, in fact, be the case as Aheer responded to Unifor’s submission on June 29, 2018 stating that the unfair labour practices complaint referred to by Unifor [in its June 21, 2018 submission] “has nothing to do with the [Commissioner’s] case.” Aheer then stated that the unfair labour practices complaint in question “was never part of the [LRB] hearing.”
17. For these reasons, I am confident that my decisions have been based upon a fair assessment of the Complainant’s credibility.

Compensation owed to the Complainant for lost remuneration

18. In the Decision Notice I stated that I would not order Aheer to compensate the Complainant for lost remuneration between May 2, 2018 and May 22, 2018 until such time as the Complainant had provided me with evidence which could be used to determine a suitable monetary award based on thirteen working days of lost remuneration. The Complainant and Aheer have since provided submissions on this matter which are addressed below.
19. Unifor, on behalf of the Complainant, submits that the average income of the Complainant over all days worked in 2018 was \$603.90 per day. Therefore, over thirteen working days, the Complainant argues that he is entitled to \$7,850.70 in lost remuneration.
20. Aheer submits that the Complainant did not account for expenses (diesel fuel, truck maintenance and insurance costs) when determining the amount owing. Aheer concurs with the Complainant that the daily average income of the Complainant is \$603.90 but calculates that his actual daily income after expenses¹ is \$449.78. Over thirteen working days, Aheer argues that the Complainant is entitled to \$5,847.14.
21. The Complainant is an independent operator (“I/O”) remunerated by the trip. The trip rates in the *Container Trucking Regulation* are set at an amount intended to include I/O expenses such as diesel fuel, truck maintenance and insurance costs as these expenses are not paid by the licence holders. Because the Complainant is paid using a trip rate inclusive of expenses, I concur with Aheer’s assessment that the calculation of lost remuneration owing to the Complainant for the period between May 2, 2018 and May 22, 2018 should be less expenses. While off work, the Complainant would have been responsible for truck maintenance and insurance expenses but would not have accrued fuel expenses. Therefore, I find that the Complainant is owed \$6,622.59 (\$603.90-\$94.47 (fuel cost) = \$509.43 x 13 days).

¹ Average Daily Fuel Costs = \$94.47; Average Daily Insurance Cost = \$35.65; Average Daily Truck Maintenance = \$24.00

22. I hereby order Aheer, pursuant to section 9 of the *Act*, to pay forthwith and in any event no later than September 13, 2018, \$6,622.59 in lost remuneration owing to the Complainant for the period between May 2, 2018 and May 22, 2018.

Application to Stay Commissioner's Order Pending Ruling on the Reconsideration

23. As I have ruled on the application for reconsideration, the application for a stay is moot and therefore dismissed.

III. Conclusion

24. In summary, the application for reconsideration of Harjinder Badh and Aheer Transportation Ltd. (CTC Decision No. 17/2018) and Decision Notice (CTC Decision No. 17/2018) is dismissed and the penalty proposed in the Original Decision is confirmed and the penalty is imposed. Section 35(2) of the *Act* requires that this fine be paid within 30 days of the issuance of the Decision Notice. Imposition of the penalty requires that Aheer pay the penalty by no later than September 2, 2018. In this case, and in consideration of the period of time between this decision and the penalty due date, I will extend that time period and require that Aheer pay the penalty forthwith, and in any event no later than September 11th, 2018.

This order and reconsideration will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 29th day of August, 2018.



Michael Crawford, Commissioner