



September 28, 2020

Safeway Trucking Ltd. and Coast Pacific Carrier Inc.
8035 170th Street
Surrey, B.C. V4N 4Y9

Commissioner's Decision

Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 11/2020)

Introduction

1. Safeway Trucking Ltd. and Coast Pacific Carrier Inc. (together the "Companies") are joint licence holders within the meaning of the *Container Trucking Act* (the "Act"). The Companies are owned by the same person and are operated jointly.
2. Under sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services are established by the Commissioner, and a licensee must comply with those statutorily established rates. In particular, section 23(2) of the *Act* states:

A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

3. 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. The Commissioner may also initiate an audit or investigation under section 31 whether or not a complaint has been received.
4. On June 15, 2020, the Commissioner received a complaint from a driver (the "Complainant"), alleging that the Companies had not paid him in accordance with a Civil Resolution Tribunal decision¹ and seeking payment of unpaid remuneration for the period between March 27, 2017 and April 17, 2017.
5. On July 6, 2020, the Commissioner directed an auditor to audit the Companies' records to determine if the Companies had paid the Complainant and were in compliance with the *Act* for the period between March 27, 2017 and April 17, 2017.

¹ 2018 BCCRT 641

Audit

6. The auditor requested, obtained and reviewed relevant records and determined that the Companies did not pay the Complainant for container trucking services performed during the period between March 27, 2017 and April 17, 2017.
7. The auditor reviewed the Complainant's timesheets provided by the Companies to determine the number of hours he worked during the period in question (100 hours) and then compared those records to records provided by the Complainant (logbooks, timesheets, interchanges, bill of ladings and scale tickets). No discrepancies were noted.
8. The Companies provided a cheque stub dated May 15, 2019 (over two years after the dates for which the Complainant alleged he had not been paid), which showed the Complainant's name and that he had been paid \$26.28 per hour for 100 hours of work (\$2,628.00). The auditor confirmed that the amount on the cheque stub was the amount owing but noted that the information on the cheque stub was handwritten, no formal pay statement had been issued and no evidence was provided to indicate that the cheque had been received and cashed by the Complainant.
9. On August 3, 2020, the auditor asked the Companies to provide information to confirm that the Complainant had received the cheque in question. The Companies replied on August 6, 2020 stating that the cheque had been mailed to the address listed on the copy of the Complainant's Driver's License on file but had not been cashed and had never cleared the Companies' bank account. The Companies stated that their failure to note that the cheque had never been cashed/cleared the bank was an accounting/administrative error which was not noticed in their bank reconciliation process.
10. The auditor contacted the Complainant on August 7, 2020 and confirmed that the Companies did not have his correct mailing address on file. The auditor confirmed his current mailing address and then provided the Companies with the Complainant's current mailing address and instructed the Companies to send a cheque in the amount of \$2,628.00 via registered mail and provide a copy of the receipt.
11. The Companies complied and provided a copy of the registered mail receipt on August 14, 2020. The receipt showed that the Companies sent a cheque via registered mail to the Complainant at the correct address. The auditor confirmed with the Complainant that the cheque had been received.
12. The audit report concludes by noting that the Companies' records were organized and readily available upon request. The Companies were very cooperative and always responded to the auditor's questions and provided information on a timely basis.
13. The Companies were provided a copy of the auditor's report on August 25, 2020 for review and were provided an opportunity to respond. The Companies responded by the required deadline stating that they had reviewed the report and wished to reiterate that the failure to pay the Complainant was the result of an administrative error.

Decision

14. As described above, the circumstances of this case are that:
- a. the Commissioner ordered an audit of the Companies' records for the period between March 27, 2017 and April 17, 2017 to determine if the Complainant had been paid for container trucking services performed;
 - b. the audit disclosed that between March 27, 2017 and April 17, 2017, the Companies failed to pay the Complainant \$2,628.00 for 100 hours of container trucking services performed;
 - c. the Companies provided evidence to demonstrate that the Complainant had been paid all the money owed on May 15, 2019;
 - d. the evidence was not conclusive and the auditor determined that the Complainant was not paid \$2,628.00 on May 15, 2019;
 - e. the Complainant has now been paid the money owed; and
 - f. the Companies were co-operative and helpful during the audit process.
15. As the Companies have paid the amounts owing to the Complainant there is no need to issue an order pursuant to section 9 of the *Act* requiring the Companies to pay the Complainant in compliance with the legislation.
16. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's licence or imposing an administrative fine. Under section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000.
17. In this case it has been determined that between March 27, 2017 and April 17, 2017 the Companies failed to comply with the *Act*. The audit findings indicate that over this period, the Companies owed the Complainant \$2,628.00 for 100 hours of container trucking services performed. The Companies provided a cheque stub dated May 15, 2019 to the auditor intended to demonstrate that the Complainant had been paid the money owing; however, the information on the cheque stub was handwritten, no formal pay statement was supplied, and the cheque did not in fact reach the Complainant.
18. Additionally, in October of 2018, the Civil Resolution Tribunal had ordered Safeway Trucking Ltd. to pay the Complainant for work performed during the period between March 27, 2017 and April 17, 2017 by no later than November 23, 2018. The cheque stub provided by the Companies to the auditor, intended to demonstrate that the Complainant had been paid, was dated dated May 15, 2019, almost six months after the Civil Resolution Tribunal ordered the money to be paid and over two years after the services were performed. The auditor subsequently determined that the Complainant had not been paid on May 15, 2019 and the Companies argue that this was due to an administrative error.
19. I am not persuaded by the Companies argument that it was their intention to pay the Complainant and that their failure to pay was the result of an administrative error. The Companies first failed to pay the Complainant in 2017, when the services were performed. In 2019, they were ordered by

the Civil Resolution Tribunal to pay the Complainant, and claim to have issued a cheque almost six months later. That cheque did not clear their accounts. Based on this sequence of events, I find that the Companies did not intend to pay the money owing, despite an order from the Civil Resolution Tribunal in 2019.

20. As recorded above, the Companies were cooperative during the audit and have paid the money found to be owed. Nevertheless, holders of Container Trucking Services Licences are responsible for paying their drivers the required rates, within the required time period, for all container trucking services performed. This audit makes clear that the Companies failed to fulfill this obligation.
21. In previous decisions,² Safeway Trucking Ltd. (“Safeway”), which was operating under a joint licence with Coast Pacific Carrier Inc. at the time of the decisions, was found to owe money to its drivers, and was ordered to pay the money owing and demonstrate that it had done so. Safeway did not comply with the initial order and therefore proposals to suspend Safeway’s licence and impose a \$10,000.00 penalty were made. Following a reconsideration, the \$10,000.00 penalty was imposed.
22. In imposing the penalty in the reconsideration, I noted that Safeway:

...complied (or not) with the requests of the auditor and the orders of the Commissioner in a manner which suggests an intention to delay the process to its benefit.
23. Safeway has a history of non-compliance, including a history of not paying its drivers and not complying promptly with orders of the Commissioner. Similarly, in this case, the Companies did not pay a driver money when it was owing in 2017. The Companies ultimately paid the Complainant the money owing but only after the Office of the BC Container Trucking Commissioner became involved.
24. Therefore, I have concluded that an administrative fine is appropriate in this case. Regarding the size of the proposed fine I have decided that an administrative penalty of \$15,000.00 is appropriate. This is an escalating fine that reflects the Companies’ past compliance history.
25. In the result and in accordance with Section 34(2) of the *Act*, I hereby give notice as follows:
 - a. I propose to impose an administrative fine against Safeway Trucking Ltd. and Coast Pacific Carrier Inc. in the amount of \$15,000.00;
 - b. Should they wish to do so, Safeway Trucking Ltd. and Coast Pacific Carrier Inc. have 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
 - c. If Safeway Trucking Ltd. and Coast Pacific Carrier Inc. provide a written response in accordance with the above I will consider that response and I will provide notice to Safeway Trucking Ltd. and Coast Pacific Carrier Inc. of my decision to either:
 - i. Refrain from imposing any or all of the penalty; or
 - ii. Impose any or all of the proposed penalty.

² Safeway Trucking Ltd. (CTC Decision No.5/2018); Safeway Trucking Ltd. (CTC Decision No.10/2018) -- Supplemental Decision; Safeway Trucking Ltd. (CTC Decision No.10/2018) – Decision Notice; Safeway Trucking Ltd. (CTC Decision No. 19/2018) -- Application for Reconsideration of CTC Decision No. 05/2018

Conclusion

26. This decision was issued following an audit of a matter which had first been raised and ruled upon by the Civil Resolution Tribunal.
27. I take this opportunity to bring to the attention of licensees and drivers that matters of remuneration specifically related to the Commissioner's Rate Order are the exclusive jurisdiction of the Commissioner. These matters should not be raised in any other forum.
28. This decision will be delivered to Safeway Trucking Ltd. and Coast Pacific Carrier Inc. and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 28th day of September, 2020.

A handwritten signature in blue ink, appearing to read 'Michael Crawford', is written above a horizontal line.

Michael Crawford, Commissioner