



January 28, 2019

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

Commissioner's Decision
Sandhar Trucking Ltd., CTC Decision No. 28/2018
(Application for Reconsideration of CTC Decision No. 18/2018)

I. Introduction

1. On December 11, 2018, the Office of the British Columbia Container Trucking Commissioner ("OBCCTC") received an application filed on behalf of Sandhar Trucking Ltd. (the "Applicant" or "Sandhar Trucking") pursuant to sections 38 and 39 of the *Container Trucking Act* (the "Act"). The application seeks reconsideration of the administrative penalty proposed in the Decision and ordered in the Decision Notice and
 - a) that the Commissioner amend the order to pay \$5,306.40 set forth in the Decision Notice.
2. In the Original Decision, I determined that Sandhar Trucking failed to comply with the minimum rates and fuel surcharge required under 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") and proposed to impose an administrative penalty against the Applicant in the amount of \$60,000.00" (paragraph 46).
3. The Applicant seeks a reconsideration of the Original Decision and responds to the proposed administrative fine of \$60,000.00 by setting out reasons why I should reduce or refrain from imposing the penalty. A summary of Sandhar Trucking's application is as follows:
 - a) Sandhar Trucking argues that the portion of the proposed penalty for failure to pay the legislated rates and fuel surcharge (\$10,000.00) should either not be imposed or should be significantly reduced because the amount of the penalty is disproportionate to the penalties levied against the licence holders penalized in the decisions cited in the Decision Notice;
 - b) Sandhar Trucking argues that the order to pay \$5,306.40 set forth in the Decision Notice should be amended (reduced by \$1,000.00) because the Commissioner should accept its evidence that the Complainant received \$2,000.00 of the \$6,306.40 owed to Complainant and not the \$1,000.00 that the Commissioner found that the Complainant received; and
 - c) Sandhar Trucking argues that the portion of the proposed penalty for violation of section 24 of the *Act* and section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence (\$50,000.00) should not be imposed because "there is no reliable evidence for the Commissioner to find an element of coercion which constituted a breach of section 24 of the *Act*."

II. Decision

Disproportionate size of the \$10,000 penalty levied.

4. In the Decision, a penalty of \$10,000.00 was proposed for failure to pay the legislated rates and fuel surcharge. In the Decision Notice, two previous decisions, which established that the onus to become compliant with the requirements of the *Act* rests entirely with the licensee, were cited in response to Sandhar Trucking's argument that its failure to pay the rates was an error which resulted from the OBCCTC's failure to confirm Sandhar Trucking's calculations.
5. Sandhar Trucking now compares the cited decisions and argues that, in other circumstances, the Commissioner has levied smaller penalties for behaviour which Sandhar Trucking argues was more egregious than its conduct.
6. In making its argument, Sandhar Trucking notes the considerations set out by the Commissioner in Olympia Transportation (CTC Decision No. 02/2016) when determining the size of the penalty in that case:
 - did the company cooperate fully with an audit or investigation;
 - has the company complied with orders or directions of the Commissioner (or a delegate of the Commissioner, including an auditor);
 - has the company engaged in meritless dispute of, or delays in paying, amounts found to be owing;
 - has the company engaged in any form of fraudulent, deceptive, dishonest or bad faith behaviour with respect to compliance with the requirements of the *Act*, *Regulation* or a licence.
7. The circumstances of Sandhar Trucking's audit differ from those of the cases Sandhar Trucking references. Nevertheless, I am persuaded, in part, by Sandhar Trucking's argument --specifically by its reference to the factors Commissioners consider when determining the size of penalties and by extension the need to weigh all these factors when considering the size of a penalty. In this case, I find that there were other factors which could have been considered when considering Sandhar Trucking's penalty for failure to pay the legislated rates and fuel surcharge.
8. The conduct of licensees and previous orders made by the Commissioner are factors that the Commissioner considers when assessing penalties. In previous decisions of the Commissioner, where licensees have been found to be non-compliant and owed drivers sums of a similar size to the amount owing by Sandhar Trucking, failure to meet the former Acting Commissioner's January 22nd, 2016 compliance deadline has also been considered in the penalty decision making process.
9. In this case, the audit confirmed that Sandhar Trucking's non-compliant rate payments were made prior to January 22nd, 2016 (its non-compliant fuel surcharge payments continued after this time) and that Sandhar Trucking did attempt to correct those payments and confirm its fuel surcharge calculations prior to January 22nd, 2016. Sandhar Trucking was not found to be in violation of its record keeping requirements and it was noted in the Decision that Sandhar Trucking was co-operative and helpful during the audit process. Therefore, I will amend my order and reduce the

portion of the penalty assessed for failure to pay the legislated rates and fuel surcharge to \$5,000.00. The size of the amended penalty reflects similar circumstances where licensees have met the January 22nd, 2016 deadline and cooperated with the audit but failed to pay the legislated rates and fuel surcharge.

The order to pay \$5,306.40 set forth in the Decision Notice should be amended (reduced by \$1,000.00).

10. Sandhar Trucking argues that the transaction between the Complainant and Sandhar was voluntary and that inconsistencies in the Complainant's version of events, when considered along with the video evidence, do not support the conclusion that the Complainant received only \$1,000.00 from Sandhar or that a violation of section 24 of the Act occurred. I am asked to accept that the Complainant received \$2,000.00 from Sandhar rather than \$1,000.00, but I am not persuaded by Sandhar Trucking's argument.
11. It is Sandhar Trucking's position that the Complainant was attempting to make amends for previous damage he incurred to a Sandhar Trucking chassis when he offered to give \$4,300.00 back after the \$6,300.00 cheque was cashed. In contrast, the Complainant states that Sandhar told him, when he went to pick up his cheque, that he did not owe him any money and that Sandhar offered to make a deal and give the Complainant \$1,000.00 back from the \$6,300.00 cheque after it was cashed.
12. The Complainant denies having been in an accident with a Sandhar Trucking chassis and Sandhar Trucking has not provided any evidence of the accident or resulting damage to the chassis. Further, it is unlikely that the Complainant, had he wished to make amends for the alleged accident, would have offered to pay back \$4,300.00 of a \$6,300.00 cheque when the cost of the alleged damage to the chassis was said by Sandhar to be over \$8,000.00.
13. Rather, it is much more likely that Sandhar proposed a deal whereby he would keep all but \$1,000.00 of the money owed to the Complainant. Such a deal is consistent with statements made by the Complainant, supporting witnesses and Sandhar which all suggest that Sandhar was not pleased with having to pay the money back to the Complainant or other Sandhar Trucking drivers. For this reason, and based on the evidence considered and the balance of probabilities, I have decided that the Complainant received \$1,000.00 from Sandhar.

The \$50,000 penalty for violation of section 24 of the Act and section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence (\$50,000.00) should not be imposed because "there is no reliable evidence for the Commissioner to find an element of coercion which constituted a breach of section 24 of the Act."

14. As to the violation of section 24 of the Act and section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence, it was articulated in the Decision Notice that:

...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.

15. I am not persuaded to reverse or amend the penalty associated with the breach of section 24 of the Act and section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence. Section 24 is breached even where voluntary and I remain of the view that licence holders are not at liberty to retrieve, or claw back, compensation found to be owing to drivers under the Act. Therefore, as noted, it is the receipt of the money, voluntary or otherwise, that constitutes the breach of section 24.
16. In any event, I do not accept Sandhar Trucking's argument that the transaction was voluntary and that that no coercion took place simply because Sandhar did not physically intimidate the Complainant at the Royal Bank in Delta. Physical intimidation is only one form of pressure and in my opinion the circumstances of this case indicate that the Complainant felt pressured to follow Sandhar's direction. A witness states that Sandhar insisted that they go to a bank to cash the cheque despite the Complainant's attempts to dissuade Sandhar by claiming he did not have his ID with him. If the Complainant was voluntarily seeking to give money to Sandhar, Sandhar would not have had to insist that he accompany the Complainant to a bank to cash the cheque and would not have had to call his son to get the Complainant's drivers licence and SIN number.

III. Conclusion

17. Having carefully considered the application for reconsideration of Sandhar Trucking Ltd. (CTC Decision No. 18/2018) and Decision Notice (CTC Decision No. 18/2018) and for the reasons outlined above, and in my Original Decision and Decision Notice, I will not refrain from imposing the penalty proposed in the Original Decision. I have, however, decided to reduce the penalty to \$55,000.00 for the reasons set out in paragraphs 7-9.
18. Section 35(2) of the Act requires that this fine be paid within 30 days of the issuance of the Decision Notice. Sandhar Trucking requested pursuant to section 39(2) of the Act that the Decision Notice order be suspended until the outcome of the reconsideration. Sandhar Trucking's request was granted. Sandhar Trucking is therefore required to pay the penalty forthwith, and in any event no later than February 11, 2019.

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

Dated at Vancouver, B.C., this 28th day of January, 2019.



Michael Crawford, Commissioner