



August 12, 2021

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. 07/2021)

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. In June 2020, the Commissioner received complaints from four drivers (the "Complainants"), alleging the following:
 - The Complainants (all listed as company drivers by the Companies) were required by the Companies to become independent operators ("I/Os") and purchase company-owned trucks. The Complainants purchased trucks from the Companies in 2018 and, thereafter, the Companies deducted amounts from their pay to cover the truck purchase and insurance costs. Some of the Complainants alleged that truck ownership was never transferred to them after the final payments were made;
 - From the point at which the Companies began deducting truck payments until 2020, the Companies failed to pay the Complainants the correct trip rates, fuel surcharge, and a Positioning Movement Rate ("PMR") for I/Os in accordance with the *Regulation* and the Commissioner's Rate Order ("the Rate Order");
 - The Companies did not pay the Complainants wait time remuneration;
 - The Companies did not pay the Complainants within the time period required by the

Regulation;

- The Companies instructed the Complainants not to record some trips to and from the Companies' yard to customer locations on their time sheets and the Complainants were therefore not paid for all container trucking services;
 - The Companies deducted incorrect insurance amounts from the Complainants' pay cheques; and
 - The Complainants were not paid amounts found owing in a previous audit.
5. In support of their allegations, the Complainants initially supplied the OBCCTC with pay statements and daily trip sheets and time sheets for the period between March 1, 2018 - February 28, 2020. The documentation provided by the Complainants did not include every month within this time period.
6. On June 12, 2020, the Commissioner directed an investigator to interview the Complainants. A summary of these interviews is set out below. In August 2020, following the interviews, the Commissioner directed an auditor to audit the Companies' records to determine if the Companies were in compliance with the legislation for the periods of July 2018, August 2019 and February 2020 ("Initial Audit Period"). Investigation and audit details and calculations are summarized below.

Investigation

7. In late July and early August 2020, an OBCCTC investigator interviewed each of the Complainants separately, with the assistance of a translator. Several follow-up interviews were later conducted with each of three of the four Complainants. A summary of the Complainants' statements given at the interviews is as follows:

Complainant #1

8. The Office of the British Columbia Container Trucking Commissioner ("OBCCTC") initially interviewed Complainant 1 on August 5, 2020, and conducted follow-up interviews on October 9, 2020, January 9, 2021 and January 11, 2021.
9. During his first interview, Complainant 1 stated that he was hired by the Companies as a company driver sometime in 2015 or 2016. In January or February 2018, the Companies' owner, Jag Graya, approached Complainant 1 and told him he would have to purchase a company-owned truck and that if he refused, he would be given no work. Complainant 1 verbally agreed to purchase a truck for \$10,000.00 and paid for the truck through installment payments deducted from his pay cheques. The truck was paid for, and the deductions ceased, by the end of 2018 or early 2019. The pay statements supplied by Complainant 1 showed the installment payments deducted from his pay.
10. Complainant 1 stated that after he completed his truck payments, he asked Mr. Graya to transfer the ownership of the truck to his name. Mr. Graya agreed to do so; however, he continued to delay the process by advising Complainant 1 that he would complete the transfer in the coming weeks or months, but never did. Complainant 1 asked Mr. Graya to meet him at an ICBC insurance broker's office to complete the process, but he did not agree to do so. To date, Mr. Graya has not transferred the ownership of the truck to Complainant 1.

11. Complainant 1 further reported that once he agreed to purchase a truck in January or February 2018, the Companies began paying him as a trip rate I/O, but he was paid for round trips rather than per trip as required by the *Regulation*, and was not paid for wait times, a PMR or a fuel surcharge. Complainant 1 alleged that the Companies charged him for “port fees” and truck parking as well as for WorkSafe BC coverage and insurance charges (some of which are properly paid for by I/Os). Complainant 1 also said that in March or April 2020, the Companies switched him to an hourly I/O pay model. The pay statements supplied by Complainant 1 showed insurance payments deducted from his pay.
12. On or about September 27, 2020, three of the Complainants, including Complainant 1, contacted the OBCCTC and complained that the Companies’ owner had cut off their truck insurance and was no longer providing work, allegedly in response to the initiation of the August 2020 audit. On October 1, 2020, one of the Complainants called the OBCCTC and stated that a Punjabi speaking woman had called him, told him she was from the OBCCTC, and asked if he had made a complaint.
13. The Commissioner then directed an investigator to re-interview the Complainants to determine if the Companies had violated section 28 of the *Act*, which prohibits licensees from penalizing, threatening or discriminating against a trucker as a result of complaint, inspection or investigation. An OBCCTC investigator re-interviewed Complainant 1 on October 9, 2020.
14. In the October 9, 2020 interview, Complainant 1 stated that on several occasions in August 2020, Mr. Graya spoke with him about the OBCCTC audit and asked if he had filed a complaint against the Companies with the OBCCTC. Complainant 1 also said that Mr. Graya asked him to sign a letter stating that he was paid properly and stating that he did not file a complaint, and that Mr. Graya threatened to withhold work from Complainant 1 if he did not sign the letter. Complainant 1 stated as well that two other employees of the Companies also asked him if he had filed a complaint. Complainant 1 denied lodging a complaint with the OBCCTC and refused to sign the letter presented by Mr. Graya.
15. Complainant 1 also reported that, sometime in September 2020, he was notified by Mr. Graya in a telephone call that the insurance on his truck had been cut off and that he would not be receiving any work and that he would not be permitted to work at the ports as the Companies had removed the truck tag assigned to his truck.
16. Still in the October 9, 2020 interview, Complainant 1 stated that, on September 15 or 16, 2020, around 10:00am or 11:00am, he received a telephone call from an unknown number and had a conversation that lasted about three or four minutes. The Complainant said that the female caller identified herself as Jaspreet or Jasleen or another name starting with a ‘J.’ Due to poor cellphone reception in his home, Complainant 1 was not able to fully hear her name and she said it very quickly. The caller informed him that she was contacting him from the Commissioner’s office regarding his complaint and asked him to confirm whether he had filed a complaint against the company. He responded in the affirmative. She asked him whether he would like to continue with his complaint about two to three times and he responded in the affirmative. She advised him that the Commissioner’s office would get him his money as it pertained to the \$25 ‘empty can’ payments he had not received in the past (likely a reference to the PMR). Complainant 1 reported that he has not received any further communication from this person since the date of this call.

17. Complainant 1 further reported that, on October 1, 2020, Mr. Graya told him to move his truck from the Companies' yard. Complainant 1 refused and subsequently an employee of the Companies advised him that Mr. Graya would deduct \$500.00 from his outstanding pay if the GPS assigned to his truck by the Port of Vancouver was not returned. Complainant 1 told the employee that it was not his responsibility to return the GPS as the truck was not in his name. Sometime later, due to fear that the truck may be towed, Complainant 1 moved the truck to another company yard located near Fraser Surrey Docks on Tannery Road, where the Companies advise it remains. Complainant 1 stated that Mr. Graya informed him that he would charge \$325 for storage per month, which would be deducted from his outstanding pay.
18. The OBCCTC investigator conducted follow-up interviews with Complainant 1 on January 9 and 11, 2021 at the direction of the Commissioner, following allegations made by Mr. Graya in a letter dated November 12, 2020 that the Complainants had fabricated employment records and were involved in the theft of records requested by the OBCCTC. Mr. Graya had advised the OBCCTC auditor that he had initiated legal action against one of the Complainants for some of the alleged conduct.
19. Complainant 1 denied falsifying any pay records. Complainant 1 stated that he requested a letter of employment but could not recall ever receiving one. Complainant 1 was not aware of the alleged theft of the Companies' records or any legal action being taken against him by the Companies. The OBCCTC investigator conducted a BC Civil Court search and was unable to find any record of legal proceedings between the Companies and Complainant 1.
20. Also, during the follow-up interviews in January 2021, Complainant 1 stated that Mr. Graya asked him in October 2020 if he would like to return to work. Complainant 1 agreed to return to work and was dispatched on October 27, 2020. On two occasions, Mr. Graya asked Complainant 1 to retract his complaint, and, on November 9, 2020, an employee of the Companies called Complainant 1 and also asked him to retract his complaint with the OBCCTC. Complainant 1 refused on all occasions and on November 9, 2020 was sent home from work by Mr. Graya. Complainant 1 also reported that on December 4 or 5, 2020, he was called to the Companies' yard on the pretense that he was to collect pay. When Complainant 1 arrived, he found his truck blocked by container loading equipment. Mr. Graya threatened to sell his truck. By way of an employee, Mr. Graya also gave Complainant 1 a cheque for \$2,000.00, which Complainant 1 accepted.
21. At the time of the final interviews, Complainant 1 advised that he had not had contact with Mr. Graya since accepting the \$2,000.00 cheque, but that on January 3, 2021 he had visited the parking yard used by the Companies to inspect the condition of his truck and discovered that the GPS unit was missing. He said that the GPS unit had been attached to the truck on his last day of employment on November 9, 2020.

Complainant #2

22. The OBCCTC investigator conducted one interview with Complainant 2, on July 23, 2020.
23. Complainant 2 stated that he was hired by the Companies as a company driver in December 2016. Complainant 2 stated that he was not paid money he believes was owed to him from the Companies' previous OBCCTC audit in 2017/2018 and alleged that Mr. Graya took photos of payment cheques to provide to the OBCCTC as proof of payment but never gave the cheques to the

drivers.

24. According to Complainant 2, in February 2018, Mr. Graya told drivers that they could purchase a company-owned truck and that if they refused, they would be given no work. Complainant 2 verbally agreed to purchase a truck for \$15,000.00 and paid for the truck through installment payments deducted from his pay cheques. Complainant 2 supplied pay statements that showed the installment payments deducted from his pay. Complainant 2 was told by Mr. Graya that the purchase price included both the truck and the associated truck tag. Mr. Graya also told Complainant 2 that he could not transfer ownership of the truck to his name as it would be “removed from the port” if he did so. Complainant 2 was told that the truck ownership and tag would be transferred to him after he paid off the truck.
25. Complainant 2 further reported that the truck was paid for, and the deductions stopped, by December 2018. After Complainant 2 completed his truck payments, he asked Mr. Graya to transfer the ownership of the truck to his name. Mr. Graya stalled, but, six months later, on June 14, 2019, Complainant 2 and Mr. Graya attended an ICBC location and transferred the ownership of the truck to Complainant 2. Complainant 2 assumed that the transfer of the ownership also meant the transfer of the truck tag.
26. Complainant 2 further reported that once he had agreed to purchase a truck, the Companies began paying him as a trip rate I/O. Complainant 2 stated that he was paid for round trips rather than per trip as required by the *Regulation*, and was not paid for wait times, a PMR or a fuel surcharge. When the fuel surcharge was later paid, the payments were incorrect. Complainant 2 also told the investigator that the Companies charged him for “port fees” and truck parking as well as for WorkSafe BC coverage and insurance charges.
27. Complainant 2 told the interviewer that, in January or February 2020, he asked Mr. Graya whether he could move to another company with the truck he had purchased. Mr. Graya responded that he could not do so as the truck tag was still owned by the company, which was the first time the complainant learned of this.
28. Complainant 2 further stated that, as a result of his complaint, Mr. Graya stopped providing him work on or about February 20, 2020, but that the Companies continued to charge him insurance on the truck. Complainant 2 reported that he could not afford the required truck repair costs and therefore asked Mr. Graya to cancel the truck’s insurance. As of the date of the interview, the truck remained parked at the Companies’ yard.
29. Complainant 2 reported that, sometime in March or April 2020, he received a telephone call from Mr. Graya requesting to have the truck back so it could be used by a company driver. An employee of the Companies also spoke with the complainant regarding the return of the truck. In April or May 2020, Complainant 2 agreed to sell the truck back to Mr. Graya for \$8,000.00. Following the purchase, the ownership of the truck was transferred back to the Companies. The Companies have provided evidence showing the truck purchase and ownership transfer.

Complainant #3

30. The OBCCTC investigator conducted three interviews with Complainant 3, on August 8, 2020, October 10, 2020 and January 10, 2021.
31. Complainant 3 stated that he was hired by the Companies as a company driver sometime in September or October 2016. In January or February 2018, Complainant 3 was travelling in India when he learned that Mr. Graya was approaching drivers and asking them to purchase trucks. When he returned to Canada in April 2018, Complainant 3 spoke with Mr. Graya and was told that there was no work for him as a company driver. Mr. Graya asked Complainant 3 to purchase a company-owned truck. Complainant 3 verbally agreed to purchase a truck for \$17,000.00 and provided a \$7,000.00 down payment. The balance of the money was paid by installments deducted from his pay cheques. The pay statements supplied by Complainant 3 showed the installment payments deducted from his pay.
32. Mr. Graya told Complainant 3 that he would transfer the ownership of the truck to him after the completion of the payments on the outstanding balance. Complainant 3 did not recall any discussions with Mr. Graya related to the purchase or transfer of the truck tag associated with the truck but Complainant 3 stated that he did not know what a truck tag was at the time of the truck purchase.
33. Complainant 3 paid off the truck, and the deductions ceased in December 2018. After Complainant 3 completed his truck payments, he asked Mr. Graya to transfer the ownership of the truck to his name. Mr. Graya agreed to do so; however, he continued to delay the process until June 2019 when Complainant 3 and Mr. Graya met at an ICBC insurance broker's office to complete the ownership transfer.
34. Complainant 3 also reported that once he agreed to purchase a truck, the Companies began paying him as a trip rate I/O. Complainant 3 stated that he was paid for round trips rather than per trip as required by the *Regulation*, and was not paid for wait times, a PMR or a fuel surcharge. He also said that when the fuel surcharge was later paid, the payments were incorrect. Complainant 3 was charged for "port fees" and truck parking as well as WorkSafe BC coverage and insurance charges. Pay statements supplied by Complainant 3 showed varying amounts of insurance deductions. In May 2020, the Companies switched Complainant 3 to an hourly I/O pay model.
35. An OBCCTC investigator re-interviewed Complainant 3 on October 10, 2020. In that interview, Complainant 3 stated that his workload began to decrease in August 2020, and that on September 2 or 3, 2020, Mr. Graya spoke with him about the OBCCTC. Mr. Graya asked Complainant 3 to sign an affidavit attesting that he did not file a complaint with the OBCCTC and that the Companies did not own him any money. Complainant 3 refused. Mr. Graya promised more work if Complainant 3 signed the affidavit, but Complainant 3 refused once again.
36. Also, in his October 10, 2020 interview, Complainant 3 reported that on September 9 or September 10, 2020, Mr. Graya informed him that his truck insurance had been "reduced", which Complainant 3 took to mean had been cancelled. On September 10, 2020, an employee of the Companies called Complainant 3 and told him that his truck had been 'kicked out' of the port. On September 10 or 11, 2020, Complainant 3 spoke with the same employee who told him that if he

wanted work, he needed to state in writing that he had no complaints and that if he did not, he was to remove the GPS affixed to his truck. The employee told Complainant 3 these were Mr. Gray's direct instructions and that he would be charged \$500 if he did not remove the GPS and return it to the port. Complainant 3 declined to remove the GPS.

37. Still in his October 10, 2020 interview, Complainant 3 stated that on September 12 or 13, 2020, he participated in a phone call with two other complainants and the Companies' employee who repeated the statements noted above. On September 30, 2020, he received another telephone call from the Companies' employee advising him that the Companies had changed yards and that he needed to move the truck to the new yard. When he arrived at the yard to move the truck, the truck would not start, and it was towed to a mechanic where it was still located at the time of the interview.
38. Sometime between September 15 and 17, 2020, between 11:00am and 1:00pm, Complainant 3 received a telephone call from blocked number and had a conversation with a female caller speaking in English who provided her name, which he could not recall, and identified herself as being from the "Trucking Commissioner's Office." Complainant 3 advised the caller that he required Punjabi interpretation and the caller began speaking to him in Punjabi. The caller advised that there was a complaint against "your" company and asked whether he filed the complaint. The caller also advised that the company was being audited and asked whether he would like his "money." Complainant 3 responded that he should receive the money that he is owed. The caller asked whether he was an owner/operator or a driver. Complainant 3 responded that he paid \$17,000.00 for his truck. The caller responded by asking whether he wished to continue with his "inquiry" and then abruptly ended the call before Complainant 3 could respond.
39. Since September 1, 2020, Complainant 3 has not received any work nor has he received a letter of termination or a record of employment from the Companies. As at the October 2020 interview, Complainant 3 had not been paid for work he completed in August 2020.
40. A third interview was conducted with Complainant 3 on January 10, 2021 at the direction of the Commissioner and following allegations made by Mr. Gray against the Complainants that they had fabricated letters of employment, used fabricated records of employment to secure loans and were involved in the theft of the records belonging to the Companies and requested by the OBCCTC. Mr. Gray had advised the OBCCTC auditor that he had initiated legal action against one of the Complainants for some of the alleged conduct.
41. When asked about Mr. Gray's allegations, Complainant 3 denied falsifying any pay records. Complainant 3 stated that he never requested a letter of employment and never used pay slips or T4/T4A slips for personal loans. Complainant 3 maintained that was not aware of the alleged theft of the Companies' records or any legal action being taken against him by the Companies. The OBCCTC investigator conducted a BC Civil Court search and was unable to find any record of legal proceedings between the Companies and Complainant 3.

Complainant #4

42. Complainant 4 was interviewed on July 25, 2020 and stated that he was hired by the Companies as a company driver sometime in October 2017. Complainant 4 stated that he was not paid money

owing from the Companies' previous OBCCTC audit and alleged that Mr. Graya reportedly took photos of payment cheques to provide to the OBCCTC as proof of payment but never gave the cheques to the drivers.

43. Complainant 4 also told the OBCCTC investigator that, in January 2018, Mr. Graya told drivers that there was no work for them as company drivers and that drivers could purchase a company-owned truck and become an I/O if they wanted to continue working. Complainant 4 verbally agreed to purchase a truck and truck tag for \$12,000.00 and paid for the truck through installment payments deducted from his pay cheques. The pay statements supplied by Complainant 4 showed the installment payments deducted from his pay.
44. Complainant 4 reported that the truck was paid for, and the deductions ceased, in November 2018. After Complainant 4 completed his truck payments, he asked Mr. Graya to transfer the ownership of the truck to his name. Mr. Graya delayed the process but eventually agreed to the transfer and provided dates to attend an ICBC insurance broker's office to complete the transfer. In May or June 2019, Complainant 4 went to the broker's office at a date and time that had been agreed upon, but Mr. Graya did not attend. Complainant 4 called Mr. Graya who advised him that he had "some problems," and that he would transfer the truck ownership later but did not provide a specific date. Mr. Graya later told Complainant 4 that the truck could not be transferred because the truck tag was non-transferable and that if the truck ownership was transferred there would be no work for him. The truck ownership was never transferred.
45. Complainant 4 also told the interviewer that once he had agreed to purchase a truck, the Companies began paying him as a trip rate I/O. Complainant 4 stated that he was paid for round trips rather than per trip as required by the *Regulation*, and was not paid for wait times, a PMR or a fuel surcharge. When the fuel surcharge was later paid, the payments were incorrect. Complainant 4 was also charged for "port fees" and truck parking as well as WorkSafe BC coverage and insurance charges which were shown in the pay statements provided by Complainant 4. In May 2020, the Companies switched Complainant 4 to an hourly I/O pay model.
46. Complainant 4 reported that he raised his pay concerns with Mr. Graya and other I/Os at a meeting in the Companies' yard on May 11, 2020. Complainant 4 threatened to file a complaint with the OBCCTC. Mr. Graya subsequently advised Complainant 4 that his employment with the Companies would be terminated because of his complaints pertaining to pay. Complainant 4 responded by sending out a group text to Mr. Graya and other employees of the Companies in which he referenced his history with the Companies, the purchase of the truck, and his agreement with Mr. Graya. He also sought a formal notice of termination of his employment, the reason for such termination, and a record of employment (ROE). A copy of the text was provided to the OBCCTC and to the Companies for response.
47. Complainant 4 told the investigator that he received a telephone call from Mr. Graya shortly after sending the text message, but he did not answer. He then received a telephone call from an employee of the Companies who advised him that there was no problem and that he could continue with his work.
48. Complainant 4 also provided photographs pertaining to a company truck, which he alleged was operating without a truck tag. The photographs showed the truck, its license plate and the number

of the container it was carrying. A picture of a scale ticket relating to the container depicted was also provided. Complainant 4 believed that this evidence demonstrated that the Companies were using untagged trucks to perform off-dock container trucking services.

49. An OBCCTC investigator re-interviewed Complainant 4 on October 9, 2020. Complainant 4 stated in that interview that his workload began to decrease in August 2020. In mid-August 2020 Mr. Graya phoned Complainant 4 and said that a complaint had been filed against the Companies and that he did not know who filed the complaint. He asked Complainant 4 if he had filed a complaint and Complainant 4 responded in the negative. Mr. Graya then asked Complainant 4 if he knew who would have filed a complaint. Complainant 4 said he did not.
50. Complainant 4 also said that, on September 10, 2020, an employee of the Companies spoke with him and two other complainants. He advised them that unless they signed a note saying that they did not file a complaint, they would not receive any money owed to them. Sometime in late September or early October 2020, Complainant 4 was on another conference call with the same attendees in which the Companies' employee said that they would not receive work, or any money owed unless they signed a statement of "non-complaint." They were told to remove the GPS devices from their trucks and return them to the port if they did not sign this statement.
51. Complainant 4 further reported that in early September 2020, Mr. Graya cancelled his truck insurance and, since then, the truck had been parked in the Companies' yard. Complainant 4 moved the truck in early October at the request of an employee of the Companies. At the time of interview, Complainant 4 had not been paid for his work in August 2020.
52. On September 13 or 14, 2020, Complainant 4 received three calls from a blocked telephone number, which he did not answer. No message was left by the caller.
53. A third interview was conducted on December 18, 2020 at the direction of the Commissioner in response to the allegations made by Mr. Graya against the Complainants in his letter of November 12, 2020 and following further allegations made by Mr. Graya in a letter to the OBCCTC dated December 15, 2020. In the later letter, Mr. Graya accused Complainant 4 of fabricating pay stubs and a record of employment letter which, he stated, were submitted to banking institutions by Complainant 4 for the purpose of securing a mortgage/loan.
54. Mr. Graya supplied an email dated January 6, 2019 sent to the Companies by Complainant 4 in support of his allegation. The email had payroll documents and a pay stub of Complainant 4's attached. Mr. Graya also supplied a copy of a confirmation of employment letter respecting Complainant 4, dated October 22, 2018 and signed by Mr. Graya, which he states was forged.
55. Complainant 4 denied falsifying any pay records. Complainant 4 stated that he requested one or two letters of employment from Mr. Graya. The first letter of employment requested was regarding an immigration application for one of Complainant 4's in-laws. Complainant 4 could not remember in what year that letter had been requested.
56. Complainant 4 also stated that, in mid-October 2018, he began the process of applying for a home mortgage, and that he had drafted the contents of an employment letter to secure a mortgage on a home purchase. In turn, Mr. Graya scanned the letter with a signature and emailed it to

Complainant 4. The OBCCTC investigator showed Complainant 4 a copy of the letter received from Mr. Graya but Complainant 4 was unsure if the letter in question was the one he was describing.

57. Complainant 4 further stated that he had been asked to draft letters of employment for other employees and send them to Mr. Graya via email. Complainant 4 denied forging Mr. Graya's signature on the letter. Complainant 4 also stated that, as well as driving for the Companies, he assisted Mr. Graya with some accounting work and, as part of those duties, had drafted letters of employment for company employees, including for two of the Complainants, for the purposes of securing mortgage financing through a real estate agent. Complainant 4 stated that Mr. Graya had asked him for a referral to the same real estate agent for help in obtaining a mortgage as well. Complainant 4 further reported that, when Mr. Graya was unsuccessful in obtaining a mortgage, he became upset and began treating Complainant 4 differently by giving him less work.
58. Complainant 4 reported that he was not aware of the alleged theft of the Companies' records or any legal action being taken against him by the Companies. The OBCCTC investigator conducted a BC Civil Court search and was unable to find any record of legal proceedings between the Companies and Complainant 4.

Letters to Complainant 4

59. On February 24, 2021, the OBCCTC was advised by a third party that Mr. Graya was sending out letters to Complainant 4. Copies of the letters were supplied to the OBCCTC by the third party. The first letter reviewed by the OBCCTC investigators is dated February 17, 2021 and is on Coast Pacific Carrier Inc. letterhead and signed by Jag Graya. The letter is addressed to Complainant 4 and begins with an accusation against him pertaining to an alleged "fraud" committed against the Companies to secure mortgages and loans for personal use. The letter claims that a "fraud alert" had been placed with "all" banking institutions associated with Complainant 4 and that a report has been filed with the RCMP. It further asserts that Complainant 4 allegedly claimed a loss with "ICBC" seeking benefits in October of an unidentified year and that ICBC was allegedly notified of the "fraud attempts." The letter concludes by advising that Complainant 4 will be sent a "court notice" a "few days later" and that the Companies "hope" Complainant 4 will co-operate with "this upcoming investigation."
60. The second letter was from Global Unity Consulting Corporation and dated February 17, 2021. It identifies the author as Jasmeet Dhaliwal, whose position is noted as "consultant," and is written on an apparent company letterhead. The letter is addressed to Complainant 4 at a different residential address than the address referenced in the letter noted above and is titled "Re: Debt owed to Coast Pacific Carrier."
61. The letter alleges that by August 3, 2020, Complainant 4 was to have paid \$12,000.00 to Ms. Dhaliwal and that this "Debt" remains outstanding despite unspecified requests for payment pertaining to the "Lease Payment" for a vehicle with Vehicle Identification Number (VIN) of FUJBBCVX7LW05176 and plate number of JE8443. The letter demands payment within 90 days of the date of the letter, which was to be remitted to 8035 170th Street, Surrey, BC, which is the address for Coast Pacific Carrier Inc. The letter further states that if legal proceedings are commenced to secure payment, Complainant 4 may be liable for any related costs, including lawyer fees, damages, and punitive damages. The letter ends by suggesting that Complainant 4 discuss his

rights and responsibilities with his legal counsel. The letter is signed by Ms. Dhaliwal.

Audit

62. An audit letter was sent to the Companies on September 1, 2020, requesting records for the Initial Audit Period by no later than September 15, 2020. The Companies requested an extension, which was granted until September 22, 2020. On September 22, 2020, the Companies notified the OBCCTC that the requested records could not be supplied. The Companies advised that all records for the period between January 2016 and August 2020 had been stolen and that a police report had been filed.
63. The Companies were given more time to produce any remaining documentation in support of the audit/record request, but no records were received. The OBCCTC also asked the Companies for a copy of the police report regarding the break-in and theft of the Companies' records. The Companies were not able to supply any further detail and, as such, the OBCCTC contacted the RCMP and obtained a copy of the RCMP report. The report noted that Amandeep Graya reported a break and enter into her shed on September 17, 2021 and that the break-in appeared to have occurred sometime within a two-week period between September 3, 2021 and September 17, 2021. According to the RCMP report, Ms. Graya stated that important documents were kept in the shed, the attending officer noted that documents were scattered around the shed, and Ms. Graya reported that nothing was missing. The RCMP file had been closed because there was insufficient evidence to proceed with the investigation.
64. On October 6, 2020, the OBCCTC requested a detailed listing of the records that were stolen, any remaining records pertaining to the Initial Audit Period, and a list of original documentation held by the Companies for September 2020 (the first pay period after the break in) by October 8, 2020. The Companies supplied this information on time.
65. To ascertain whether payments had been made to the Companies' drivers during the Initial Audit Period, the OBCCTC also requested bank statements and cancelled payroll cheques for the July 2018 period. The Companies advised that these records were not available because the bank account information "was in the sole name of [Mr. Graya's] deceased partner" and that Mr. Graya "only had signing authority, which was revoked earlier this year [2020] by his estate administrator."
66. The auditor reviewed the September 2020 records supplied by the Companies and, on November 6, 2020, the OBCCTC sent the Companies a letter, listing a number of questions regarding the September 2020 records and outlining the allegations made by the Complainants for the Companies' response by November 19, 2020.
67. On November 12, 2020 the Companies provided answers to the auditor's questions and denied all of the allegations made by the Complainants. The Companies argued that the records and documents provided by the Complainants were forged and that all of their drivers were moved to an hourly pay model in 2018 and therefore not owed any fuel surcharge, trip rate or PMR payments as alleged.
68. The Companies also suggested that the Complainants may be responsible for the theft of company documents and alleged that one of the Complainants had committed fraud by forging documents to receive financing from a financial institution. The Companies advised it intended to file legal

proceedings against this Complainant. Lastly, the Companies noted that the Complainants were not included in the previous audit, and therefore were not owed any amounts owing from that audit.

69. On December 1, 2020, the OBCCTC sent another letter requesting the following of the Companies:

- Evidence to support the Companies' allegation that the Complainants had forged their logbooks;
- Evidence to support the Companies' statement that the Companies began paying the Complainants by the hour in 2018;
- Evidence to support the Companies' claim of legal action taken against the Complainants;
- Evidence to support the Companies' claim of a verbal lease-to-own agreement with the Complainants and evidence to support the Companies' claim that the Complainants made \$1,000.00 per month payments to the Companies towards the ownership of the trucks; and
- Payroll records for the period October 1 – 31, 2020 to support insurance deductions listed on the Complainants' pay records.

70. On December 15, 2020, the Companies responded to the letter by providing bank statements for September 2020 and stating that all other evidence was stolen in the theft. They also stated that the lease-to-own agreements were all verbal arrangements, and the Companies had no written documentation of truck purchases.

I/Os & Company Drivers – September & October 2020

71. The Companies sponsored four I/Os in the month of September 2020 and five I/Os in the month of October 2020. Per the Companies' payroll records, all the I/Os were paid by the hour.

72. The auditor reviewed the records and determined that the I/Os were paid correctly in September and October 2020. The auditor contacted two I/Os (not any of the Complainants) and was advised by the I/Os that they had been switched to hourly pay (from a trip rate pay model) sometime in June or July of 2020; however, one of the I/Os sent the auditor documents from 2019 which showed that the I/O had been paid by the hour at that time.

73. The Companies employed two company drivers in September 2020 and three company drivers in October 2020. The auditor reviewed the records and determined that the company drivers were also paid correctly during these periods.

The Complainants

74. All four Complainants provided the OBCCTC with documents in support of their allegations. Because of the alleged theft of the Companies' records, the auditor used pay statements, trip sheets and time sheets provided by the Complainants to calculate an average amount owing for each Complainant.

75. The auditor calculated the amounts owing for each Complainant within the period covered by the records provided by the Complainants, beginning on the date in which each Complainant alleged, and their pay statement deductions confirmed, that they were sold trucks and "converted" to I/Os. These dates differed for each Complainant.

76. The auditor reviewed the records and determined that the Complainants were paid by the trip for the period from March 1, 2018 - June 30, 2019 and hourly from July 1, 2019 - February 28, 2020. All the Complainants provided the auditor with records for at least some of the months from the first period (March 1, 2018 - June 30, 2019). Two of the Complainants did not provide the auditor with any records for the second period (July 1, 2019 - February 28, 2020); therefore, calculations for these two Complainants ended on June 30, 2019.

Audit – March 1, 2018 – June 30, 2019

77. The auditor reviewed the Complainant's records for the period March 1, 2018 to June 30, 2019 and determined that the Companies had not paid the Complainants correct trip rates. Specifically, the Companies failed to increase the off-dock trip rates to meet the June 2018 increase in the Rate Order. The Companies also deducted an amount for fuel from each Complainant's pay cheque but did not pay the Complainants a fuel surcharge until July 1, 2018. The fuel surcharge calculated after July 1, 2018 was calculated incorrectly. An insurance amount and an amount for truck payments was also deducted from each Complainant's monthly pay during this period.

Audit – July 1, 2019 – February 28, 2020

78. The auditor reviewed two of the Complainants' records for the period of July 1, 2019 – February 28, 2020 and determined that the Companies had not paid the two drivers the correct hourly rate and had incorrectly calculated the fuel surcharge. The auditor further determined that the Companies had deducted increasing amounts of insurance each month. The Complainants advised the auditor that the insurance deductions decreased in subsequent months after they asked the Companies for records to support the increasing deduction amounts.

79. The auditor noted that no PMR was paid because the drivers were being paid by the hour during the period under review. One of the Complainants provided two timesheets for the same month in August 2019 and explained to the auditor that the Companies made him fill out two timesheets, one by the hour and one by the trip. He stated that the Companies would pay him according to which time sheet required the least amount of payment. He stated that this method of payment allegedly continued until June 1, 2020 but the Complainant was only able to provide the auditor with two sets of time sheets, for August 1 – 31, 2019. The auditor reviewed these records and determined that the Companies were paying the Complainant by the hour (the lower of the two payments), rather than the trip.

Amounts owing

80. The auditor calculated the amount owing to each Complainant by adding the monthly amounts owing for the audit period for which the Complainants provided records and dividing that amount by the number of months in the audit period to determine an average monthly amount owing. That amount was then multiplied by the number of months in the audit period. The auditor then added in the insurance amounts deducted from the Complainant's compensation and the full purchase price of each truck. The auditor calculated that the Companies owed the Complainants a combined amount of \$128,468.75 for the Initial Audit Period.

81. The auditor also reviewed all Port of Vancouver wait time payment distributions made to the Companies during the audit time period and determined that two of the Complainants were owed a combined total of \$850.00 in wait time payments for the period February 1, 2019 - May 31, 2020.

Summary

82. The following allegations were investigated by the OBCCTC:

1. *All four of the Complainants alleged that the Companies required them to become I/Os, that they each purchased a truck from the Companies, and that payments for the trucks were deducted from their pay cheques. Three of the four Complainants did not end up owning the trucks.*

83. Records supplied by the Complainants show that the Complainants were compensated as I/Os after a certain date. Records also show that amounts were deducted from their pay cheques for the purchase of the trucks. The Companies confirm that the Complainants were originally company drivers and then became I/Os after entering into a lease-to-own agreement. The Companies have stated that the agreements were verbal and therefore no written agreement was available for the auditor's review.

2. *The Complainants alleged that during the time they were being compensated as I/Os, the Complainants were not paid fuel surcharge or a PMR, and they were paid incorrect trip rates.*

84. As noted, the auditor determined that the Companies had not been paying the correct I/O trip and hourly rates or fuel surcharge. Payment of the PMR was not applicable because the Complainants were being paid by the hour during the period when the PMR would have been payable.

3. *The Complainants alleged that they were not paid for wait time remuneration.*

85. The auditor determined that two of the Complainants are owed a combined total of \$850.00 in wait time payments for the period February 1, 2019 - May 31, 2020.

4. *The Complainants allege that the Companies instructed the Complainants not to record trips to and from the Companies' yard to customer locations on their time sheets and they were therefore not paid for all container trucking service trips.*

86. Upon review of the records received, the auditor determined that drivers were not paid for trips between S&R Sawmills and the Companies' yard. S&R Sawmills is in close proximity to the Companies' yard.

5. *The Complainants allege that the Companies deducted incorrect insurance amounts from the Complainant's pay cheques.*

87. As noted, the auditor determined that the Companies deducted varying amounts for insurance monthly, but the Companies were not able to verify the deductions by providing documentation to support the amount of insurance paid monthly on the Complainants' behalf.

6. *One Complainant alleged that he was not paid for amounts owing from a previous audit.*

88. One of the Complainants was employed during the 2017/2018 OBCCTC audit. In that audit, it was determined that he was owed \$534.01 in unpaid remuneration. The Companies did not provide the current auditor with cancelled cheques or bank records to demonstrate that Complainant 1 had been paid the money owed to him from the last audit. The Complainant has provided his March 2018 and April 2018 bank statements to confirm that he did not receive the cheques and therefore, the auditor has determined that the Companies owe Complainant 1 \$534.01 in unpaid remuneration.

Other Amounts Owing to I/Os

89. In addition to reviewing the September and October 2020 records for the Complainants supplied by the Companies, the auditor reviewed the records of other I/Os (not the Complainants) and determined the following:

I/O 1

90. Another I/O ("I/O 1") who was sponsored by the Companies provided the auditor with pay statements and timesheets for the month of July 2019 and alleged that the Companies made him fill out two time sheets: one to calculate payment by the hour and one to calculate payment by the trip. He further alleged that the Companies would then pay him based on which method was the least expensive.

91. The July 2019 time sheets provided by I/O 1 recorded the hours per day that he worked. When the auditor compared these hours to those listed on his pay statements, minimal discrepancies were noted. I/O 1 did not provide the auditor with a second time sheet showing trip payments and therefore the auditor could not confirm that I/O 1 was ever paid by the trip.

92. The auditor reviewed the hourly rate paid to I/O 1 that was listed on his July 2019 pay statement and determined that he was paid the correct hourly rate. However, the Companies were not paying the correct fuel surcharge. The auditor multiplied the amount owing for July 2019 by the number of months in the audit period and determined that for the period between July 1, 2019 (date of sponsorship) to June 1, 2020 (date Companies state I/Os were switched to hourly pay), I/O 1 is owed \$5,845.72 resulting from incorrect fuel surcharge payments.

I/Os 2 & 3

93. In May of 2019 the Companies supplied the OBCCTC with pay statements and timesheets for two I/Os ("I/O 2" and "I/O 3") for the months of November and December 2018 as well as January 2019, in response to an OBCCTC proposal to remove truck tags from the Companies. As set out in the audit report, the OBCCTC had retained these documents and provided them to the auditor, upon the auditor's request, for review in this investigation because of the alleged theft of the Companies' records.

94. These records indicated that I/O 2 and 3 were paid by the trip. The auditor compared the trips recorded on the drivers' timesheets with their pay statements and no discrepancies were noted;

however, when the trip rates were reviewed, the auditor determined that the Companies had failed to increase the off-dock trip rate in June 2018 and were not paying the I/Os for trips between S&R Sawmills Ltd. and the Companies' yard.

95. The auditor calculated that I/O 2 and 3 were owed a combined amount of \$6,015.36 for the months of November and December 2018 and January 2019. The auditor performed an average calculation of the amount owing for each I/O and determined that I/O 2 and 3 were owed a combined amount of \$40,728.29.¹

Companies' Response

96. The auditor advised the Companies on March 8, 2021, that the total amount calculated as owing to seven drivers was \$175,042.76.

97. The Companies responded on March 10, 2021 by letter to the OBCCTC asking that the audit be postponed or that the auditor's calculations be deemed incorrect. The Companies made the following submissions:

- The Companies' records have been stolen; the Companies also restated the fraud accusations described above;
- The auditor has based her calculations on incorrect assumptions and forged documentation;
- The auditor's calculations were based on records that the Companies did not supply and therefore the Companies cannot verify if the records are correct;
- September and October 2020 records supplied by the Companies indicate compliance;
- The auditor's trip rate and fuel surcharge calculations as well as her wait time payment determination are incorrect because the drivers were paid by the hour beginning in 2018;
- Truck payment deductions from driver pay is not improper because the Companies were providing assistance, through a leasing program, to its drivers, which is a common practice;
- If the Companies were to reimburse the drivers for the costs of the trucks and insurance deductions, the drivers would, in fact, be company drivers, not I/Os;
- The drivers were all paid hourly, so the Companies did not fail to pay their drivers for trips between S&R Sawmills Ltd. and the Companies' yard; and
- The Companies are pursuing the fraud investigation with the RCMP (on February 24, 2021, the Companies filed a police report against one of the Complainants alleging that he had forged documents in order to secure a mortgage).

98. On March 11, 2021, I replied to the Companies stating that I would not postpone the audit or deem the auditor's calculations to be incorrect. I advised the Companies that the auditor would be preparing an audit report which they would have an opportunity to review and provide comment on prior to my issuing a decision. I also advised that I would accept any information from the Companies demonstrating that there was an active RCMP investigation into the alleged fraud.

¹ I/O 1's calculation period was from his time of employment until June 30, 2019 when the Companies switched to a different rate of pay. I/O 2 was employed with the Companies during the previous audit period; however, the OBCCTC found that he was not owed any amounts. The previous audit covered April 3, 2014 to June 30, 2016, therefore, I/O 2's outstanding pay calculations started on July 1, 2016 rather than the date his employment commenced.

99. On March 15, 2021, the Companies confirmed that the RCMP investigation into the alleged fraud was open and provided a case file number for reference. The OBCCTC contacted the RCMP and confirmed that a report of fraud had been lodged by Mr. Graya against one of the Complainants.

Conclusion

100. The auditor concludes her report by stating that:

Over the course of this audit, the Companies have not been able to supply any documentation as evidence in response to the Complainants' allegations. Multiple attempts were made to contact the Companies via phone and numerous voicemails were left to which the Companies did not respond. After many attempts to contact the Companies via phone, the owner, Jag Graya, emailed me to tell me they would like contact to be via email only. The documents supplied by the Complainants, other I/Os of the Companies, and the Companies, have supported many of the Complainants claims and allegations. My review of the documents supplied showed that the Companies did not pay their drivers in accordance with the *Regulation* and the Commissioner's Rate Order for the period March 1, 2018 – May 31, 2020. June 1, 2020 is the date of which all of the drivers claim they were switched to the regulated hourly rate. My review of the documents supplied by the Companies (the earliest paper documents were only available September 1, 2020) shows that the Companies began paying their drivers in accordance with the *Regulation* and the Commissioner's Rate Order in September 2020.

101. The Companies were sent a copy of the auditor's report, the Complainants' statements, and all associated materials, including those collected by the investigators from the Complainants, on April 16, 2021 and were provided an opportunity to respond. The Companies' legal counsel sought two extensions to the response period. A two-month extension was initially granted but a second extension request was denied.

102. On May 28, 2021, the Companies responded to the audit report. The Companies submit that the truck payment deductions and insurance payments were legitimate and should not be calculated as owing and that the audit report does not account for any leave or absences of the Complainants when calculating money owing. The Companies ask that the auditor recalculate the amounts owing the Complainants or, in the alternative, if I find that the Companies owe the Complainants for past truck payment and insurance deductions, that the Complainants be treated as company drivers, not I/Os, for the purpose of the audit. If the Complainants are treated as company drivers, the Companies ask that the amounts owing be recalculated on the basis of company driver remuneration. The Companies also provided additional payment information respecting one Complainant for consideration.

Decision

103. As described above, the circumstances of this case are that:

- a. The Commissioner investigated the complaints of four drivers and ordered an audit of the Companies' records for the months of July 2018, August 2019 and February 2020 to determine compliance with the *Act*;

- b. The Companies maintained that they were unable to provide the requested records due to an alleged theft and company ownership issues;
- c. The investigation disclosed that the Companies had sold company-owned trucks to the four Complainants who were originally company drivers, after which point the Complainants were required to become I/Os and were remunerated as such. The Companies deducted the cost of the truck purchases from the Complainants' pay and three of the Complainants do not own the trucks they paid for;
- d. The Companies violated an order of the Commissioner made in Safeway Trucking Ltd. (CTC Decision No.10/2018); specifically, the Companies owe one Complainant \$534.01 in unpaid remuneration found to be owing in the 2018 OBCCTC audit of the Companies;
- e. Following the commencement of the present audit, the Companies stopped providing work to the Complainants, either cancelled or threatened to cancel the Complainants' truck insurance, withheld pay, and alleged that one Complainant had committed fraud against the Companies and may have stolen the records requested by the OBCCTC;
- f. The audit disclosed that for different periods between June 30, 2016 and June 1, 2020, the Companies owe the Complainants collectively \$128,468.75 as a result of incorrect trip rate payments, fuel surcharge payments, insurance charge deductions, and truck payment deductions, owe two Complainants a combined total of \$850 in unpaid wait time payments, and owe three other drivers a combined amount of \$46,574.02 for incorrect fuel surcharge payments, trip rate payments and unpaid trips;
- g. The Companies have not paid the money found to be owing; and
- h. The audit process was made more difficult because of the Companies' failure to supply the requested records, their failure to provide timely responses to the auditor's initial queries and their deadline extension requests.

104. I have considered the statements and documentation provided by the Complainants, the auditor's report, and the Companies' submissions. For the reasons set out below, I find that the Companies have violated the *Act, Regulation* and the Container Trucking Services ("CTS") Licence.

Record-keeping violations

105. The Companies allege that the requested records were stolen, and that their banking records could not be obtained from their financial institution due to a dispute with the estate of a deceased owner of the Companies. For these reasons, the auditor was required to rely solely on the records provided by the Complainants and records held by the OBCCTC and to perform estimate calculations to determine money owing to drivers.

106. The Companies referenced to a police report in support of their claim that the records were stolen, which the OBCCTC independently obtained. The police report filed with respect to the alleged theft indicated that the matter was not being pursued by the police because there was insufficient evidence to proceed with the investigation. I also note that, according to the police report, the Companies' records were being kept in a garden shed and, while it appeared that records had been scattered around the shed, the person who filed the complaint reported that nothing was missing.

107. There is no evidence to suggest that the records were stolen; indeed, the person who filed the

police report stated that nothing was missing from the garden shed where the records were kept. The Companies have argued that one of the Complainants may have been the thief and that the records were stolen to cover up a fraud, but this allegation is unsubstantiated.

108. The Companies further maintain that they are unable to access their banking records from their financial institution because of a company ownership dispute. This is not the first time the Companies have responded in this way to an OBCCTC records request.² The matter was first raised by the Companies in 2018. I am aware that a previous owner passed away and it is possible that there is a dispute between Mr. Graya and the previous owner's estate (although the Companies have not provided documentary evidence of this); however, the Companies' failure to obtain and ensure access their own records cannot be used to avoid the Companies' record-keeping responsibilities.
109. The Companies failed to meet the record keeping requirements of the *Act* and CTS Licence and were therefore unable to make the requested records available. The importance of keeping and providing proper records has been canvassed extensively in previous decisions dating as far back as CTC Decision No. 02/2016. The purpose of the *Act* is, in large part, to ensure that drivers are remunerated correctly, and the audit and enforcement requirements of the Commissioner cannot be properly fulfilled without complete, accurate records. Licensees are responsible for the safe and secure storage of records for production to the OBCCTC as required. There is far too great a risk that records will be damaged or go missing if they are improperly stored. The Companies' practice of storing its records in a garden shed was wholly insufficient and resulted in the Companies' failure to keep and make available records as required by the Commissioner.
110. Records must be properly managed, available and readily accessible upon request. A licensee's failure to produce records, particularly if the failure is the result of poor record management, including insufficient storage practices, will not assist in avoiding liability and may result in penalty.

Requiring company drivers to have an ownership or leasehold interest in a truck and become I/Os

111. The Complainants alleged that the Companies sold them company-owned trucks and required them to become I/Os. Each Complainants' allegations were put to the Companies for response.
112. In response, the Companies argue that the lease or sale of the trucks to the Complainants, and the deduction of the lease/sale price and insurance costs from the Complainants' pay, was legitimate. The Companies state that the trucks were purchased by the Companies on behalf of the Complainants and then leased back to the Complainants with monthly deductions from their pay cheques. The Companies state that the Complainants entered into a verbal contract to purchase the trucks and once the trucks were paid in full, ownership was to be transferred to the Complainants but in some cases, the Complainants did not take the necessary steps to ensure that the ownership of the truck was transferred.
113. The Companies submit that if they are required to reimburse the Complainants for the cost of buying the trucks and for insurance, the Complainants would not be I/Os but rather company drivers, and therefore the trucks should be used or sold by the Companies at their discretion and all

² Safeway Trucking Ltd. (CTC Decision No. 05/2018).

wages should be recalculated at company driver rates.

114. The Companies do not dispute that the trucks were leased/sold to the Complainants who were thereafter treated as I/Os by the Companies. I am tasked with determining if the agreement was a requirement forced upon the Complainants by the Companies. In a letter to the OBCCTC dated November 12, 2020, the Companies stated that the Complainants “sought an opportunity to lease the trucks” but do not expand any further as to why the Complainants may have sought this opportunity or the circumstances that led to the verbal agreement to lease/purchase. The Companies have not elaborated in any subsequent submissions.

115. The Complainants all state that Mr. Graya either told them to buy a truck or told them that there was no more work available as a company driver. They all state that they were advised that if they did not purchase a truck, they would no longer have work. The Complainants’ statements are detailed and consistent with one another. In the absence of any detailed submission from the Companies respecting the agreement to lease/purchase, I accept the Complainants’ accounts of what occurred. I find that the Companies threatened the Complainants with a loss of work if they did not become I/Os and required the Complainants to lease/buy company-owned trucks in violation of Appendix A of the Container Trucking Services Licence.

Retaliation in breach of s. 28 of the Act

116. The Companies do not respond to the allegations that on many occasions the Companies’ owner or employee either stopped providing work, threatened to stop providing work or promised to provide work in exchange for information about the complaints. Complainants 1, 2 and 3 all stated that the Companies’ owner cut off their truck insurance and stopped providing work in response to the initiation of the audit.

117. The Companies also attempted to have the Complainants admit to having made complaints to the OBCCTC and attempted to pressure them to withdraw them. Complainant 1 stated that Mr. Graya spoke with him on several occasions in August 2020 about the audit and asked him if he had filed a complaint. Mr. Graya also allegedly asked him to sign a letter stating that he was paid properly and stating that he did not file a complaint and threatened to withhold work from Complainant 1 if he did not sign the letter. Two other employees of the Companies also asked Complainant 1 if he had filed a complaint. In September 2020, Complainant 1 was notified by Mr. Graya in a telephone call that the insurance on his truck had been cut off and that he would not be receiving any work or be permitted to work at the ports. The auditor reviewed the pay records supplied by the Companies for September and October 2020 and confirmed that Complainant 1 did not work in September 2020 and only worked 36 hours in October 2020. This is consistent with Complainant 1’s statement that he agreed, at Mr. Graya’s request, to return to work in October 2020.

118. Like Complainant 1, Complainant 2 also stated that Mr. Graya stopped providing him work because of his complaint. Complainant 3 also stated that his workload began to decrease in August 2020, and that on September 2 or 3, 2020, Mr. Graya asked him to sign an affidavit attesting that he did not file a complaint with the OBCCTC and that the Companies did not owe him any money. Complainant 3 further says that his truck insurance was cancelled around September 9 or 10, 2020 and that he was then told by a company employee that truck had been ‘kicked out’ of the

port. The same employee also told Complainant 3 that if he wanted work, he needed to state in writing that he had no complaints. On a separate occasion, the same employee told three of the Complainants that if they wanted work, they need to state in writing that they had no complaints with the Companies. This conversation with corroborated by two of the Complainants.

119. Complainant 4 reported that he raised his pay concerns with Mr. Graya and other I/Os at a meeting in the Companies' yard on May 11, 2020 and threatened to file a complaint with the OBCCTC. Mr. Graya subsequently advised Complainant 4 that his employment with the Companies would be terminated because of his complaints pertaining to the pay discrepancy. Complainant 4 responded by sending out a group text to Mr. Graya and other employees of the Companies in which he referenced his history with the Companies, the purchase of the truck, and his agreement with Mr. Graya. He also sought a formal notice of termination of his employment, the reason for such termination, and a record of employment (ROE). A copy of the text was provided to the OBCCTC.
120. Complainant 4 states that in mid-August 2020 Mr. Graya phoned him and said that a complaint had been filed against the Companies and that he did not know who filed the complaint. He asked Complainant 4 if he had filed a complaint or if he knew who did.
121. The Companies rely upon the fraud investigation (alleging that one Complainant forged documents in order to secure a mortgage) being pursued with the RCMP as evidence that some or all of the Complainants' allegations are false and should not be relied upon. The Complainants' allegations are credible, however. Their allegations are generally consistent with one another. They are also corroborated by Complainant 1's October 2020 pay records and the supplemental evidence supplied by Complainant 4.
122. Additionally, and importantly, the Companies have not denied or refuted any of the Complainants' allegations. I find that the Companies have breached s. 28(a) of the *Act* by refusing to continue to employ or retain each of Complainants 1-4. I further find that they have breached s. 28(b) by threatening to stop providing work in retaliation for the filing of a complaint. The Companies have also breached s. 28(d) by directly questioning whether complaints had been made and making efforts to get the Complainants to withdraw their complaints in exchange for work. Again, the Companies have not denied attempting to have the Complainants withdraw their complaints/attesting that they have no complaints in exchange for work.
123. Breaches of s. 28 of the *Act* also occurred when a caller, purporting to be from the OBCCTC, contacted Complainant 1 and 3 to confirm if they had made a complaint. The Complainants' statements are consistent with each other, and all employees of the OBCCTC confirm that no such calls were made by OBCCTC staff. Again, the Companies have not responded to these statements and in particular have not denied their involvement in the fake phone calls. I find that the Companies were involved in these phone calls as part of an ongoing effort to establish who had complained to the OBCCTC and that the Companies' efforts to know who had complained in general, including the behaviour dealt with in this paragraph, was intimidating and coercive in violation of section 28(d) for each of Complainant 1 and 3.
124. I also find that the Companies were responsible for sending Complainant 4 threatening letters

accusing him of fraud and claiming that a fraud alert had been placed with all banking institutions, and that ICBC and the RCMP had been contacted on the matter. One letter referenced an upcoming investigation and court action and a second letter demanded payment for a truck and threatened legal proceedings and liability for associated legal costs. These letters were not sent by any legal authority and the OBCCTC investigator confirms that no legal proceedings on the matter have been initiated. I accept that these letters were sent on behalf of the Companies in retaliation for Complainant 4's complaint to and cooperation with the OBCCTC and I also find that the Companies have breached s. 28(d) in their dealings with Complainant 4.

Monies owing to Complainants

125. Section 23(2) of the *Act* prohibits licensees from paying a trucker less than the required rates. Certain deductions that result in a driver getting paid less than the required rates are allowed, such as legitimate business costs, including insurance deductions. However, the lease/purchase price of the trucks is not a legitimate deduction because the lease/sale of the trucks is prohibited by Appendix A 1(a) of the CTS Licence. Additionally, three of the four Complainants do not actually own the trucks. The Complainants received less than the rates established under s. 22 of the *Act* when the Companies deducted the truck lease/purchase price from the Complainants' pay. I find that the Companies breached the *Act* and are required to return the money they were paid for the trucks. The auditor calculates that Complainants are owed a combined total of \$32,500.00 in truck payment deductions made by the Companies.
126. The Complainants were paid as I/Os and were expected to incur the costs associated with the trucks they purchased, including insurance costs. The Companies argue that the insurance amounts deducted from the Complainants' pay were legitimate and have provided cancelled cheques of payments for insurance to ICBC and Accost Insurance as proof of the amounts paid on behalf of the Complainants. However, the cancelled cheques provided by the Companies do not match or explain the monthly amounts deducted from each of the drivers. The Companies have not provided a breakdown of how the totals on the cancelled cheques are divided amongst the drivers and maintain that they are unable to provide the invoices and corresponding cancelled cheques for the insurance deductions due to the alleged theft of their records.
127. It was the Companies' intention to sell the Complainants trucks and convert the Complainants to I/Os. The Companies wanted to compensate the Complainants as I/Os and did so. The Complainants have been treated as I/Os for the purpose of the audit and they will be treated as I/Os for the purpose of this decision. Insurance deductions can legitimately be deducted from I/O pay and I will therefore not require the Companies to reimburse the insurance deductions.
128. The audit disclosed that in different time periods between June 30, 2016 and June 1, 2020, the Companies paid incorrect trip rate and fuel surcharge payments. I find that the Companies owe two Complainants a combined total of \$850.00 in unpaid wait time payments and owe three other drivers a combined total of \$65,419.89 for incorrect fuel surcharge payments, trip rate payments and unpaid trips.
129. The Companies argue that the auditor's calculations do not consider driver vacation/leave and have provided evidence to support various leaves taken by drivers. The Companies request that the auditor consider vacation/leave when calculating the amount owing to six of the seven drivers

audited. Based on this submission by the Companies, I directed the auditor to review her calculations and the information provided by the Companies and to contact drivers as required to consider vacation/leave in her calculations. The auditor has advised as follows:

- The Companies state that Complainant 1 travelled to India from November 1, 2018 to December 9, 2018. The auditor was unable to contact Complainant 1 and the Companies have provided no supporting documentation regarding this trip;
- The Companies state that Complainant 2 travelled to India from November 2017 to January 31, 2018. Complainant 2 did not purchase a truck until March 2018 and was a company driver until that date. The travel period does not fall into the audit period;
- The Companies state that Complainant 3 travelled to India from February 2, 2018 to April 8, 2018. Complainant 3 did not purchase a truck until June 2018 and was a company driver until that date. The travel period does not fall into the audit period;
- The Companies state that Complainant 4 travelled to India from January 15, 2019 to February 15, 2019. The auditor was unable to contact Complainant 4 to confirm these dates; however, the Companies provided self-printing boarding passes with Complainant 4's name on them with dates that match the alleged travel period. The auditor accepts that Complainant 4 was away during this time period;
- The Companies submitted that the amounts found owing to two other I/Os should be reduced because the I/Os were not working for them during certain times. Specifically, the Companies stated that one I/O was working for a different company from August 30, 2018 – October 31, 2018. The auditor confirmed that the I/O did not, in fact, work for the Companies during that time period. The Companies also stated that another I/O was working for another licensee between August 30, 2019 and October 3, 2018. The auditor confirmed with the I/O that he was working for another licensee during that time period.

130. The auditor also determined that the Companies owed \$534.01 in unpaid remuneration to Complainant 1, which was ordered to be paid following the 2018 OBCCTC audit of the Companies. The auditor reached this conclusion because Complainant 1 states that he never received payment and provided bank statements as evidence that the payment was not deposited into his account. Further, the Companies were originally not able to provide the auditor with cancelled cheques or bank records to demonstrate that Complainant 1 had been paid the money owed to him from the last audit. When the auditor requested records to demonstrate that the payment had been made in 2018, the Companies told the auditor that the previous owner had passed away and they still did not have access to any bank records from that time period.

131. More recently, in their May 28, 2021 response to the audit report, the Companies provided photocopies of two cheques dated March 1 and 23, 2018 in the combined amounts of \$534.01, made out to Complainant 1 as evidence that the complainant had been paid following the last audit. The Companies ask that I consider the payments made to Complainant 1.

132. I have reviewed the photocopies provided by the Companies. The photocopies of the two cheques were originally provided to the OBCCTC by the Companies' counsel on April 10, 2018 and were reviewed by the previous auditor. I have also reviewed the previously submitted cheque photocopies. The previous auditor accepted these photocopies as evidence that Safeway Trucking Ltd. had made the payments as ordered in Safeway Trucking Ltd. (CTC Decision No.05/2018). However, Complainant 1 alleges that he never received these cheques and Complainant 2 alleged

that Mr. Graya took photos of payment cheques in 2018 and provided the photos to the OBCCTC as proof of payment, but never gave the cheques to the drivers.

133. The photocopies resubmitted by the Companies in their May 28, 2021 response to the audit report do not demonstrate that these cheques were ever given to Complainant 1 or that they were cashed. The Companies have not provided copies of cancelled cheques indicating that they were cashed and have not responded to the allegation that Mr. Graya provided cheque images to the OBCCTC in 2018 to demonstrate that his drivers had been paid but never gave the cheques to the drivers.
134. I find that the \$534.01 ordered to be paid to Complainant 1 in the 2018 audit remains owing. The Companies are required to pay Complainant 1, \$534.01. This amount has been added to the total amount found to be owed to Complainant 1.
135. The auditor has revised her calculations based upon the information provided by the Companies and further investigation. As the Companies have not paid the money found to be owing to their I/Os for the time periods between June 30, 2016 and June 1, 2020, I find that the following amounts are outstanding and make the following Order pursuant to section 9 of the Act:

I hereby order Safeway Trucking Ltd./Coast Pacific Carrier Inc. to pay the seven drivers identified by the auditor a combined total of \$141,749.32. Money orders (not cheques) are to be made out to each driver owed money and delivered forthwith, and in any event no later than September 13, 2021, to the OBCCTC for distribution to the drivers. The seven drivers are owed the following amounts:

- (a) Complainant 1 - \$32,227.72
- (b) Complainant 2 - \$23,643.27
- (c) Complainant 3 - \$23,191.00
- (d) Complainant 4 - \$18,857.90
- (e) I/O 1 - \$5,845.72
- (f) I/O 2 - \$8,873.47
- (g) I/O 3 - \$29,110.24

136. A detailed spreadsheet identifying each driver and the associated calculations and money owing will be provided to the Companies.

Consideration of appropriate penalty

137. 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.
138. In this case it has been determined that the Companies violated section 25 of the Act and part 4 of Appendix D of the CTS Licence for failure to keep and make available their records as required. It

has also been determined that the Companies violated sections (a) and (e) of Appendix A of the CTS Licence by requiring four employees to have an ownership interest or a leasehold interest in equipment (including trucks) in which the licensee has an ownership interest or leasehold interest and requiring the same four employees to become I/Os.

139. Appendix A of the Container Trucking Services Licence prohibits licensees from requiring an employee or I/O to have an ownership interest or a leasehold interest in equipment (including trucks) in which the licensee has an ownership interest or leasehold interest. Licensees are also prohibited from requiring an employee to become an I/O. These practices have been prohibited since the inception of the regulatory regime and the introduction of the first licence issued by the OBCCTC in 2016. They are prohibited because they have historically been part of schemes that lead to rate undercutting and illegal reductions in driver remuneration. Among other things, they enrich licensees by transferring truck ownership and operation costs to drivers, including the risk and cost associated with operating vehicles that may not meet the Port of Vancouver's truck age requirements in the future.
140. Both practices were noted in the 2014 "Recommendation Report – British Columbia Lower Mainland Ports" prepared by Vince Ready and Corinn Bell, which was the precursor to the *Act* and the *Regulation*. Ready and Bell were concerned that "undercutting and gamesmanship" would continue in the industry and that "companies and drivers will seek to find loopholes in the proposed wage system." To address some of these loopholes, Ready and Bell made a number of recommendations including that:

...it will be considered a breach of the TLS license for any trucking company to require that an employee purchase a truck, trailer or any other equipment or that any employee purchase or assume any proprietary interest or obligations in the company's business as a condition of employment. ***We recommend that any breach of this provision, result in a cancellation of the TLS license for a significant period of time...***³ [emphasis added]

141. However, these are not the Companies' only violations. The Companies also violated section 23 of the *Act*, section 23 of the *Regulation* and parts 1 & 2 of Appendix E of the CTS Licence for failure to properly pay seven drivers for the time periods between June 30, 2016 and June 1, 2020. Specifically, the Companies made improper deductions (for truck lease/purchase payments), incorrect fuel surcharge payments and trip rate payments and failed to pay for some trips. The audit findings indicate that the Companies owe seven drivers, at a minimum, a combined total of \$141,749.32. This amount is based upon the available documentation. The auditor was unable to calculate all amounts owing because of the Companies' failure to keep records.
142. The rate and licence violations summarized in the paragraphs immediately above might have resulted in a substantial, escalating financial penalty had the Companies not also violated section 28 of the *Act* on multiple occasions. Following the commencement of the audit, the Companies repeatedly sought to determine who had made complaints to the OBCCTC, including by impersonating OBCCTC staff, stopped providing and/or threatened to stop providing work to the Complainants, and cancelled or threatened to cancel the Complainants' truck insurance. The

³ Recommendation Report – British Columbia Lower Mainland Ports, October 2014, Ready/Bell, pages 31 & 32.

Companies repeatedly violated subsections 28(a)(b) and (d) in their treatment of each of Complainants 1-4.

143. Unfortunately, the OBCCTC is aware of many instances where a licensee has approached drivers following the initiation of an OBCCTC audit/investigation to determine who may have contacted the OBCCTC. However, these are the most serious allegations of such behaviour to date. The Companies refused to continue to employ or retain each of the complainants, threatened to stop providing work in retaliation for the filing of a complaint, directly questioned whether complaints had been made and tried to get the Complainants to withdraw their complaints in exchange for work. In addition, the Companies had a person impersonate an employee of the OBCCTC to determine who may have been responsible for an audit and was responsible for threatening letters to a driver.
144. These are egregious violations of section 28 of the *Act*. Section 28 is a response to driver concerns, captured by Ready and Bell, that they would lose their jobs or suffer other negative consequences if they came forward to report non-payment, rate undercutting or kickbacks.⁴ Ready and Bell recommended that these concerns be addressed through legislation and that the ***strictest of penalties be imposed*** in the face of evidence of retaliation or retribution by licensees against complainants.⁵
145. In conclusion, this investigation/audit has identified multiple, serious violations of the *Act*, *Regulation* and CTS Licence, as summarized in the paragraphs above. The legislation and regulatory regime, including the available penalties under the *Act*, were introduced to prevent the types of actions that occurred in this case.
146. Further, the Companies have a history of non-compliance that includes rate and record-keeping violations as well as failure to comply with an order of the Commissioner.⁶ This is the Companies' third violation of the *Act*. In response to the first two decisions issued by OBCCTC, the Companies argued that their non-compliance did not reflect the policies of the current director (Mr. Graya) who "does everything in his power to ensure compliance" and "strives to ensure that the workings within the [Companies], and the treatment of drivers and owner operators, is in accordance with the *Act* and *Regulation*."⁷ I find this to be untrue.

⁴ Recommendation Report – British Columbia Lower Mainland Ports, October 2014, Ready/Bell, page 37.

⁵ Recommendation Report – British Columbia Lower Mainland Ports, October 2014, Ready/Bell, page 37.

⁶ [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; [Safeway Trucking Ltd./Coast Pacific Carrier Inc.](#) (CTC Decision No. 11/2020).

⁷ [Safeway Trucking Ltd. and Coast Pacific Carrier Inc.](#) (CTC Decision No. 14/2020) (Application for Reconsideration of CTC Decision No. 11/2020), pages 3 & 4.

147. Mr. Graya also committed to ensuring that non-compliant activities would not be repeated in the future.⁸ That commitment is unfulfilled, and the Companies' current violations are far more serious than their prior violations. The findings in this audit/investigation demonstrate that the Companies are repeat offenders. It is clear that previous penalties of \$10,000.00 (for failure to comply with orders of the Commissioner following a finding of non-compliance for failure to pay the correct rates) and \$15,000.00 (for failure to pay a driver for all hours of container trucking services performed) have not had the desired deterrent effect. It is also clear that the Companies will resort to retaliation and coercion of their drivers in order to avoid the consequences of complaints to the OBCCTC. I have therefore concluded that Safeway Trucking Ltd. and Coast Pacific Carrier Inc.'s licence should be cancelled.

148. In the result and in accordance with Section 34(2) of the *Act*, I hereby give notice as follows:

- a. I propose to cancel Safeway Trucking Ltd. and Coast Pacific Carrier Inc.'s licence;
- 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 their responses and I will provide notice to Safeway Trucking Ltd. and Coast Pacific Carrier Inc. of my decision respecting that response.

149. This decision will be delivered to Safeway Trucking Ltd. and Coast Pacific Carrier Inc. and may be published on the Commissioner's website (www.obcctc.ca) after Safeway Trucking Ltd. and Coast Pacific Carrier Inc.'s response period has closed.

Dated at Vancouver, B.C., this 12th day of August, 2021.



Michael Crawford, Commissioner

⁸ Safeway Trucking Ltd. and Coast Pacific Carrier Inc. (CTC Decision No. 14/2020) (Application for Reconsideration of CTC Decision No. 11/2020), page 4.