



May 3, 2023

Safeway Trucking Ltd.  
8974 154 Street  
Surrey, BC V3R 4J2

Coast Pacific Carrier Inc  
8974 154 Street  
Surrey, BC V3R 4J2

Attention: Mr. Jagbir Graya

### **Commissioner's Orders - Safeway Trucking Ltd. and Coast Pacific Carrier Inc.**

#### **Complaints**

1. In April of 2023, the Office of BC Container Trucking Commissioner ("OBCCTC") received a number of complaints from drivers that they had not been paid by Safeway Trucking Ltd. and Coast Pacific Carrier Inc. (collectively, "Safeway"). The first complainant ("Complainant #1") advised the OBCCTC that Safeway had issued him two separate cheques as payment for his wages in February 2023 and that his bank advised him on or around April 18, 2023 that one of the cheques had insufficient funds. The second complainant ("Complainant #2") advised he had not been paid for the month of February or for March 2, 2023. The third complainant ("Complainant #3") advised the OBCCTC he was not paid for the months of February, March, and April 2023. (Complainants 1-3 collectively the "Complainants.")

#### **Background**

2. Safeway is a licensee within the meaning of the *Container Trucking Act* (the "Act").
3. Section 9 of the *Act* authorizes the Commissioner to order a licensee who fails to comply with any provision of the *Act*, *Container Trucking Regulation* ("Regulation"), or container trucking licence to comply with those requirements.
4. Section 16(1)(b) of the *Act* states that a licensee must carry out container trucking service in compliance with:
  - (i) this Act and the regulations,
  - (ii) the license, and
  - (iii) if applicable, an order issued to the person under the Act.
5. 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. Section 23(2) 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.

6. Section 24(2) of the *Regulation* states that remuneration, fuel surcharge and wait time payments must be paid out to independent operators (“IOs”) within thirty (30) days of the end of the calendar month in which the IO performed the work.
7. Section 4(f) of Appendix D to Schedule 1 of Safeway’s licence states that a licensee must produce payroll records kept in accordance with section 27 and 28 of the *Employment Standards Act* upon request to the Commissioner.
8. Under section 31 of the *Act*, the Commissioner may conduct an audit or investigation to ensure compliance with the *Act*, the *Regulation* or a licence.
9. In *Safeway Trucking Ltd./Coast Pacific Carrier Inc.* (CTC Decision No 07/2021), the Commissioner found that Safeway had: failed to keep proper records; required four employees to become IOs; made improper deductions; failed to pay one driver the money owed from a previous decision; impersonated OBCCTC staff; threatened and retaliated against complainants; and underpaid its drivers in the amount of \$141,749.32. Safeway was ordered to compensate the drivers and its license was cancelled.
10. Safeway was granted a stay of the licence cancellation pending the outcome of a judicial review. The court dismissed Safeway’s petition and its license was cancelled on or around April 17, 2023. Safeway intended to appeal the lower court’s dismissal and was granted an interim stay of the cancellation notice until May 5, 2023. On April 21, 2023, Safeway advised that it will not pursue the stay beyond May 5, 2023 and relinquished its license effective immediately.

### **Investigation**

11. Complainant #1 is an I/O who is paid by the hour. He provided the OBCCTC a copy of his February 2023 wage statement (“February Wage Statement”) showing that he performed 125.5 hours of container trucking services during the month. He earned \$64.93 per hour and 36% in fuel surcharge in accordance with the regulated rates. The February Wage Statement shows he earned \$8,148.71 in wages and \$2,933.54 in fuel surcharge for a total of \$11,082.25.
12. The Complainant provided photocopies of cheques issued in the amount of \$5,000 on March 10, 2023 and in the amount of \$6,082.25 on March 30, 2023.
13. The Complainant deposited the pay cheques into his bank account. The March 30, 2023 cheque in the amount of \$6,082.25 cleared. The March 10, 2023 cheque in the amount of \$5,000 did not. The Complainant provided a statement from his bank showing a copy of Safeway’s returned cheque for \$5,000 and the reason for the return is identified as insufficient funds.

14. On April 21, 2023, the OBCCTC advised Safeway that the Complainant received a notification from his bank that the March 10, 2023 cheque had insufficient funds. Safeway was offered an opportunity to reissue a payment to the Complainant no later than April 25, 2023. Safeway did not provide a response or reissue another cheque by the deadline.
15. Complainant #2 is also an I/O who is paid by the hour and claims he was not paid for work performed in February and March 2, 2023. The trip sheets he provided for the month of February and March 2, 2023 show he worked 161 hours and 15 minutes in February and 6 hours and 45 minutes on March 2, 2023. The February wage statement shows he worked 131 hours in February, and he was to be deducted two separate amounts for insurance (\$800.00 and \$150.00) and \$300.00 for yard rental. The Complainant could not provide an explanation for the difference in hours of work but stated that the trip sheets reflected his hours of work.
16. Complainant #3 is another I/O who is paid by the hour and claims he was not paid for container trucking work performed in February, March and April of 2023. He provided a handwritten note of the hours he worked each day in each month for a total of 170 hours and 30 minutes in February, 145 hours and 30 minutes in March, and 31 hours and 30 minutes in April.
17. The OBCCTC advised Safeway on April 17, 2023, that it had received complaints that drivers were not paid for work performed in January, February, and March 2023 and requested payroll records covering those periods to be delivered to the OBCCTC no later than April 25, 2023. Safeway failed to provide the requested records by the deadline or to respond at all.
18. On April 27, 2023, the OBCCTC advised Safeway that Complainant #2 and Complainant #3 alleged they were not paid and shared with Safeway the materials provided by the two Complainants detailing the hours they claimed to have worked. Safeway was given an opportunity to respond by no later than May 1, 2023. Safeway did not respond.

### **Preliminary Matter**

19. Even though Safeway's license was cancelled effective April 21, 2023, I find that Safeway is a licensee within the meaning of the *Act*. Even though the definition of licensee uses the present tense in section 1 of the *Act*, the interpretation must have regard to the text, context and the purpose of the legislation. Similarly, section 7 of the *Interpretation Act* advises that such present term tenses need to be applied based on the circumstances:

#### **Enactment always speaking**

- 7 (1) Every enactment must be construed as always speaking.
- (2) If a provision in an enactment is expressed in the present tense, the provision applies to the circumstances as they arise.

20. It is well recognized that the *Act* is beneficial legislation and one of the central purposes of the regulatory scheme is to ensure that container truck drivers are fairly compensated for their work and paid in a timely way.
21. Prior to the creation of the OBCCTC, the container trucking industry (also known as the drayage industry) saw work stoppages and labour disputes in 1999, 2005 and 2014, arising largely from inadequate compensation of drivers. The *Act* was intended to improve the working conditions of drivers and end the previous cycle of labour disruptions.
22. In this case, Safeway was a licensee when the Complainants performed the work for which they have not been paid. If the Commissioner is prohibited from issuing orders compelling a licensee that has had its licence cancelled for non-compliant conduct to comply with the *Act* based on breaches that occurred only when it held the license, the purpose of the *Act* would be defeated as the licensee would be shielded from complying with the *Act* and the drivers would not be compensated for work they had performed while the license was in effect.
23. If the legislature only intended licensees to only be subject the powers of the Commissioner during the term of the licence, licensees could unilaterally cancel a license at any time and escape any accountability to remunerate underpaid drivers pursuant to the *Act*. I find here that a licensee includes a licensee who previously held a license for these reasons.

### **Orders**

24. Based on the best evidence available, I am satisfied that Complainant #1 earned a total of \$11,082.25 in February 2023 and that he only received a payment of \$6,082.25. I find that Safeway breached s. 24 of the *Regulation* for failing to pay Complainant #1 within 30 days of the calendar month in which the work was performed, and I order Safeway to pay Complainant #1 \$5,000.00 no later than 12:00pm on May 5, 2023 ("Order #1).
25. In the absence of any explanation from Safeway and based on the best evidence available provided by Complainant #2, I am satisfied Complainant #2 performed 161 hours and 15 minutes of container trucking services in February 2023 and 6 hours and 45 minutes on March 2, 2023 for which he has not been paid in accordance with section 24 of the *Regulation*. Safeway failed to provide payroll records for Complainant #2 including records of the deductions and the reason for those deductions on the February 2023 wage statement as required in Appendix D of the CTS License. I was unable verify the amount of the payroll deductions for parking or insurance or particulars the purpose of these deductions. Complainant #2 identified these deductions for parking his personal vehicle and insurance on his personal vehicle and commercial vehicle through Safeway's fleet insurance I find that Complainant #2 is owed \$10,469.96 (\$64.93 x 161.25 hours) for container services work performed in February 2023 less \$1,250.00 for insurance and yard deduction and \$438.28 (\$65.93 x 6.57 hours) for container services work performed in March 2023. I find Safeway in breach of section 24 of the *Regulation* for failure to pay wages to Complainant #2 within 30 days of the last day of the month in the work was performed and I order Safeway to pay Complainant #2 the sum of \$9,658.24 no later than 12:00pm on May 5, 2023 ("Order #2).

26. Based on the best evidence available, I am satisfied that Complainant #3 performed 170.5 hours of container trucking work in February and 145.5 hours in March 2023. I make no determination at this point on hours worked in April as Safeway has until May 30, 2023 to pay for that work. I find that Complainant #3 is owed \$11,070.57 (\$64.93 x 170.5 hours) for February 2023 and \$9,447.32 (\$64.93 x 145.5 hours) for March 2023. I find Safeway in breach of s. 24 of the *Regulation* for failing to pay Complainant #3 within 30 days following the end of the calendar month in which the work was performed, and I order Safeway to pay Complainant #3 \$20,517.89 no later than 12:00pm on May 5, 2023 ("Order #3).
27. If the Commissioner intends to propose an administrative penalty based on Safeway's failure to comply with the *Act*, a penalty will be proposed in accordance with section 34 of the *Act*.
28. These Orders (collectively "Order #1, Order #2, and Order #3) will be delivered to Safeway and published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C. this day of May 3, 2023

Sincerely,

**OFFICE OF THE BRITISH COLUMBIA CONTAINER TRUCKING COMMISSIONER**



Glen MacInnes, Commissioner