



October 23, 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.

Background

1. Safeway was a licensee at all material times within the meaning of the *Container Trucking Act* (the "Act") and continues to be a licensee for the purposes of the orders made below for the reasons outlined in my orders made May 3, 2023.
2. 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.
3. 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.
4. 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 via Rate Order, and a licensee must comply with those 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.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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 would not pursue the stay beyond May 5, 2023, and relinquished its license effective immediately.
10. In April of 2023, the Office of BC Container Trucking Commissioner ("OBCCTC") received 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.")
11. On May 3, 2023, following an investigation that included an opportunity for Safeway to provide documents and a submission about the allegations, I issued an Order ("First Order") that the Complainants be paid outstanding wages as follows:
 - a. Complainant #1 - \$5,000.00 for wages and fuel surcharge in January 2023
 - b. Complainant #2 - \$9,658.24 for wages earned in February and March 2023
 - c. Complainant #3 - \$20,517.89 for wages earned in February and March 2023 (monies owing for April were not due at the time of the First Order)
12. On June 7, 2023, I advised Safeway that the OBCCTC had received a complaint from Complainant #2 that he did not receive any wages or surcharges for work performed in the month of April 2023. A copy of Complainant #2's notations of each day worked in April 2023 (a total of 31.30 hours) was provided to Safeway and Safeway was invited to provide a response.
13. On June 12, 2023, Safeway advised the OBCCTC that it had prepared Complainant #2's cheque and it had been ready to be picked up since April 30, 2023, but Complainant #2 had failed to pick up the cheque. The OBCCTC advised Complainant #2 that the cheque was ready to be picked up and

Complainant #2 subsequently advised the OBCCTC that he picked up the cheque and confirmed he received the April wages and fuel surcharge.

14. On September 26, 2023, I advised Safeway that the OBCCTC had received further complaints that Complainant #1 did not receive wages or fuel surcharge for work performed in March 2023 and Complainants #2 and #3 did not receive their fuel surcharge payments for February or March 2023. Safeway was provided a copy of Complainant #1's trip sheets on Safeway letterhead ("Trip Sheets") which noted his daily hours performing container trucking services between March 3 -31, 2023 and was invited to provide a response to the non-payment of wages and fuel surcharges by October 15, 2023. Safeway did not provide a response by the deadline.

Investigation

Complainant #1

15. Complainant #1 is an I/O who is paid by the hour. He provided the OBCCTC a copy of 2023 Trip Sheets showing that he performed 125 hours of container trucking services during the month of March 2023 as follows:

Date	Start Time	Lunch	End Time	Worked Hours
March 3	8:15am	N/A	4:30pm	8:15
March 6	7:30am	N/A	3:00pm	7:30
March 7	8:00am	N/A	2:00pm	6:00
March 13	8:00am	N/A	2:00pm	6:00
March 14	8:15am	N/A	6:15pm	10:00
March 15	8:15am	N/A	4:00pm	7:45
March 16	8:30am	N/A	6:30pm	10:00
March 17	7:30am	N/A	4:15pm	8:45
March 20	8:15am	N/A	5:00pm	8:45
March 21	7:45am	N/A	4:00pm	8:15
March 24	7:45am	N/A	3:15pm	7:30
March 27	7:45am	N/A	2:30pm	6:45
March 28	7:30am	N/A	1:30pm	6:00
March 30	7:30am	N/A	4:00pm	8:30
March 31	7:00am	N/A	4:00	9:00
Total				119

16. The regulated fuel surcharge rate ("FSR") in March 2023 specified that IOs paid hourly were to receive a minimum of \$64.93 per hour and a fuel surcharge of 30%.
17. Complainant #1 earned \$64.93 per hour and 30% in fuel surcharge in accordance with the regulated rates. Based on the applicable Rate Order and Fuel Surcharge, and Safeway's failure to respond by October 15, 2023, I find that Complainant #1 is entitled to the following amount:

$\$64.93 \times 119 \text{ hours} = \$7,726.67 \text{ in wages}$
 $\$7,726.67 \times 30\% \text{ FSR} = \$2,318.00 \text{ in fuel surcharges}$

Total owed = \$10,044.67

Complainant #2

18. In the First Order, I found Complainant #2 was not paid for the hours worked in February and March 2, 2023, and ordered that he be paid \$10,236.15 (\$64.93 x 161.25 hours worked) for February 2023 and \$428.49 (\$64.93 x 6.57 hours worked) for March 2023 minus \$1,250 for insurance and yard fee deductions. Safeway was ordered to pay Complainant #2 a total of \$9,658.24 (\$10,644.64 - \$1,250). Safeway did not do so, and the OBCCTC subsequently paid Complainant #2 \$9,658.24 from Safeway's security on or around September 18, 2023.
19. Upon receiving the above payment for wages, Complainant #2 advised the OBCCTC that he was not paid the fuel surcharge for February and March 2023. Prior to issuing the First Order, I was not aware that Complainant #2 had not been paid the fuel surcharge for February 2023 which totaled \$3,685.01 (\$10,236.15 x 36% FSR) or for March 2023 which totaled \$145.69 (\$428.49 x 34% FSR). Despite my request for evidence of payment or a submission, Safeway failed to provide a response or documentation supporting payment of the FSR to Complainant #2 by the October 15, 2023, deadline.

Complainant #3

20. In the First Order, I found Complainant #3 was not paid for the hours worked in February and March 2, 2023, and ordered that he be paid \$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. Safeway was ordered to pay Complainant #3 a total of \$20,517.89 for the hours worked (\$11,070.57 + \$9,447.32). Safeway did not do so, and Complainant #3 was therefore paid \$20,517.89 from Safeway's security on or around September 18, 2023.
21. Upon receiving the above payment for wages, Complainant #3 advised the OBCCTC that he was not paid the fuel surcharge for February and March 2023. Prior to issuing the First Order, I was not aware that Complainant #3 had not been paid the FSR for February 2023 which totaled \$3,985.41 (\$11,070.57 x 36% regulated FSR) or for March 2023 which totaled \$3,212.09 (\$9,447.32 x 34% FSR). Despite my request for evidence of payment or a submission, Safeway failed to provide a response or documentation supporting payment of the FSR to Complainant #2 by the October 15, 2023, deadline.
22. I have confirmed that Complainant #3 received the wages and fuel surcharge owed for April 2023.

Orders

23. Based on the best evidence available, I am satisfied that Complainant #1 earned a total of \$7,726.67 in March 2023 and was entitled to \$2,318.00 in fuel surcharge for March 2023 for which he did not

receive from Safeway. 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 \$10,044.67 no later than 12:00pm on October 31, 2023 (“Order #1”).

24. Based on the best evidence available, I am satisfied that Complainant #2 was not paid the fuel surcharge for February or March 2023 pursuant to s. 24 of the *Regulation*. In accordance with my finding in the First Order that Complainant #2 earned \$10,236.15 (161.25 hours at a rate of \$64.93 per hour) in February 2023 and \$428.49 (6.57 hours at a rate of \$64.93 per hour) in March 2023, I find Complainant #2 is owed \$3,685.01 ($\$10,236.15 \times 36\%$ FSR) for the fuel surcharge in February 2023 and \$145.69 ($\$428.49 \times 34\%$ FSR) for the fuel surcharge in March 2023. I order Safeway to pay Complainant #2 the amount of \$3,830.70 no later than 12:00pm on October 31, 2023 (“Order #2”).
25. Based on the best evidence available, I am satisfied that Complainant #3 was not paid the fuel surcharge for February or March 2023 pursuant to s. 24 of the *Regulation*. In accordance with my finding in the First Order that Complainant #3 earned \$11,070.57 (170.5 hours at a rate of \$64.93 per hour) in February 2023 and \$9,447.32 (145.5 hours at a rate of \$64.93 per hour) in March 2023, I find Complainant #2 is owed \$3,685.01 ($\$11,070.57 \times 36\%$ FSR) for the fuel surcharge in February 2023 and \$3,212.09 ($\$9,447.32 \times 34\%$ FSR) for the fuel surcharge in March 2023. I note that I permitted a deduction of \$1,250 for insurance and yard fees from Complainant #3’s wages in the First Order, but the FSR is calculated on the gross earnings of the driver and therefore that deduction is not factored into the fuel surcharge owing. I order Safeway to pay Complainant #3 \$6,897.10 no later than 12:00pm on October 31, 2023 (“Order #3”).
26. 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*.
27. These orders (Order #1, Order #2, and Order #3) will be delivered to Safeway and published on the Commissioner’s website (www.obcctc.ca).

Dated at Vancouver, B.C. this day of October 23, 2023

Sincerely,

OFFICE OF THE BRITISH COLUMBIA CONTAINER TRUCKING COMMISSIONER



Glen MacInnes
Commissioner