



August 31, 2021

Rideway Transport Ltd.
15969 106 Avenue
Surrey, B.C. V4N 3J4

Commissioner's Decision

Rideway Transport Ltd. (CTC Decision No. 09/2021)

Introduction

1. Rideway Transport Ltd. ("Rideway") is a licence holder within the meaning of the *Container Trucking Act* (the "Act"). Under section 24 of the Act:

A licensee must not solicit or receive, directly or indirectly, a financial set-off, commission or rate reduction or rebate from a trucker.

2. 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.
3. On November 27, 2020, the Commissioner received separate complaints from two drivers (the "Complainants"), alleging that they had been contracted by Rideway to conduct long-haul trucking services at a rate of \$24.00 per hour but actually performed container trucking services (local drayage within the Lower Mainland) at the Commissioner's rate of \$27.50 per hour. The Complainants alleged that the owner of Rideway (Mr. Sandhu) required them to pay \$3.50 of their hourly rate back to him in cash. One Complainant reported that he did not make the cash payments as requested. The other Complainant alleged that he paid Mr. Sandhu approximately \$3,400.00 in cash payments. The Complainants also alleged that at the time of making their complaints, Rideway was withholding their final pay following their resignation until they signed certain documents.
4. In support of their allegations, the Complainants supplied the Office of the BC Container Trucking Commissioner ("OBCCTC") with the following:
 - Copy of Complainant 1's application for employment to Rideway;
 - Copy of Rideway's Labour Market Impact Assessment ("LMIA") approval document, outlining the employer (Rideway), job (long-haul truck driver) and wage (\$24.00 per hour);¹
 - Copies of 31 timesheets between both Complainants;

¹ A Labour Market Impact Assessment is a document that an employer in Canada obtains before hiring a foreign worker in certain circumstances. A positive LMIA will show that there is a need for a foreign worker to fill the job. It will also show that no Canadian worker or permanent resident is available to do the job.

- Copies of 18 paystubs and cheques for Complainant 1, some of which contained post-it-notes for dollar amounts;
 - Photograph of a letter addressed to Complainant 1 titled “Full and Final Settlement”;
 - Copy of a paystub with a post-it-note with a dollar amount written on it and a copy of a photograph containing 20 additional similar post-it-notes from Complainant 2; and
 - Copy of Complainant 2’s resignation email of November 17, 2020 and his follow-up email requesting outstanding pay and T4 slip of January 23, 2021, both allegedly sent to Mr. Sandhu.
5. On February 10, 2021, the Commissioner directed an investigator to conduct an investigation regarding the alleged section 24 violations. On February 16, 2021 the Commissioner directed an auditor to audit Rideway’s records to determine if Rideway was in compliance with the legislation for the periods of December 2019, May 2020 and November 2020 (“Initial Audit Period”). Investigation and audit details and calculations are summarized below.

Investigation

6. Between February and March 2021, an OBCCTC investigator interviewed each of the Complainants as well as Mr. Sandhu separately, and, in the case of the Complainants, with the assistance of a translator. Summaries of the Complainants’ and Mr. Sandhu’s statements given at the interviews are set out below.

Complainant #1

7. An OBCCTC investigator interviewed Complainant 1 on February 24, 2021.
8. Complainant 1 stated that he was employed by Rideway as a long-haul company driver under a LMIA work permit. Complainant 1 further stated that he began working for Rideway in February/March 2020 but did not in fact perform long-haul work and instead performed on and off-dock drayage work in the Lower Mainland. Complainant 1 was paid \$27.50 per hour and received payment bi-weekly.
9. Complainant 1 reported that he received his first pay cheque from Rideway in May 2020. Attached to the paystub was a post-it-note with a dollar amount written on it. Complainant 1 states that he spoke with Complainant 2 who advised him that Rideway required him to pay back \$3.50 per hour because his LMIA agreement stated that he was to be paid \$24.00 per hour (as a long-haul driver) but he was being paid \$27.50 as a local driver per the requirements of the Act.
10. A short time later, Complainant 1 contacted Mr. Sandhu by telephone and asked about the “dues.” Mr. Sandhu instructed Complainant 1 to come to Rideway’s office after his shift to discuss the matter further. Complainant 1 told the investigator that when he arrived at the office, Mr. Sandhu told him that he was to pay back the “dues” because his LMIA agreement rate was \$24.00 per hour.
11. Complainant 1 stated that he asked Mr. Sandhu to give him long-haul work in accordance with the LMIA but Mr. Sandhu advised him that there was no long-haul work available. Complainant 1 told the investigator that he did not resign from Rideway at that time because he needed work, but he did not pay the “dues” and no amounts were ever deducted from his pay cheques, although he

continued to received pay cheques with accompanying post-it-notes.

12. Complainant 1 further stated that Mr. Sandhu asked him several times to pay the “dues” but, in response, Complainant 1 always said he did not have the money. He alleged that Mr. Sandhu told him to make payments so that the money would not keep adding up, making it harder to pay a larger amount later.
13. Complainant 1 ultimately decided to leave Rideway and, in October 2020, secured long-haul work with another company under another LMIA work permit. On November 5, 2020, Complainant 1 gave his two-week resignation notice to Rideway. Complainant 1 reports that he was not given any more work after that day. On November 25, 2020, Complainant 1 was told by Mr. Sandhu to come to his office the next day to collect his final pay cheque. Complainant 2 (who had resigned from Rideway earlier) was also instructed to attend Mr. Sandhu’s office on November 26, 2020.
14. Complainants 1 and 2 both told the investigator that they attended Mr. Sandhu’s office the next day. Mr. Sandhu, his spouse, and a dispatcher named “Jot” were in the office. Complainant 1 was presented with four documents by Mr. Sandhu that required his signature. The first document stated that any payments to Complainant 1 up to November 26, 2020 were finalized and completed. Complainant 1 stated that he refused to sign this document until he was given his final pay cheque and that Mr. Sandhu denied this request, stating that both he and Complainant 2 need to sign the documents before receiving their pay cheques because he was worried that they would “run-away” without signing the rest of the documents.
15. Complainant 1 reported that he signed the initial document but did not immediately hand it to Mr. Sandhu. The second document was a copy of Complainant 1’s resignation email sent to Mr. Sandhu, which was signed by Complainant 1. The third document was a copy of the work permit that had been issued to and signed by Complainant 1. The fourth and final document pertained to the days worked by Complainant 1 and stated that, if agreed upon, Complainant 1 would pay the company \$5,748.00 in “dues.”
16. Complainant 1 further reported that he refused to sign the document and then took a photo of it. As set out above, that photo was supplied to the OBCCTC. Complainant 1 stated that Mr. Sandhu then withdrew the documents and pay cheque and told Complainants 1 to leave. He also told Complainant 1 that if he did not sign all the documents and pay back the “dues,” he would not receive his final payment. Complainant 1 did not receive his final pay cheque and departed the office. In January 2021, Complainant 1 contacted Rideway via email requesting his final pay cheque and T4, but he had not received a response by the date of the interview.

Complainant #2

17. The OBCCTC investigator interviewed Complainant 2 on March 1, 2021.
18. Complainant 2 stated that he was employed by Rideway as a long-haul company driver under a LMIA work permit. Complainant 2 stated that he began working for Rideway in November or December 2019 but did not perform long-haul work for Rideway. Complainant 2 reported that he instead performed on and off-dock drayage work in the Lower Mainland. Complainant 2 was paid \$27.50 per hour and received payment bi-weekly.

19. Complainant 2 told the investigator that he went to Mr. Sandhu's office to collect a pay cheque in January 2020 and was advised by Mr. Sandhu that he had to return a portion of his pay to the company as "dues." Complainant 2 alleges that Mr. Sandhu threatened him with termination of employment and deportation if the money was not paid.
20. Complainant 2 stated that he was told by Mr. Sandhu to put the cash in a "black box" located at the company yard and that he would receive a "slip" listing a different dollar amount for each pay period.
21. Complainant 2 stated that he made four to five payments totaling approximately \$3,500.00 in "dues." He told the investigator that he would go to a bank machine, withdraw cash for "dues" based on the post-it-note amount, and put the cash in the "black box" at the end of his shift a couple days after receiving a pay cheque. However, despite claiming that he made cash withdrawals from the bank to make his payments to Rideway, when asked for proof, such as bank statements, Complainant 2 responded that he did not have any such records.
22. Complainant 2 further reported that after a period of time he was advised by friends that he was not required to pay "dues" and ceased payment. Complainant 2 continued his employment at Rideway, and every pay cheque continued to have post-it-notes attached with specified dollar amounts written on the notes.
23. Complainant 2 decided to leave Rideway and, in November 2020, secured long-haul work with another company under another LMIA work permit. On November 17, 2020, Complainant 2 gave his two-week resignation notice to Rideway. Complainant 2 was not given any more work after that day.
24. Complainant 2 corroborates Complainant 1's statement that they were both asked to come to Mr. Sandhu's office to collect their final pay cheques and that Mr. Sandhu, his spouse, and a dispatcher named "Jot" were in the office. Complainant 2 stated that he and Complainant 1 accompanied Mr. Sandhu into a private room inside the office where Mr. Sandhu presented them each with three to four documents for signature.
25. The first document presented to Complainant 2 was a copy of the resignation letter emailed to Mr. Sandhu, which had already been signed by Complainant 2. The second document was a signed copy of Complainant 2's work permit. Complainant 2 stated that the third document contained language to the effect that "no dues pending and to sign above." Complainant 2 signed the document. The fourth and final document, according to Complainant 2's recollection, outlined that he worked for the company at a rate of \$24.00 per hour but was actually paid \$27.50 per hour and that approximately \$6,800.00 was to be returned to Rideway.
26. Mr. Sandhu allegedly told Complainant 2 that if he did not sign the fourth document, he would not receive his final payment. Complainant 2 refused, and Mr. Sandhu told both complainants to leave. Complainant 2 did not receive his final pay cheque. He also emailed Rideway in January 2020 requesting his final pay cheque and T4, but he had not received a response by the date of the interview.

Mr. Sandhu

27. The OBCCTC investigator and a translator called Mr. Sandhu on March 31, 2021 and conducted an interview regarding the Complainants' allegations over the phone. Mr. Sandhu agreed to the interview and agreed to have the interview recorded.
28. The allegations were put to Mr. Sandhu. Mr. Sandhu stated that Rideway does not engage in long-haul trucking and has had three LMIA employees in the past, including the two Complainants. Mr. Sandhu initially denied the presence of a box or mailbox in the company's yard, but later advised the investigator that the company maintains a black box in its yard, located on an immobile shipping container. The box is not locked, has a slot, and can be opened by lifting its lid. Employees regularly submit their trip sheets by depositing them inside the box. Mr. Sandhu stated that employees are not required to submit any other documentation or objects using this box.
29. Mr. Sandhu further advised that Rideway's employees, including those under LMIA permits, are paid \$27.50 per hour. He stated that employees are paid by cheque every 15 days and the cheques are accompanied by pay slips, but that the cheques are not accompanied by notes. Mr. Sandhu specifically denied the presence of any post-it-notes attached to employee pay cheques or pay slips.
30. Mr. Sandhu stated that all three LMIA employees had since left Rideway, citing their reason as a desire to return to India because they did not like Canada, although Mr. Sandhu confirmed that they never went back to India. He stated that the LMIA employees only provided him with two- or three-days' notice and alleged that the Complainants used his company to obtain experience or training before seeking other employment without fulfilling their two-year employment obligation under the LMIA permit.
31. Mr. Sandhu denied ever asking his employees, including the Complainants, to make cash payments. He denied ever telling any LMIA employees that their hourly rate would be \$27.50 but that their actual hourly rate was \$24.00 and that they were required to reimburse Rideway \$3.50 per hour every pay period. Mr. Sandhu denied that any of the cheques issued to the Complainants had post-it-notes attached and denied requesting that his employees deposit anything other than trip sheets in the black box found inside the company's yard. He denied ever receiving any cash payments from his employees, including the Complainants, as a result of the \$3.50 pay discrepancy and specifically denied receiving cash payments from Complainant 2.
32. Mr. Sandhu could not recall the exact date that the Complainants resigned but confirmed that, after their resignations, he asked them to "correct" their pay cheques and sign paperwork, which he planned to submit to Canadian immigration officials. Mr. Sandhu claimed that he issued last pay cheques to both Complainants and that the cheques were picked up by the Complainants on the same day the Complainants signed documents. Mr. Sandhu stated that documentation supplied to the OBCCTC auditor as part of the OBCCTC audit would confirm the cheque issue dates.
33. When asked for specific details about the final meeting between himself and the Complainants, Mr. Sandhu stated that both Complainants attended the company's office on an unidentified date and were presented with paperwork showing the details of their last pay, after which they obtained their cheques and pay slips and departed. Mr. Sandhu stated that the meeting occurred in a "common area" of the company's office on a date when both the company's dispatcher and

Ms. Sandhu were present.

34. Mr. Sandhu told the OBCCTC investigator that the documents the Complainants were required to sign had been submitted to the OBCCTC auditor and that is common practice for Rideway to have departing employees sign a letter agreeing that they are not owed any money by the company. In the event money is owed, it is Rideway's practice to issue any additional pay if required.
35. The OBCCTC investigator specifically asked Mr. Sandhu if he required Complainant 1 to sign a document titled "Full and Final Settlement." Mr. Sandhu advised that he had drafted the "Full and Final Settlement" letter and that it contained information such as cheque number, dollar amount, and confirmation that no money was owed by the company to the drivers. Mr. Sandhu also said that the letter was retained by the company for the record and future reference. When asked if the letter contained any other information, Mr. Sandhu referenced the OBCCTC audit record request and stated that the letter had been supplied to the auditor.
36. The OBCCTC investigator then read to Mr. Sandhu the following portion of the "Full and Final Settlement" letter that had been supplied by Complainant 1:

I was bounded [sic] with Rideway transport Ltd. [sic] from Date Aug 09/2019 to Aug 09/2021 my pay rate bounded with company was \$24.00 but I received all money with \$27.50 and I need to pay back money to Rideway transport Ltd. [sic] whatever they paid me extra amount difference. I gave quitting notice on Nov 18, 2020 by email to Dispatch for three day only. I further declare that I will pay all amounts which are \$5784.00 back to Rideway Transport Ltd...

37. In response, Mr. Sandhu stated that he did not draft that letter and that any letter Rideway drafted had been sent to the OBCCTC auditor. Mr. Sandhu suggested that perhaps the Complainants had drafted the letter that had been read to him. He denied withholding the Complainants' final pay cheques because they would not sign the "Full and Final Settlement" letters. He denied receiving any email communication from the Complainants seeking their final pay cheques or T4 slips.
38. Mr. Sandhu also disclosed that he filed a complaint with Immigration, Refugees and Citizenship Canada ("IRCC") regarding the circumstances of the Complainants' departure from his company shortly after they resigned. He declined to provide any further details of the complaint to the OBCCTC investigator, such as a file number.

Investigator's Assessment

39. The OBCCTC investigator conducted a metadata analysis of the original JPEG file of the photograph of the "Full and Final Settlement" letter provided by Complainant 1 that he reported taking during the November 26, 2020 meeting between himself, Complainant 2 and Mr. Sandhu. The analysis confirmed that the photo was taken on an iPhone X camera on November 26, 2020 at 3:06pm at 8246 Willard Street, Burnaby, BC (Rideway's location). The photo had not been modified and only edited as a result of sending the photo via SMS to the OBCCTC investigator.
40. The OBCCTC investigator also reviewed the documents sent to the OBCCTC auditor by Mr. Sandhu. These included two letters titled "Full and Final Settlement of Account," one addressed to Complainant 1 and another addressed to Complainant 2, both dated November 20, 2020.

The OBCCTC investigator confirms that the two letters are nearly identical, in format and content, to the version of the same letter provided to the OBCCTC investigator by Complainant 1, with the exception of the sentences pertaining to the cash back payment allegedly owed to the company by the Complainants for the differential rate in pay, which are missing from Mr. Sandhu's version. The letters also contain signatures purporting to be those belonging to the Complainants.

41. The last pay cheque numbers (4004, 4005, 4006, and 4007) on the paystubs supplied by Mr. Sandhu to the OBCCTC auditor did not match the list of cancelled cheques also provided, and, as such, it appeared that the Complainants did not receive their final pay cheques.
42. The "Full and Final Settlement of Account" letters supplied by Mr. Sandhu were shown to the Complainants. Complainant 1 confirmed signing the letter provided to the OBCCTC by Mr. Sandhu; however, he advised that he was "tricked" into signing this letter because his pay cheque was placed on a table and he was promised he would be given the cheque once he signed the letter. Complainant 1 stated that the moment he signed the letter, Mr. Sandhu quickly picked up the pay cheque and asked him to sign another agreement stating that he owed money to the company from his previous pay cheques. He declined to sign the second agreement and advised the investigator that he would not have signed the first letter had he known that Mr. Sandhu would not provide him with his final pay.
43. Complainant 2 also confirmed signing the "Full and Final Settlement of Account" letter and stated that after signing the letter, he was told by Mr. Sandhu that he would not be provided with his final pay cheque unless he signed another document agreeing that he owed the company money that he was required to pay back. When he declined, he was told he would not receive his cheque and was asked by Mr. Sandhu to leave the company's office.
44. The OBCCTC investigator reports that Mr. Sandhu prepared and presented to the Complainants two separate letters of a similar nature, one stating that the company did not owe them any money (the "Full and Final Settlement of Account" letter) and another stating that they owed the company the cashback payment amounts ("The Full and Final Settlement"), the latter of which both complainants declined to sign. Mr. Sandhu presented the first letters to the Complainants, which they were required to sign in order to obtain their pay cheques. However, after they signed these letters, they were also required to sign the second letters before they could get their pay cheques. The Complainants did not sign the second letters.
45. The OBCCTC investigator concludes his report by stating that, based upon interviews with the Complainants and with Mr. Sandhu and the documentary evidence, it appears that Mr. Sandhu requested cash back payments from the Complainants for the difference between the Commissioner's hourly rate of \$27.50 paid to the Complainants and the LMIA hourly rate of \$24.00.
46. In his report, OBCCTC investigator also states that during his interview and in response to the allegation of requesting cash back from the Complainants, Mr. Sandhu presented as defensive, did not directly respond to or deflected questions, and repeatedly suggested that the investigator was accusing him of being a criminal. The investigator concludes that "Mr. Sandhu's denials of certain facts such as authoring the specific content of the letter in question and the details of his final meeting with the Complainants were equivocal and vague" and that "Mr. Sandhu was not forthcoming in responding to the allegation(s)."

Audit

47. The OBCCTC sent an audit letter to Rideway on February 16, 2021, requesting records for all drivers during the Initial Audit Period by no later than March 2, 2021. Rideway requested an extension, which was granted until March 15, 2021. Rideway supplied copies of timesheets and pay stubs and copies of associated cancelled cheques before the revised deadline; however, the records were not original documents as requested. On April 12, 2021, the OBCCTC asked again that Rideway provide original timesheets for the Initial Audit Period and also asked Rideway to provide a complete set of all pay stubs for the Complainants for the period November 1, 2019 – November 31, 2020 (the “Expanded Audit Period”).
48. On April 15, 2021, the OBCCTC received a letter from Rideway’s legal counsel requesting an extension until May 31, 2021 to provide the requested documentation. The auditor extended the deadline to April 23, 2021. The records were provided by the deadline.

Company Drivers

49. The auditor reviewed the company driver records and determined that the drivers were paid an hourly rate of \$27.50 during the Initial Audit Period. No discrepancies were noted. The hours recorded on the drivers’ timesheets were compared with the drivers’ paystubs and the auditor noted that many of the hours on the drivers’ timesheets had been altered using whiteout. The auditor compared the photocopied timesheets with the original timesheets and determined that the whiteout changes resulted in a reduction in the number of working hours recorded. The reductions generally resulted in a 0.25hr to 1hr alteration to the drivers’ finish time or start time.
50. The auditor contacted three drivers (not the Complainants) to discuss the significant use of whiteout on their timesheets. All three drivers indicated that they use whiteout to fix mistakes on their timesheets. Two confirmed that they were paid appropriately by the company, but one driver stated that he was required to provide cash back to Rideway. He alleged that the amount he was required to pay back was written on a sticky note attached to his pay cheque. The driver stated that he always paid the amounts because Rideway threatened to write a false report to immigration officials that would hurt his chances of becoming a permanent resident if he did not. This driver declined to be interviewed further.
51. The auditor then compared each drivers’ net pay listed on their pay statements against their associated cancelled cheques. Each drivers’ pay statements reconciled with their corresponding cancelled cheques.
52. Rideway only provided November 2020 pay statements for both Complainants and did not provide corresponding cancelled cheques, so this comparison could not be made for the Complainants. Based upon the pay statements only, the auditor determined that the Complainants were owed a combined amount of \$5,410.46 for the two pay periods in November 2020.
53. The auditor asked Rideway about the Complainants’ final pay cheques by email on May 31, 2021. Rideway’s legal counsel responded on June 2, 2021 and stated that Rideway’s records indicated that the cheques had been given to the Complainants but that Rideway was not entirely sure why they hadn’t been deposited. Rideway’s counsel stated that it was Rideway’s belief

that the Complainants had not deposited the cheques because doing so would “likely affect their permanent residence prospects.” Rideway’s legal counsel did not provide any additional information as to why depositing the cheque would affect the Complainants’ permanent residence prospects.

54. The auditor also reviewed the post-it-note copies provided by the Complainants to determine how the amounts on the post-it-notes were calculated. The auditor confirms that the amounts on 25 of the 31 post-it-note copies provided equaled \$3.50 for every hour worked, plus vacation pay.
55. Complainant 2 stated that he paid Rideway approximately \$3,500.00 of salary back in cash, but the amounts listed on the post-it-notes provided by Complainant 2, for the period January 2020 – March 2020 total \$1,801.73.

Independent Operator

56. Rideway sponsored one independent operator (“I/O”) during the Initial Audit Period. The I/O’s records were reviewed, and the auditor determined that Rideway paid the I/O in accordance with the Act and the Commissioner’s Rate Order.

Conclusion

57. On July 7, 2021, Rideway was sent a copy of the investigator and auditor reports, including a summary of the Complainants’ statements, Mr. Sandhu’s interview, and all associated materials. Rideway was provided an opportunity to respond to these materials.
58. On July 22, 2021, Rideway’s legal counsel responded. Counsel restated Rideway’s position that the Complainants had been paid for November 2020 but had failed to deposit the cheques. Rideway offered to issue new cheques and requested that they deliver the cheques to the OBCCTC to “avoid false allegations of non-payment.” No other response to the investigation or audit reports was provided.
59. The OBCCTC agreed to accept new cheques and disperse them to the Complainants. Rideway delivered the cheques to the OBCCTC and the cheques have been dispersed.

Decision

60. As described above, the circumstances of this case are that:
 - The Commissioner investigated the complaints of two drivers and ordered an audit of Rideway’s records for the months of November and December 2019 and January through November 2020 to determine compliance with the Act;
 - The audit determined that Rideway paid its drivers the correct rates in accordance with the Act;
 - The investigation disclosed that Rideway requested cash back payments from the Complainants for the difference between the Commissioner’s hourly rate of \$27.50 and the LMIA hourly rate of \$24.00; and
 - Rideway withheld the Complainants’ final pay.

61. I have considered the statements and documentation provided by the Complainants, the auditor and investigator reports, and Rideway's submission. For the reasons set out below, I find that Rideway violated the *Act, Regulation* and the Container Trucking Services ("CTS") Licence.

Cash-back request in breach of the Act and CTS Licence

62. Mr. Sandhu denies requesting cash back from the Complainants, denies that any of the cheques issued to them had post-it-notes attached, denies requesting that his employees deposit anything other than trip sheets in the black box found inside the company's yard, denies ever receiving any cash payments from his employees (including \$3,500.00 from Complainant 2), and denies asking the Complainants to sign letters stating that they owed money to Rideway.

63. Both Complainants provided copies of post-it-notes with various dollar figures on them that the auditor confirms equals \$3.50 for every hour worked plus vacation pay.

64. Complainant 2 alleged that he made cashback payments of approximately \$3,500.00 between January and March 2020 that he placed in a black box in Rideway's yard. Mr. Sandhu first denied, then confirmed, the existence of a black box in Rideway's yard. Mr. Sandhu noted the black box is unlocked and therefore unlikely that drivers would be told to leave cash in the box. Complainant 2 claimed that he made cash withdrawals from his bank account to make the cashback payments but was unable to provide any evidence to support this claim. The auditor reports that the amounts listed on the post-it-notes provided by Complainant 2, for the period January 2020 – March 2020, total \$1,801.73, not \$3,500.00.

65. The Complainants both stated that they attended a meeting at Rideway on November 26, 2020 where they were presented with documents to sign, one of which stated that they owed Rideway cash back. Mr. Sandhu confirmed that the meeting occurred at Rideway's office and corroborated the Complainants' statement about who was in attendance in the office during the meeting. However, Mr. Sandhu stated that the documents given to the Complainants at their final meeting showed only the details of their last pay and that it is common practice for Rideway to have departing employees sign a letter agreeing that they are not owed any money by the company.

66. Mr. Sandhu admitted to authoring letters to both Complainants titled "Full and Final Settlement of Account" which were presented to them during their last meeting with him, but he denied that the letters stated that the drivers' actual pay rate was \$24.00 per hour, that they were paid \$27.50 per hour, and that they were therefore required to pay Rideway back.

67. When advised of the content of a "Full and Final Settlement" letter supplied by one of the Complainants, Mr. Sandhu stated that he did not make that letter and that any letter Rideway made had been sent to the OBCCTC auditor. Mr. Sandhu suggested that perhaps the Complainants had drafted the letter that had been read to him.

68. Rideway provided the auditor with letters titled "Full and Final Settlement of Account" on March 2021, months after the complaints were filed. The version of the "Full and Final Settlement of Account" letter provided by Rideway sets out the driver's period of employment, the date of his notice of resignation, his last pay cheque numbers, and includes confirmation that he has received

all payments owed to him and that his account with the company are fully settled. With the exception of the sentences related to the pay rate difference, the amount owing to the company, and the cheque numbers, Rideway's letter is almost identical to the version provided by Complainant 1 which contains the cash back request.

69. The Complainants' statements are detailed and consistent with one another and they have provided documentary and photographic evidence to support their allegations. The auditor confirms that the amounts listed on the post-it-notes are consistent with their allegation that they were asked to pay back the difference between the LMIA hourly rate and the Commissioner's hourly rate.
70. Mr. Sandhu corroborates parts of the Complainants' statements, including that there is a black box on Rideway's property and that a final meeting occurred at Rideway's offices where documents were presented to the Complainants for signature.
71. Mr. Sandhu denies that he ever asked the Complainants for cash back or withheld their final pay cheques because they refused to sign letters stating that they owed cash back. However, I do not accept that the "Full and Final Settlement of Account" letters provided by Rideway, which Mr. Sandhu references in support of his statement, were the only letters drafted and presented to the Complainants by Rideway.
72. A photograph of one of the second letters ("Full and Final Settlement") presented by Rideway on November 26, 2020 at Rideway's office was provided by Complainant 1. A metadata analysis of the photograph confirms the date, time and location of the photograph. It is more likely that Mr. Sandhu purposely withheld the original "Full and Final Settlement" letters from the OBCCTC than that Complainant 1 falsified a "Full and Final Settlement" letter and then took a photo of the forged document on November 26, 2020 at Rideway's office to support his allegation.
73. Mr. Sandhu's statement that he never asked any employees, including the Complainants, to make cash payments to Rideway is not credible. The Complainants both supplied copies of post-it-notes requesting cash back and a third driver stated that he too was asked for (and supplied) cash back to Rideway. All three drivers referenced threats made by Mr. Sandhu that he would contact immigration officials if they didn't do what he requested. Indeed, Mr. Sandhu told the OBCCTC investigator that he filed a complaint with IRCC regarding the circumstances of the Complainants' departure from his company shortly after they resigned.
74. Mr. Sandhu was defensive, did not directly respond to or deflected questions, and was not forthcoming in responding to the cash back allegations when interviewed by the OBCCTC investigator. I am not persuaded by Mr. Sandhu's denials.
75. I accept the Complainants' statements, that Rideway solicited cash back via post-it-notes and that Rideway tried to have them sign agreements that they owed cash back, for the reasons set out above. I find that Mr. Sandhu violated section 24 of the *Act* and Appendix A 1(h) of the CTS Licence when he solicited cash back from the Complainants for the difference between the LMIA rate of \$24.00 per hour and the Commissioner's rate of \$27.50 per hour.
76. There is not, however, sufficient evidence to find that Complainant 2 paid any money back to Rideway. Complainant 2 was unable to provide any supporting documentation demonstrating that

he made cash payments and the auditor determined that the amounts listed on the post-it-notes supplied by Complainant 2 amount to \$1,801.73 rather than \$3,500.00 he claimed.

Withholding pay in breach of the *Regulation* and the CTS Licence

77. The Complainants allege that Mr. Sandhu withheld their final pay cheques because they would not sign a letter stating that they still owed cash back to Rideway. Mr. Sandhu denies withholding the pay cheques at the final meeting and maintains that the Complainants were given their pay cheques.
78. Rideway supplied the OBCCTC auditor with records partly intended to demonstrate that the Complainants had been paid for container trucking services in November 2020. When the OBCCTC auditor determined that the Complainants' final pay cheques had not been cashed, she asked Rideway for an explanation and was advised by Rideway's counsel that Rideway's records indicated that the cheques had been given to the Complainants and that Rideway was not entirely sure why they hadn't been deposited. In response to the audit and investigation reports, counsel restated Rideway's position that the Complainants had been paid for November 2020 but had failed to deposit the cheques. New cheques have since been issued to the Complainants but Rideway characterized the allegation that the Complainants were not given their final pay cheques as "false."
79. The Complainants and Mr. Sandhu's statements regarding the circumstances of their final pay are in conflict. However, I find the Complainants' statements more credible. Rideway did not provide the OBCCTC auditor with the Complainants' final cancelled cheques and was aware that the Complainants had not deposited them. It is unlikely that the Complainants would take the final cheques, not cash them, and then allege that they didn't receive them. Further, Rideway believed it was owed money by the Complainants and therefore had motive to not issue the final cheques until it had been paid.
80. Rideway suggests that the Complainants did not cash the cheques because doing so would affect their permanent residence status. Rideway did not explain how cashing the cheques would impact their permanent residence status and there is no obvious explanation for this.
81. It is possible that the Complainants received their final pay cheques but did not cash them because they were concerned that Mr. Sandhu might make a complaint to IRCC. (As set out above, a third driver told the OBCCTC auditor that Rideway threatened to write a false report to immigration officials that would hurt his chances of becoming a permanent resident if that driver did not provide cash back, and Mr. Sandhu told the investigator that he had lodged a complaint with IRCC regarding the Complainants.) However, if that were the case, it is unlikely they would have then lodged a complaint with the OBCCTC that they did not receive the cheques, knowing that doing so would alert Mr. Sandhu and likely lead to him lodging a complaint with the IRCC anyway. The fact that the Complainants refused to sign the "Full and Final Settlement" letters is also inconsistent with the idea that they would have avoided cashing their final pay cheques to avoid aggravating Mr. Sandhu.
82. The auditor determined that the Complainants did not received their final pay based upon a review of the records supplied by Mr. Sandhu to the OBCCTC. Mr. Sandhu denied receiving any email communication from the Complainants seeking their final pay cheques or T4 slips but those communications were provided by the Complainants to the OBCCTC.

83. For these reasons, I find that Rideway did not give the Complainants their final pay cheques, resulting in a violation of section 24 of the *Regulation* for failure to pay for container trucking services performed in November 2020 within the prescribed timeframe.
84. I also find that Rideway violated Appendix A 1(f) of its CTS Licence when it provided the auditor with records intended to demonstrate that the Complainants had received their final pay. This was a misrepresentation of monies paid to the Complainants.
85. Further, Rideway violated Appendix A 1(h) of the CTS Licence (which prohibits licensees from threatening, harassing, coercing, or attempting to influence a trucker in any way, either directly or indirectly, regarding their right to retain their pay). It did so by asking the Complainants for cash back and by attempting to coerce the Complainants into signing the “Full and Final Settlement” letters confirming that the Complainants owed Rideway cash back in exchange for their final pay.

Consideration of appropriate penalty

86. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act* or the term of a licence, 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 can be an amount up to \$500,000.
87. In this case it has been determined that Rideway violated section 24 of the *Act* and Appendix A 1(h) of the CTS Licence when Mr. Sandhu solicited cash rebates from the Complainants for the difference between the LMIA rate of \$24.00 per hour and the Commissioner’s rate of \$27.50 per hour.
88. Rideway committed another violation of Appendix A 1(h) of its CTS Licence when Mr. Sandhu attempted to coerce the drivers into signing “Full and Final Settlement” letters in exchange for their final pay.
89. It has also been determined that Rideway violated section 24 of the *Regulation* when it failed to pay the Complainants for container trucking services performed in November 2020 within the prescribed timeframe.
90. Rideway further violated Appendix A 1(f) of its CTS Licence when it misrepresented the monies paid to the Complainants.
91. Rideway’s solicitation of cash back is a very serious matter. Cash back schemes undercutting driver compensation have long been identified as a concern in the container trucking industry.² Deputy Commissioner Ready referenced “brown bag” schemes in a January 2016 Industry Advisory Committee meeting and warned that licence cancellation was a potential course of action should the OBCCTC discover such activity occurring. This was restated in a bulletin issued by the OBCCTC

² See, for example: “Drayage Owner Operators: Understanding Container Drayage Owner-Operators in Metro Vancouver, Summary Report,” Asia Pacific Gateway Skills Table, July 2013, page 40; “Recommendation Report – British Columbia Lower Mainland Ports,” Vince Ready and Corinn Bell, October 16, 2014, page 37.

on October 11, 2016.³

92. Cash back schemes are expressly prohibited under section 24 of the *Act* because government recognized that cash back schemes were contributing to the rate undercutting that was destabilizing the industry and that had contributed to three work stoppages in 1999, 2005 and 2014. This is clear from previous reports including the Ready/Bell recommendation report.
93. In this case, it has been established that Rideway solicited cash back, although the amount of money Rideway received has not been established.
94. This is not Rideway's only violation arising out of this audit and investigation. It has also been determined that Rideway violated two prohibited practices under the CTS Licence in its attempt to solicit rebates from the Complainants and cover up the events when audited by the OBCCTC. In these circumstances, I have concluded that an administrative fine is appropriate.
95. In Sandhar Trucking Ltd. (CTC Decision No. 18/2018), a licensee was found to have violated section 24 of the *Act* and section 1(h) of Appendix A to Schedule 1 of the 2018 Container Trucking Services Licence when the licensee received cash-back following the payment of monies owed to a driver. Sandhar Trucking Ltd. was penalized \$50,000.00 for the violation.⁴
96. In this case, I have decided that an administrative penalty of \$50,000.00 is also appropriate. While I recognize that this is Rideway's first finding of non-compliance, there are multiple findings of non-compliance arising out of this audit and investigation and the nature of the most critical non-compliance in this case is severe.
97. It is not severe in fiscal terms. Other decisions have revealed much higher amounts of money owing to drivers. It is severe because the nature of the non-compliance is very serious. Large penalties or licence cancellations are appropriate where licensees have been found to be engaging in schemes resulting in rate undercutting or other egregious labour practices that are strictly prohibited by the *Act*.
98. Cash back schemes are prohibited under the legislation because they undercut rates, impoverish drivers and can destabilize an industry of provincial and national importance.
99. Container truckers in the Lower Mainland are historically vulnerable employees and the *Act* is intended to protect them from employers who seek to exploit their workforce in any number of ways, including by requesting cash back and withholding pay. In this case, the violations involve particularly vulnerable drivers, from another country, on work permits and whose livelihoods and possibly Canadian residency can be significantly prejudiced by the actions of their employers.

³ OBCCTC Bulletin, "Container Trucking Services Licence - Prohibited Practices – Cash Back," October 11, 2016.

⁴ Sandhar Trucking Ltd. (CTC Decision No. 18/2018), paragraph 46.

100. 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 Rideway Transport Ltd. in the amount of \$50,000.00;
- b. Should it wish to do so, Rideway Transport Ltd. has 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 Rideway Transport Ltd. provides a written response in accordance with the above, I will consider its response and I will provide notice to Rideway Transport Ltd. of my decision respecting that response.

101. This decision will be delivered to Rideway Transport Ltd. and may be published on the Commissioner's website (www.abcctc.ca) after Rideway Transport Ltd.'s response period has closed.

Dated at Vancouver, B.C., this 31st day of August, 2021.



Michael Crawford, Commissioner