



April 11, 2022

Rideway Transport Ltd.
Unit #1 – 14655 108th Avenue
Surrey, B.C. V3R 1V9

Commissioner's Decision

Rideway Transport Ltd. (CTC Decision No. 02/2022) (Reconsideration of CTC Decision No. 09/2021)

I. Introduction

1. On March 7, 2022, the Office of the BC Container Trucking Commissioner (“OBCCTC”) received an application on behalf of Rideway Transport Ltd. (“Rideway”) pursuant to section 38 of the *Container Trucking Act* (the “Act”). Rideway seeks reconsideration of the administrative penalty proposed in Rideway Transport Ltd. (CTC Decision No. 09/2021) (the “Original Decision”) and ordered in the subsequent Decision Notice. Rideway had earlier requested that the Order requiring payment of the administrative penalty made in the Decision Notice be suspended until the outcome of this reconsideration pursuant to section 39(2) of the Act. I agreed to suspend the Order pending the outcome of this reconsideration.
2. In the Original Decision, I determined that Rideway violated section 24 of the Act and Appendix A 1(h) of the CTS Licence when the owner of Rideway, Mr. Sandhu, solicited cash rebates from two drivers (the “Complainants”) and attempted to coerce the Complainants into signing letters agreeing to refund some of their compensation in exchange for their final pay. I also determined that Rideway violated section 24 of the *Container Trucking Regulation* (the “Regulation”) when it failed to pay the Complainants for container trucking services performed in November 2020 within the prescribed timeframe and violated Appendix A 1(f) of its CTS Licence when it misrepresented monies paid to the Complainants. An administrative penalty of \$50,000.00 was proposed and Rideway was given time to make submissions as to why the proposed penalty should not be imposed.
3. Rideway submits that the findings set out above are unsubstantiated because they do not take Rideway’s evidence into account and that the penalty should therefore not be imposed. In the alternative, Rideway submits that the penalty is disproportionate and should be reduced from \$50,000 to \$5,000. Rideway relies on its previous submissions (made in advance of the Decision and Decision Notice) and has provided additional submissions, as set out below.

Rideway does not have the “complete tribunal record”

4. Rideway continues to argue that the audit and investigation processes have been procedurally unfair because it has not been supplied with the audio recordings and written transcripts.

Conduct of Mr. Sandhu's interview

5. Rideway argues that the conduct of Mr. Sandhu's interview was procedurally unfair because the OBCCTC's investigator did not schedule the interview with Mr. Sandhu or provide Mr. Sandhu with a copy of the allegations against him before conducting the interview. Rideway argues that the OBCCTC investigator should have asked Mr. Sandhu if he wished the interview to take place in the presence of his counsel.

Delegation of the Commissioner's decision-making authority

6. Rideway restates its argument that I delegated my decision-making authority by relying on the OBCCTC investigator's summary of his interview with Mr. Sandhu.

Right to cross-examine

7. Rideway restates its argument that it ought to have been provided the opportunity to cross-examine the Complainants.

Pre-determined investigation

8. Rideway restates its argument that the decision was reached without hearing evidence of Rideway drivers and Mrs. Sandhu. It provides statutory declarations from Rideway drivers in support of its reconsideration request. Rideway argues that I failed to reasonably weigh the evidence of Mrs. Sandhu in the Decision Notice. It also provides a statutory declaration from Mrs. Sandhu.

Proportionality

9. Rideway argues that the penalty is onerous, punitive, and disproportionate to the nature of the wrongdoing and the circumstances of the case. It notes that the Complainants have already been paid and argues that the penalty, if imposed, should be equal to or marginally higher than the amount of money withheld from drivers. Rideway notes that this is its first finding of non-compliance and suggest that the penalty, if imposed, would impact its financial viability in light of the current economic landscape (Covid 19).

II. Decision

Rideway does not have the "complete tribunal record"

10. Rideway has been given the opportunity to respond to the allegations against it but argues that it has not been provided the opportunity to "meaningfully" respond because it does not have the complete tribunal record. It states that I have not provided any rational explanation for withholding audio recordings or written transcripts of the interviews with the Complainants, Mr. and Mrs. Sandhu, and the drivers interviewed by the auditor, and that the withholding of these materials raises apprehensions of bias and demonstrates a lack of transparency on my part.
11. Rideway has not been provided the audio recordings of the interviews with the Complainants and the Sandhus because I did not rely on them when making my decision. Rideway was not provided

written transcripts of investigation interviews because recordings of the interviews conducted by the OBCCTC investigator are not transcribed. This was addressed in the Decision Notice.

12. In the Decision Notice, I also stated that my findings with respect to “Mr. Sandhu’s conduct during the meeting were based upon statements made by Mr. Sandhu during his interview which were directly quoted in the investigation report.”¹ Rideway questions how I have determined that Mr. Sandhu was directly quoted by the investigator if I have not heard the audio recordings and states that my determination that Mr. Sandhu was “defensive” is based on hearsay because I have not heard the audio recordings.
13. Rideway attempts to impugn the credibility of the OBCCTC investigator by suggesting that the investigation reports cannot be relied upon but does not say why the investigator’s reports are unreliable or how the audio recordings would add anything. The OBCCTC investigator provides reports that are clearly detailed and comprehensive. As addressed below, OBCCTC investigators have training and experience in their field.
14. The investigation reports were provided to Rideway for response. Licensees can correct the record if they believe that the investigator reports are deficient in any way. In this case, Rideway has provided supplemental information but has not provided any evidence to demonstrate that the investigator’s reports cannot be relied upon. Indeed, Rideway has not suggested that the investigator’s reports of his interviews with Mr. and Mrs. Sandhu were inaccurate.
15. Rideway also argues that it ought to have been provided a redacted investigation report for the three drivers cited in paragraph 27 of the Decision Notice. The drivers in question were contacted by the OBCCTC auditor, not the investigator, during the audit. OBCCTC auditors do not make audio recordings of their conversations with drivers or transcribe their conversations. Auditors keep notes during conversations with drivers and use them to prepare audit reports if the conversations are relevant to the auditor’s conclusions. Drivers’ identities are kept confidential where requested, as was the case here. Like investigation reports, audit reports considered in the decision-making process are provided to licensees for response before a decision is issued.
16. All of the materials I have considered have been provided to Rideway and Rideway has provided detailed responses on multiple occasions to them.

Conduct of Mr. Sandhu’s interview and alleged delegation of decision-making authority

17. When the investigator called Mr. Sandhu, he informed Mr. Sandhu of the purpose of the interview and the allegations made against Rideway and asked if Mr. Sandhu consented to the interview being recorded. Mr. Sandhu agreed to be interviewed and rejected an offer of an interpreter. During the interview Mr. Sandhu asked that further questions be directed in writing so that he, and his counsel, could reply, but also agreed to continuing the interview.
18. I do not accept that it was unfair of the investigator to “cold-call” Mr. Sandhu. Indeed, unscheduled interviews are a reasonable and effective means of eliciting more accurate and reliable information. Mr. Sandhu was subsequently provided the opportunity to respond to the investigator’s report,

¹ Rideway Transport Ltd. (CTC Decision No. 09/2021) – Decision Notice, paragraph 30.

provide supplemental information, and make submissions, including correcting any statements made to the investigator which he felt were made in error.

19. As I noted in the Decision Notice, my assessment of Mr. Sandhu's credibility was not made in reliance on the investigator's conclusions but upon statements made by Mr. Sandhu that were quoted, not summarized, in the investigator's report. I found Mr. Sandhu to be defensive and deflective during the interview. My assessment was based upon Mr. Sandhu's words, not his tone, which I consider more meaningful, as tone can be modulated and may be a less reliable measure of assessing credibility than content.
20. When assessing Mr. Sandhu's credibility, I also considered the plausibility of his responses, particularly those relating to the allegations of immigration fraud that he made against the Complainants and which I found lacking in credibility.² I also considered the lack of consistency between his comments in the interview and Rideway's subsequent submissions, including Mrs. Sandhu's statements. Conversely, the Complainant's allegations were consistent, and elements of them were corroborated by other drivers. My assessment was not based solely upon the OBCCTC investigator's report or its conclusions.

Right to cross-examine

21. Rideway provides no new submissions regarding its argument that it ought to have been provided the opportunity to cross-examine the Complainants. In the Decision Notice I discussed why I do not believe that cross-examination is necessary or appropriate in this case. My reasons included that:
 - Rideway has had sufficient opportunity to mount its defense without cross-examination of the Complainants;
 - The cross-examination of the Complainants could be sufficiently intimidating to dissuade drivers from making complaints against licensees, undermining one of the overall purposes of the *Act*; and
 - The OBCCTC has a mandate to ensure maximum protection for drivers against licensee mistreatment and retaliation which strongly militates against cross-examination of complainants by licensees and/or their legal counsel.

Rideway has argued that the quantum of the penalty is sufficiently high to warrant a cross-examination of the Complainants. This is not a criminal proceeding and I have determined that cross-examination is not required in this case for the reasons cited above and because the interests at stake (a \$50,000.00 penalty) are not significant enough to warrant the exercise. I also consider that the cross-examination of the Complainants is unlikely to elicit new or relevant information.

Pre-determined investigation

22. In response to the Decision Notice, Rideway argues that I failed to reasonably weigh Mrs. Sandhu's evidence. Rideway has now provided statutory declarations made by the Sandhus. For the most part, Mrs. Sandhu's statutory declaration is a restatement of her oral evidence, and Mrs. Sandhu's oral testimony was considered and addressed in the Decision Notice.

² Rideway Transport Ltd. (CTC Decision No. 09/2021) – Decision Notice, paragraph 51.

23. The Sandhus deny that they solicited cash back from any Rideway employees including the Complainants. They point to statutory declarations provided by other drivers at Rideway to indicate that it is not the practice of Rideway to demand cash back from their drivers.
24. No new information has been provided by the Sandhus in their statutory declarations that would convince me to reverse my finding. Their version of events was comprehensively addressed in the Decision Notice where, after considering the Complainants' statements, photographs of post-it-notes and a Full and Final Settlement letter referencing dues, a meta-data analysis of the photographed letter, an auditor's calculation of the amounts written on the post-it-notes, the statement of a third Rideway driver, and the Sandhus' testimony, I concluded that Rideway had solicited cash back from the Complainants.
25. Rideway states that it paid the Complainants the regulated rates and Mr. Sandhu attests that he pays all his employees the regulated rates. I am unsure, however, why Rideway makes this point. Rideway is not penalized for failing to pay its drivers the regulated rates. Rather, it is penalized, in part, because it 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.
26. Ten Rideway drivers have submitted statements declaring that they have never experienced remuneration issues at Rideway or had Rideway solicit cash back from them. Three of the drivers attest to knowing the Complainants and state that the Complainants never discussed any employment related issues, including solicitation of cash back, with them.
27. It may well be that Rideway never solicited cash back from the drivers who provided statements and that the Complainants never spoke to some of them about Rideway soliciting cash back. However, I do not accept the statutory declarations as evidence demonstrating that Rideway did not solicit cash back from the Complainants.
28. A key factor when reviewing the Complainants' allegations was their employment as drivers under LMIA work permits. In the Original Decision, I noted that LMIA drivers are "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
29. It is this vulnerability that makes LMIA drivers particular targets of cash back schemes in this industry. In this case, one of the Complainants did not have a visa when he was sponsored by Rideway, leaving him particularly vulnerable to Rideway's requests.
30. Drivers who are beholden to their employer for reasons beyond simple employment may be more easily convinced to provide cash back and may not be inclined to discuss the violations with others out of concern that their participation in an illegal scheme would impact their status in Canada. It is therefore unlikely that the Complainants would have spoken to other drivers about Rideway's actions.
31. Rideway continues to argue that the meeting where the Complainants were allegedly given their final pay and asked to sign a Full and Final Settlement Letter occurred on November 23, 2020.

³ Rideway Transport Ltd. (CTC Decision No. 09/2021), paragraph, 99.

32. The date of the meeting where a second Full and Final Settlement Letter was presented to the Complainants was discussed in the Decision Notice, where I determined that the photograph used by the Complainants as evidence of the second letter was genuine and that it was taken on November 26, 2020 at a meeting in Rideway's offices, not on November 23, 2020 as Rideway alleges.⁴ I arrived at this conclusion in part because Rideway provided no explanation or information to support its allegation that the second letter was forged and the photograph of the letter taken on a later date.
33. Rideway now argues that the investigator's meta data analysis of the photograph used to determine that the meeting took place on November 26, 2020 cannot be relied upon because the meta data analysis has not been analyzed by an expert. However, Rideway does not say why the investigator's meta data analysis is unreliable.
34. OBCCTC investigators are retained by the OBCCTC because they (and the company they work for) are specialists in their field. A second analysis of the photograph in question, or a second opinion of the investigator's analysis, is not required. Rideway also points to a text message between Mr. Sandhu and the Complainants (previously provided as evidence) to demonstrate that the meeting occurred on November 23, 2020. I addressed this evidence in the Decision Notice where I determined that the photograph, not the text message, was a more reliable determinant of the meeting date.⁵
35. Rideway states that the second Full and Final Settlement Letter is "fake" and notes that the letter's formatting and writing style is different from the first letter prepared by Rideway. As such, Rideway argues that I should prefer Mrs. Sandhu's evidence that no second letter was presented to the Complainants.
36. I have reviewed both letters. The formatting in each letter has differences. However, the writing style of both letters is similar. Both employ the same type of poor grammar, sentence structure and formatting/spacing. Both letters have the same content except for the passages in the second letter referencing money owing.
37. Identifying the differences and similarities between the two letters does not, however, establish that the second letter was prepared by Complainant 1 as alleged by Rideway. Rideway provides no explanation as to why or how Complainant 1 could have forged the second letter. Complainant 1 saw the first letter briefly at the meeting with Rideway and it is unlikely that he could have drafted the second letter from memory, particularly given the similarities between the two letters. A photo or copy of the first letter would have assisted Complainant 1 in drafting the second letter but Complainant 1 did not take a photo of the first letter at the meeting and did not have a copy of it.
38. I also see no motive for the Complainants to lie about the two letters and create the second letter as evidence that Rideway withheld their pay. In the Original Decision, I dismissed Rideway's argument that the Complainants were given their final pay but did not cash their cheques because of immigration issues, in part because Rideway's explanation made no sense. Mr. Sandhu now states that the Complainants may not have cashed their cheques because they were not entitled to earn

⁴ Rideway Transport Ltd. (CTC Decision No. 09/2021) – Decision Notice, paragraph, 58.

⁵ Rideway Transport Ltd. (CTC Decision No. 09/2021) – Decision Notice, paragraph 57.

the amount of money they were earning as local drivers, when the conditions of their LMIA agreement required them to earn less as long-haul drivers.

39. It is not my responsibility to investigate allegations of immigration fraud, but, in any event, Mr. Sandhu's explanation is counter intuitive. If the Complainants intended not to cash the cheques, then they would not have forged a second letter to support a complaint to the OBCCTC which was intended to elicit their final pay, which they have now received.
40. For these reasons, I prefer the Complainants' statements over the Sandhus' and I remain of the view that Rideway drafted two Full and Final Settlement letters and presented both to the Complainants for signature in an attempt to solicit cash back from the Complainants before releasing their final pay.
41. I also find that the Complainants were not given their final pay cheques at the meeting. Rideway previously provided paystub and cheque copies to demonstrate that the Complainants were given their final pay on November 23, 2020 but I determined that these documents did not demonstrate that the drivers were paid the money owed to them on November 23, 2020.⁶ Rideway has not provided anything new to change my view on this issue.
42. Rideway now relies on the statutory declarations of the drivers and the Sandhus as evidence that the Complainants were paid, and as evidence that Mr. Sandhu did not threaten the Complainants with immigration consequences. For the reasons articulated above, I do not accept Rideway's response to the allegations.

Proportionality

43. Rideway argues that the quantum of the penalty should be proportional to the wrongdoing and says that the amount owed to the Complainants for two pay periods in November 2020 (\$5,410.46) is disproportionate to the \$50,000.00 penalty. Rideway also states that the penalty is onerous because the Complainants have already been paid.
44. The Complainants have been paid but only in response to the OBCCTC audit and investigator reports. The Complainants were not paid within the prescribed timeline and the fact that they have been paid does not necessarily have a bearing on the penalty size. Rideway fails to consider my findings and my reasons for the penalty in making its argument as why a \$50,000.00 penalty is not appropriate.
45. I have noted in previous decisions that the size of a penalty is decided by assessing all the relevant factors together and in consideration of the importance of the factors in each case.⁷ Clearly, the nature of the licensee's breaches is a relevant consideration. Here, Rideway is penalized for violating section 24 of the *Act* and Appendix A 1(h) of the CTS Licence by soliciting cash rebates from the Complainants. It is also penalized for violating Appendix A 1(h) of its CTS Licence by attempting to coerce the drivers into signing "Full and Final Settlement" letters in exchange for their final pay. Rideway also violated section 24 of the *Regulation* when it failed to pay the Complainants

⁶ Rideway Transport Ltd. (CTC Decision No. 09/2021) – Decision Notice, paragraphs 62-62.

⁷ See for example, Safeway Trucking Ltd. and Coast Pacific Carrier Inc. (CTC Decision No. 14/2020) paragraph 21 and Aheer Transportation Ltd. (CTC Decision No. 05/2021, paragraph 17.

for container trucking services within the prescribed timeframe and Appendix A 1(f) of its CTS Licence when it misrepresented the monies paid to the Complainants.

46. All four of these contraventions are serious and violate the basic purpose of the regulatory regime, which is to ensure that drivers are paid the minimum rates. I consider them to be comparably serious because they are all connected to the solicitation of cash back from vulnerable drivers. In the Original Decision, I discussed cash back schemes and noted that they are expressly prohibited under section 24 of the *Act* because they have long contributed to the rate undercutting that has destabilized the industry and which the regulatory regime is intended to address. As such, the quantum of the penalty reflects the seriousness of soliciting cash back from drivers, which outweighs the fact that this is the first penalty imposed against Rideway.
47. Rideway appears to be arguing that the amount of the penalty should be comparable to the amount of money the licensee is found to owe its drivers, but that is not the only consideration. The *Act* allows for fines of up to \$500,000.00. I consider \$50,000.00 to be proportionate to the seriousness and number of Rideway's contraventions.
48. Licensees must be deterred from soliciting cash back from drivers and I do not believe that a \$5,000.00 penalty, or a penalty close to the amount of money owing or requested in cash will deter licensees from soliciting cash back from drivers in the future.
49. The quantum of the penalty is also consistent with those imposed in other cases where licensees have solicited cash back from a driver. In *Sandhar*,⁸ the licensee was successful in receiving the cash back, but I do not consider Rideway's failure to receive cash back from the Complainants a circumstance that would mitigate the size of the penalty. Rideway wanted to succeed, made considerable efforts to succeed, and should not benefit from its failure or from the Complainants' bravery in making the complaints. This decision is also a message to drivers about their role in preventing cash-back schemes. Drivers should not provide cash back to licensees and should report instances of solicitation.
50. Rideway also submits that payment of the penalty will impact its financial viability because of the current economic landscape, which it maintains has been negatively impacted by Covid-19. Financial hardship is not generally considered when imposing penalties. Further, Rideway has provided no evidence to demonstrate that payment of the penalty will impact its financial viability or that it has been negatively impacted by Covid-19. Indeed, for many companies, container drayage in the Lower Mainland has been buoyed by increased demand for containerized goods as a result of Covid-19.
51. For these reasons, I have determined that a financial penalty in the amount of \$50,000.00 is appropriate.

⁸ *Sandhar Trucking Ltd.* (CTC Decision No. 08/2018).

III. Conclusion

52. In summary, the application for reconsideration of CTC Decision No. 09/2021 is dismissed and the penalty imposed in the Decision Notice is confirmed. Section 35(2) of the Act requires that fines be paid within 30 days. Rideway is required to pay the penalty no later than 30 days from the date of this decision.

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

Dated at Vancouver, B.C., this 11th day of April, 2022.

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

Michael Crawford, Commissioner