May 31, 2022

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. 04/2022)
(Reconsideration of CTC Decision No. 07/2021)

I. Introduction

1. On April 18, 2022, the Office of the BC Container Trucking Commissioner ("OBCCTC") received an application on behalf of Safeway Trucking Ltd. ("Safeway") and Coast Pacific Carrier Inc. ("Coast") (together "the Companies") pursuant to section 38 of the *Container Trucking Act* (the "*Act*"). The Companies seek reconsideration of the administrative penalty proposed in Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021) (the "Original Decision") and ordered in the subsequent Decision Notice; the Companies also seek reconsideration of the amount of the order to pay monies to drivers. The Companies had earlier requested that the orders 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 orders pending the outcome of this reconsideration.

2. In the Original Decision, I determined that the Companies had violated the *Act*, *Container Trucking Regulation*, and/or licence by:

    a) failing to keep and make available records as required;
    b) requiring four employees (the "Complainants") to have an ownership or leasehold interest in equipment in which the licensees had an ownership or leasehold interest and requiring them to become independent operators ("I/Os");
    c) making improper deductions (for truck lease/purchase payments), making incorrect fuel surcharge and trip rate payments, and failing to pay drivers for some trips;
    d) failing to pay one driver money owing from a previous OBCCTC audit;
    e) repeatedly seeking to determine who had made complaints to the OBCCTC, including by impersonating OBCCTC staff, and ceasing to provide and/or threatening to stop providing work to the Complainants; and
    f) cancelling or threatening to cancel the Complainants' truck insurance following the commencement of the audit in retribution for the filing of complaints.

3. In the Original Decision, I proposed to cancel the Companies' licences for the breaches set out above and ordered the Companies to pay monies owing to drivers. The Companies had an opportunity to respond to the Original Decision. In the Decision Notice, I gave notice that the Companies' licences would be cancelled and ordered the Companies to pay a total adjustment in the amount of $141,379.59 for money owing to seven drivers. The Companies were given time to make submissions as to why the proposed penalty should not be imposed.

4. The Companies deny committing the violations set out above and submit that the audit/investigation process was procedurally unfair. The Companies submit that the cancellation of their licences is not an appropriate penalty and that the amount of money found to be owing to the Complainants is incorrect. The Companies submit that the publication of the Decision Notice was itself a substantial penalty and that a fine would be appropriate in this case. The Companies rely on their previous submissions (made in advance of and in response to the Original Decision and Decision Notice) and have provided additional submissions, as set out below.

General Objections

5. The Companies continue to argue that the audit and investigation processes have been procedurally unfair because they have not been supplied with audio recordings and written transcripts of the Complainants' and Mr. Graya's interviews. The Companies also argue that I delegated my decision-making authority to the OBCCTC investigator because I did not listen to the audio recordings or review transcripts of the Complainants' interviews. The Companies further submit that they ought to have been given an opportunity to cross-examine the Complainants.

6. The Companies also continue to argue that the lack of published rules of practice and procedure has resulted in a procedurally unfair audit/investigation that was pre-determined and biased.

Section 28 violations

7. The Companies deny that they violated section 28 of the *Act* by retaliating against the Complainants.

Licence cancellation

8. The Companies argue that the penalty is not proportionate to the wrongdoing and that licence cancellation is onerous and punitive. The Companies argue that the licence cancellations do not "strike the necessary balance between the adverse impact on the Companies, its employees, and other affected parties, weighed against the public purpose sought to be advanced." The Companies also submit that the licence cancellation penalty amounts to cruel and unusual punishment pursuant to section 12 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

9. The Companies submit that the publication of the Decision Notice is already a substantial penalty and that a financial penalty is more appropriate in this case, but they do not argue for a particular fine amount. The Companies ask that I refrain from publishing the Decision Notice until after the conclusion of the reconsideration process.

Order to pay

10. The Companies maintain that the amount they have been ordered to pay is too high. The Companies continue to argue that the Complainants were not forced to purchase trucks, but rather asked to become independent operators ("I/Os"). They also continue to argue that if the truck payments collected by the Companies are returned to the Complainants, then the Complainants should not be considered I/Os for the purpose of the audit calculations (should instead be compensated based on the hourly rates applicable to employees). The Companies further argue that truck payment deductions should not be returned to the Complainants as this would result in their unjust enrichment.

11. The Companies ask that I consider vacation time taken by the Complainants in calculating money owing.

II. Decision

General Objections

12. The Companies provide no new submissions in support of their general objections. With respect to their concern that they were not supplied with the audio recordings and written transcripts of the Complainants' and Mr. Graya's interviews, the Companies have already been advised that audio recordings and transcripts are not generally reviewed by the Commissioner in the decision-making process, and that indeed audio recordings are not generally transcribed. Nevertheless, the Companies' request for audio recordings was considered but ultimately rejected. The rationale for this was set out in the Decision Notice.[1] Nevertheless, the Companies continue to raise the audio recording disclosure issue and argue that I have provided no rationale for not sharing the audio recordings. The Companies overlook the explanation that has already been provided in the Decision Notice. The audio recordings were not included in the materials upon which I based my decision.

13. The investigator's interview summaries were detailed and thorough and the Companies have not provided any reasons why they should not be relied upon. The Companies' counsel was present during the interviews with Mr. Graya and both Mr. and Mrs. Graya provided written statements after their interviews. If there were any inaccuracies in the interview summaries, the Companies were well-placed to identify them and make a compelling argument for the inclusion of the audio recordings in the record. They have not done so, and I do not accept that the process was unfair simply because the audio recordings did not form part of the record in this case.

14. Nor do I accept that I delegated my decision-making authority to the OBCCTC investigator or that the investigation was pre-determined because I did not listen to the audio recordings or review transcripts of the Complainants' interviews. I responded to this argument in paragraph 36 of the Decision Notice:

> My findings are based upon the entirety of the record before me, including the investigator and auditor reports, written statements by Mr. and Mrs. Graya, the Companies' submissions, and supporting documentation provided by both the Complainants and the Companies…

15. The Companies have not provided any new information to convince me to change my mind. The Companies' submissions on cross-examination have also been thoroughly canvassed in paragraphs 37-41 of the Decision Notice:

> (37) The Companies have asked on several occasions to cross-examine the Complainants on the basis that the findings against the Companies are serious and that the Complainants "failed to provide useful documentary evidence to substantiate their allegations." Comparable submissions were also considered in Rideway.

[1] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021) – Decision Notice, paragraph 33.

(38) In my September 24, 2021 correspondence to the Companies, I advised that cross-examinations are not part of the OBCCTC's process and that the Act does not provide for a right of cross-examination. In a subsequent letter dated October 7, 2021, I advised the Companies that I did not consider cross-examinations appropriate or necessary in the circumstances of their case. I continue to believe that the Companies have had sufficient opportunity to contradict and challenge the Complainants' evidence through their interviews and written submissions. The Companies have also had opportunity to submit documentary evidence.

(39) I am satisfied that the Companies have been provided with sufficient opportunity to understand and respond to the allegations against them. They saw and responded to the documentary evidence submitted by the Complainants. They reviewed and responded to the investigator and auditor reports. They were granted extended time to respond to the Decision, and I have now considered statements made by Mr. and Mrs. Graya as well as Mr. Graya's interviews and the Companies' written submissions. Although they did not produce very much relevant documentary evidence, they were provided the opportunity to do so.

(40) The Act does not explicitly provide for cross-examination. Cross-examination of complainants by licensees and/or their legal counsel could have a chilling effect on future complaints. This has to be considered against the possible benefits of cross-examination (and in circumstances where the licensees would not be subject to cross-examination). As I stated in Rideway, allowing for cross-examination of drivers could be sufficiently intimidating to dissuade drivers from making complaints against licensees; this would be inconsistent with the overall purposes of the Act. The following from Rideway is also relevant (footnotes have been omitted):

> [38] Container trucking drivers are vulnerable to mistreatment by licensees and their protection has always been a primary consideration of government and the OBCCTC. For example, the Act was introduced following a work stoppage in 2014, which ended upon the signing of a Joint Action Plan that committed to the introduction of a number of reforms, including a whistleblower mechanism "for the reporting of concerns related to compliance with trucking licensing system requirements (including compensation provisions) or incidents of intimidation or harassment related to container drayage activity." A confidential complaint line was established and is now administered by the OBCCTC.
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> [39] Much of the Act, Regulation and the CTS Licence provisions are based upon recommendations made in a report drafted by Vince Ready and Corinn Bell ("Ready/Bell") in the context of the 2014 work stoppage. In their report, Ready/Bell noted that drivers who come forward to report a non-payment, undercutting, or kickbacks are fearful about losing their jobs or suffering other negative employment consequences. Ready/Bell recommended that "the strictest of penalties" should be imposed "in the face of evidence of retaliation or retribution."
>
> [40] Section 28 of the Act recognizes that drivers may be harassed or coerced or otherwise mistreated because of a complaint, inspection or investigation. This section represents a legislative attempt to keep licensees from punishing a driver for making a complaint. In the CTS Licence, licensees are prohibited from threatening, harassing, coercing, or attempting to influence truckers regarding their right to compensation. The

> OBCCTC has a mandate to ensure maximum protection for drivers against licensee mistreatment and retaliation. These factors militate strongly against cross-examination of complainants by licensees and/or their legal counsel.
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> (41) Where s. 28 violations are alleged, as is the case here, the argument against cross-examination of complainants by licensees and/or their legal counsel becomes even stronger.

16. Again, no new evidence or argument has been provided. I remain of the opinion that the Companies have been provided with ample opportunity to respond to the Complainants through interviews, the submission of documentary evidence, and their extensive written submissions via counsel, and I do not agree that a cross-examination of the Complainants was necessary in this case. I also continue to be of the view that the practice of cross-examination is not appropriate in the context of OBCCTC decision making because of the chilling effect that the practice would have on the OBCCTC's complaint process. I once again refer the Companies to the discussion about cross-examination in Rideway Transport Ltd. (CTC Decision No. 09/2021) – Decision Notice, included in the Decision Notice in this matter.

Section 28 violations

17. The Companies deny violating section 28 of the *Act*. They previously submitted that the Complainants' allegations are false and were made in response to the Companies' accusations of fraud. The Companies' submissions were extensively addressed in the Decision Notice and for the reasons articulated in paragraphs 71-95 of the Decision Notice, I am not persuaded to change my conclusion that the Companies breached s. 28 of the *Act* by repeatedly seeking to determine who made complaints to the OBCCTC (including by impersonating OBCCTC staff in phone calls to two of the Complainants, by ceasing to provide and/or threatening to stop providing work to Complainants 1, 3 and 4, and by cancelling or threatening to cancel three of the Complainants' truck insurance. Nor am I persuaded to change my finding that the Companies engaged in all of these activities in retaliation for the Complainants' having filed complaints. The Companies also sent threating letters to Complainant 4 in retaliation for the same.[2]

18. The Companies provide no new information or argument in support of their reconsideration request on the s. 28 question and therefore I have no reasons to reverse my findings on this matter.

Licence cancellation

19. The Companies argue that the penalty is not proportionate to the wrongdoing and that licence cancellation is punitive. They submit that a fine is more appropriate than a licence cancellation in this case and assert that the impact that the licence cancellations will have on the Companies' owner and employees is too severe.

20. The Companies fail to consider my findings and my reasons for the penalty in restating their argument. In this one audit and investigation alone, the Companies have been found to have committed multiple breaches of the *Act, Regulation* and licence. Many of those breaches were committed multiple times and/or against multiple drivers. I have found that the Companies required four employees to have an ownership interest or a leasehold interest in trucks in which the

[2] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021) – Decision Notice, paragraphs 71-95.

licensee had an ownership interest or leasehold interest and required the same four employees to become I/Os. The Companies also failed to properly pay seven drivers for the time periods between June 30, 2016 and June 1, 2020. One driver was not paid following a previous audit and the Companies misrepresented that the driver had been paid on two occasions. Additionally, and importantly, the Companies failed to keep and make available their records as required.

21. The Companies also violated s. 28 of the *Act* multiple times against four drivers by repeatedly seeking to determine who had made complaints to the OBCCTC, sending threating letters, not providing and/or threatening to stop providing work to the Complainants, and cancelling or threatening to cancel the Complainants' truck insurance. I discussed the seriousness of the s. 28 violations in the Decision Notice where I noted that:

> (104) In this case the Companies' violations are serious, in particular the s. 28 violations. Section 28 was enacted in response to driver concerns that they would lose their jobs or suffer other negative consequences if they came forward to report non-payment, rate undercutting or kickbacks. It was also enacted in response to Ready/Bell who also recommended that the strictest of penalties be imposed in the face of evidence of retaliation or retribution.
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> (105) In Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 12/2019) – Decision Notice, I observed that licence cancellation could result in greater industry stability. I noted that the Lower Mainland drayage sector had been destabilized by rampant rate undercutting that ultimately resulted in government introducing the Act and the available penalties, which include licence cancellation. The industry is stable when drivers are fairly compensated, and the successful enforcement of the rates depends on drivers having certainty that they will be protected when they report instances of rate undercutting. Section 28 is therefore central to the Act's purpose, and this is why I consider s. 28 violations to be particularly egregious.

22. Additionally, the Companies are repeat offenders and had already been penalized twice for earlier infractions before the commencement of this audit/investigation. In this case, the Companies committed multiple, serious violations, the severity and number of which were expressly considered when issuing the licence cancellation penalty. Also considered was the degree to which the Companies' drivers were financially harmed and the Companies enriched. The Companies' complete failure to keep and make available records was also considered, as was the impact of the Companies' record keeping violations on their drivers and on my ability to make an accurate award.

23. The Companies argue that a financial penalty would be more suitable but do not address the fact that previous financial penalties against them have had no deterrent effect. In the Decision Notice I discussed licence cancellation as a remedy when a licensee does not alter its behaviour following previous penalties:

> (109) These penalties have not had the desired deterrent effect. The Companies have argued in response to previous penalties that their noncompliance did not reflect the policies of Mr. Graya and would not be repeated. However, the Companies have in fact repeated their non-compliant behaviour. They also argued that they operate the Companies and treat their drivers in accordance with the Act. This is also untrue.

(110) I am also mindful of the fact that the Companies were aware of the legislative and regulatory requirements but chose to undermine the integrity of the OBCCTC enforcement process by providing false evidence (copies of two cheques that were never given to Complainant 1) to demonstrate compliance in response to this audit. This is particularly egregious as the Companies have a history of providing false evidence to demonstrate compliance and not paying drivers following an order to pay.

(111) Licence cancellation is an appropriate penalty in this case for the reasons noted above and also because it is the most effective means of ensuring that licensees do not view penalties as just another cost of doing business. I have previously stated that:

> …the Act does not require, nor should licensees expect, that a licence cancellation will only occur after a series of graduated fines. If the circumstances of an audit warrant it, licences will be cancelled in order to protect the integrity of the Commissioner's enforcement program and fulfill the purpose of the Act.

(112) Nor should licensees expect a licence suspension to follow graduated fines. A licence suspension may be appropriate in limited circumstances which do not apply to this case. For example, it may be a useful penalty when a licensee has failed to comply with an order and the term of the suspension is pegged to compliance with the order, but I am not convinced that licence suspensions are generally deterrent or corrective. A licence suspension would only be serious to licensees depending solely on port access for their business and these Companies do not. To overcome a short-term licence suspension, the Companies would simply have to contract out the container trucking services portion of their business for a time. Only a long-term licence suspension could disrupt the Companies' operations to the degree that it may dissuade them and others from future violations; however, it is unclear how long that suspension would have to be and at what point the suspension would have the same effect as a cancellation in any event.

24. The Companies have provided some additional evidence to demonstrate the impact that the licence cancellations will have on their owner and employees. Similar evidence was provided in response to the Original Decision. The Companies have provided a new statement from the Companies' owner, Mr. Graya, some evidence of the Companies' financial obligations, and sworn statements from two of the Companies' drivers who previously provided statements in support of the Companies.

25. I have considered this evidence and the Companies' submissions. I recognize that the licence cancellations will impact impact the Companies' owner, but I continue to be of the view that licence cancellation is a suitable remedy. Mr. Graya understood that the Companies' licences could be jeopardized by violations of the *Act,* yet he has persistently engaged in non-compliant activity. This is the case despite the penalties imposed on two other occasions.

26. The Companies have provided documentation demonstrating various debts/financial obligations of the Companies and state that the loss of the licences will result in bankruptcy. However, the Companies have not supplied any evidence showing the income derived from their licences (used to access Port of Vancouver container terminals) compared to the other income they generate doing other trucking work. Nor have they provided financial statements or any other materials showing their income as compared to their costs. The Companies have not established that they will cease to exist if they lose their ability to access the Port.

27. I am aware of that the licence cancellations will impact the Companies' drivers. I have determined that this does not outweigh the importance of addressing the Companies' continued non-compliance and I have already noted that the OBCCTC can assist drivers to find new work with other licensees.[3]

28. In response to the Original Decision, the Companies argued that the licence cancellations would have a destabilizing effect on the industry. The Companies restate this now but provide no evidence in support. Evidence provided previously by the Companies on this issue was addressed in the Decision Notice where I determined that the container volumes moved by the Companies to and from the Port of Vancouver could be absorbed by other licensees.

29. Further, sector stability is derived, in part, when industry stakeholders can be confident that licensees are following the rules and the Commissioner is enforcing them.[4] It has been recognized since before the coming into force of the *Act* that rate undercutting and other driver abuses negatively impact the sector.[5] In this way, the Companies actions have a destabilizing effect, and the cancellation of the Companies' licences may, in fact, aid in the sector's stabilization.

30. The Companies also submit that the licence cancellations are "cruel and unusual punishment contrary to section 12 of the *Charter*." Section 2(4) of the *Act* incorporates specific provisions of the *Administrative Tribunals Act,* including sections 44 and 45. Sections 44 and 45 together provide that the Commissioner does not have jurisdiction over constitutional questions, including questions relating to the *Charter*. It is therefore outside of my jurisdiction to consider this question.

31. It seems doubtful that the Companies are protected by s. 12 of the *Charter*. Section 12 does not include protection for individuals who are financially connected to, or who control, corporations that are subject to penalties. In any event, I do not consider licence cancellation either "cruel" or disproportionate here. Rather, the cancellation of the Companies' licences is proportionate for the reasons set out above.

32. The Companies' licences grant them the right to access Port of Vancouver container terminals, subject to their compliance with the regulatory scheme. The right to access the terminals is not a guaranteed right. Rather, loss of access, as a result of licence cancellation is known to be a potential consequence of non-compliance. The availability of licence cancellation reflects the intention of the legislature and the history underlying the *Act*. [6]

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[3] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021) – Decision Notice, paragraph 117; and Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 12/2019) – Decision Notice, page 9.
[4] Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 12/2019) – Decision Notice, page 3.
[5] See for example extensive discussions regarding rate undercutting in *Recommendation Report – British Columbia Lower Mainland Ports*, Vince Ready and Corinn Bell, October 16, 2014.
[6] Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 06/2020) (Reconsideration of CTC Decision No. 12/2019), paragraphs, 20, 21 and 39; and Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021) – Decision Notice, paragraphs 111 & 112.

33. Additionally, and in any event, the Companies may be able to continue to operate in related business. They have not disagreed with or responded to my comments in the Decision Notice on this matter:

> (116) The Companies provide a range of trucking services primarily for the forestry industry that include, but are not limited to, container trucking services requiring a CTS Licence. There is no evidence to suggest that a loss of CTS licence, resulting in an inability to access marine container terminals, would lead to the collapse of the Companies' business. Indeed, recent performance statistics compiled by the Port and shared with the Companies indicate that they accessed marine terminals at a rate below the industry average over the last three months of 2021. This indicates that the Companies are providing limited container trucking services and are perhaps providing other services that do not require a licence.

34. The Companies cite the loss of "significant business" following the publication of the Decision Notice and argue that the Commissioner should consider the loss of business after the publication of OBCCTC decisions when issuing penalties. The Companies do not include any evidence of this loss of business but "reserve the right" to submit evidence as it becomes available. The Companies' owner does not attest to this business loss in his statutory declaration, but counsel asserts a loss of $80,000 - $90,000 in written submissions. I do not consider that business loss arising from the publication of a decision would be relevant to the penalty even if it were established on the evidence. The Companies have not cited any authority in support of their submission that business losses are relevant to penalty, and it would not make sense to consider such losses for many reasons, including because there is no guarantee that a licensee will lose business following the publication of a penalty order, and it could not be confirmed with certainty that a licensee lost business solely because of a published order.

35. Finally, I note that the Companies have asked me to refrain from publishing the Decision Notice despite its publication on March 8, 2022 and despite its argument that the impact of its publication should be accounted for when reconsidering the penalty. This submission is internally inconsistent. The Decision Notice has already been published, and, as set out above, I do not consider that any financial impact resulting from its publication is relevant.

36. For these reasons, I remain of the opinion that licence cancellation is appropriate.

Order to pay

37. The Companies argue that the amounts owed to the Complainants should be calculated as though they were employees paid by the hour rather than I/Os paid by the trip and should not include the truck payments deducted from their pay.

38. The Companies provide no new submissions on these issues and these arguments have been well canvassed in the Original Decision and Decision Notice. I have found that the Companies threatened the Complainants with a loss of work if they did not become I/Os. I have also found that the Companies required the Complainants to lease/buy company-owned trucks in violation of Appendix A of the Container Trucking Services Licence. Because the Companies breached the *Act*, they were required to return the money they were paid for the trucks and because the Complainants were paid by the trip, the auditor calculated the amounts owing based upon a trip payment.[7]

39. The Companies reiterate their submission that the Complainants were not required to become I/Os. This argument was dismissed in the Decision Notice on the basis that the choice posed to the Complainants was no choice at all. The Companies argued that the trucks were sold to the Complainants for their benefit, but this argument was dismissed in light of the substantial benefits reaped by the Companies, rather than the Complainants, as a result of the truck sales.

40. In the Decision Notice I agreed with the Companies that the Complainants would be unfairly enriched if the purchase price of the trucks was returned to them, and they also collected the trucks from the Companies. However, I pointed out that three of the Complainants do not own the trucks and therefore cannot collect them and that the one truck that is owned by a Complainant has no value because of its age.[8] Therefore the Complainants will not be unfairly enriched if the amounts they remitted to the Companies for the trucks they were leasing/buying is returned to them.

41. The Companies have asked that vacation time be considered in the auditor's calculations on two occasions: once before the Original Decision and now on reconsideration. In the Original Decision, I outlined the steps taken by the auditor to account for vacation time and provided revised calculations that accounted for the vacation time information supplied by the Companies.[9] The Companies provided further submissions on vacation time in their response to the Decision Notice which were considered with the result that a further amendment to the amount owing was made.[10] The Companies now ask that I account for four weeks vacation time each year for each Complainant but provided no information in support of their request. I will not account for holidays that the Companies cannot prove.

III. Conclusion

42. In summary, for the reasons set out above and the reasons in the Original Decision and Decision Notice, the application for reconsideration of CTC Decision No. 07/2021 is dismissed and the penalty imposed in the Decision Notice is confirmed.

43. The Companies earlier requested, pursuant to section 39(2) of the *Act*, that the Decision Notice orders be suspended until the outcome of the reconsideration. That request was granted.

[7] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraphs 125-128.
[8] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021) – Decision Notice, paragraph 56.
[9] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraphs 135.
[10] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021) – Decision Notice, paragraph 56.

44. The Companies are now ordered, pursuant to s. 9 of the *Act*, to immediately pay the total amount owing to the seven drivers identified in the auditor's revised calculations ($141,379.59) and provide proof to the auditor that payment of the money has been made to each driver by no later than June 17, 2022.

45. Safeway and Coast's 2018 licences were meant to expire on November 30, 2020 but have been extended twice pending the determination of a legal challenge to the OBCCTC 2020 licensing process. That challenge was dismissed (Port Transportation Association v. The Office of the British Columbia Container Trucking Commissioner 2022 BCSC 387) and an application for a stay pending determination of an appeal of that dismissal has also been rejected.

46. On September 9, 2020, before the legal challenge to the OBCCTC 2020 licencing process, Safeway and Coast were awarded conditional licences, subject to the submission of security and other materials. If they had not been operating under the extension of their 2018 licences pending determination of the legal challenge, they would have been operating under 2020 licences after December 1, 2020. As a result of this Reconsideration Decision, Safeway Trucking Ltd. and Coast Pacific Carrier Inc.'s 2020 conditional licences are cancelled, or their conditional approvals withdrawn, and the extension of the term of their 2018 licences expires as of June 30, 2022.

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

Dated at Vancouver, B.C., this 31st day of May, 2022.

Michael Crawford, Commissioner