



December 18, 2023

Simard Westlink Inc.
16062 Portside Road
Richmond, BC V6W 1M1

Commissioner's Decision - Supplemental Simard Westlink Inc. (CTC Decision No. 16/2023)

Introduction

1. On August 25, 2023, in Simard Westlink Inc. (CTC Decision No. 09/2023) ("Decision"), I ordered Simard Westlink Inc. ("Simard") to, *inter alia*, pay two drivers the following amounts for work performed on March 15, 2023:
 - Mr. S. Kim is to be paid \$6.29
 - Mr. G. Brar is to be paid \$1,200.96 ("Payment Orders")
2. On September 1, 2023, Simard responded to the penalty proposed in the Decision and included additional submissions on the Payment Orders. According to Simard's calculations Mr. Kim was not owed any additional wages and Mr. Brar was only owed \$278.44.
3. On September 15, 2023, in Simard Westlink Inc. (CTC Decision No. 09/2023) ("Decision Notice"), I suspended the Payment Orders for 45 days pending receipt of documentation from Simard in support of its position that the calculations for Mr. Kim and Mr. Brar were incorrect.
4. On October 10, 2023, Simard provided payroll documentation in support of its positions that (1) benefits paid on behalf of Mr. Kim should be included in the calculation of the rate he was paid and (2) Mr. Brar was not entitled to the Fuel Surcharge and the payroll deduction in the amount of \$445.98 plus 5% GST was for fuel reimbursement and was compliant with the *Container Trucking Act* ("Act") as it was not a business expense of Simard.
5. I understand Simard maintains that Mr. Kim and Mr. Brar were not performing container trucking services covered by its CTS licence or the Act or the *Container Trucking Regulation* ("Regulation") and that Simard's October 10, 2023, submission is part of its alternative position that the Payment Orders were incorrect if in fact the work was covered under the regulatory scheme.

Mr. S. Kim

6. Simard states that it originally provided the Office of the BC Container Commissioner with the wrong payroll statement for the work performed by Mr. Kim on March 15, 2023.

7. On October 10, 2023, Simard provided the correct wage statement for Mr. Kim for the pay period covering March 15, 2023. The payroll records show he worked 11.25 hours on March 15, 2023, and was paid \$27.65 per hour for the first 8 hours and \$41.47 per hour for the remaining 3.25 hours.
8. Simard also provided, for the first time, a statement paid on Mr. Kim's behalf to the Teamsters Union for a national benefits plan which I understand provides certain extended health benefits to employees. The amount paid on Mr. Kim's behalf was \$327.00 for the month of March 2023. Based on the hours worked by Mr. Kim, Simard states, and I confirm, the benefit premium equated to \$1.26 per hour.
9. The Rate Order makes the regulated rates inclusive of benefits and therefore I find that Mr. Kim was paid \$28.91 per hour (\$27.65 + \$1.26) for the first 8 hours worked and \$41.47 per hour for the 3.25 hours on March 15, 2023. Based on the above I find that Mr. S. Kim was paid the minimum regulated rate for work performed on March 15, 2023.

Mr. G. Brar

10. Simard paid Mr. Brar the following for work performed on March 15, 2023:

Container	From	To	Zone Revenue	Wait Time Revenue	Total Revenue
EMCU863256	CP Rail	Rolls Right Terminal	\$65.29	\$60.06	\$125.35
EMCU863256	Rolls Right Terminal	CP Rail	\$65.29	\$9.24	\$74.53
CPPU236082	CP Rail Yard	Purolator	\$92.49	\$0.00	\$92.49
Bobtail	Purolator	Western Canada	\$45.63	\$0.00	\$45.63
CPPU237220	Western Canada	TJX Canada	\$49.73	\$0.00	\$49.73
CPPU234089	TJX Canada	CP Rail	\$97.65	\$26.18	\$123.83
Total			\$416.08	\$95.48	\$511.56

11. In its September 1, 2023, submission Simard maintained that the payment of wait time should be considered part of the trip rate but did not provide any further information as to why. Simard advised that Mr. Brar was covered under a collective agreement and my review of the collective agreement on file shows that Simard pays wait time based on certain wait times a CP Rail. I accept that the wait time was paid by Simard as part of Mr. Brar's compensation and therefore should be used in the calculation of the trip rate.

12. Simard does not appear to dispute the calculation of the regulated trip rates and Position Movement Rate (“PMR”) that would apply to Mr. Brar for the work he performed on March 15, 2023, with the exception of the trip between Purolator and Western Canada facilities. Simard does not particularize its objection to the inclusion of this trip, but I assume from Simard’s insertion of the term “bobtail” next to the trip that it argues that such trips do not attract the trip rate because there was no container movement.
13. In Simard Westlink Inc. (CTC Decision No. 01/2020), Commissioner Crawford dismissed Simard’s argument that “bobtail” moves (moves by trucks without a chassis or container between facilities) are not covered under the *Act* and referenced Pro West Trucking Ltd. (CTC Decision No. 06/2017) which held that bobtail trips are an ancillary service in support of container trucking services. Commissioner Crawford reasoned that the exclusion such ancillary services would lead to a multi-tiered rate structure that would impair the ability of auditors to effectively audit licensees as they would be called upon to dissect a plethora of complex multi-tiered rate structures. Commissioner Crawford’s decision on bobtails was recited in an industry bulletin on April 17, 2020. I agree with this analysis and find that the bobtail trip is an ancillary trip that allowed Mr. Brar to move a container from the Western Canada facility to the TJX Canada facility and attracts a regulated rate.
14. Simard also disputes that Mr. Brar was entitled to any fuel surcharge rate for each trip performed on March 15, 2023, because he only paid \$0.875 per litre – less than the \$1.05 required to trigger the fuel surcharge calculation set out in the Rate Order.
15. The invoice attached to Simard’s submission indicates Mr. Brar purchased fuel on two separate occasions during the pay period covering March 15, 2023, as follows:

Date	Litres	Total cost (including 5% GST)
March 13, 2023	265.20	\$449.94
March 14, 2023	270.00	\$468.49
	532.20	\$918.43

16. While the number of litres used by Mr. Brar matches the line-item deduction description on his wage statement, the deducted amount was less than Simard’s cost for fuel. On December 5, 2023, Simard responded to my inquiry about the discrepancy and explained that Mr. Brar is covered under a collective agreement that only requires drivers to only repay Simard the first \$.0875 per liter charged on the fleet card. Therefore, Mr. Brar received a discount on fuel and paid \$0.0875 per litre for the 532.2 litres for a total of 445.98 plus 5% GST – the amount equal to the deduction on Mr. Brar’s wage statement.
17. The Rate Order includes the fuel surcharge formula to be paid to drivers and, if the reference price of diesel is higher than \$1.05 per liter, then the difference is used to calculate the fuel surcharge applied to each trip. I accept that Mr. Brar received a discounted rate on fuel at \$0.875 per litre

and therefore, the FSR for March 15, 2023, is \$0.00 as follows:

$$\text{March 15, 2023 FSR} = \frac{(\$0.875 - \$1.05)}{\$0.05} \times \$889.00 \times 2\% = \$0.00$$

18. Based on the above, I find that Mr. Brar was owed a minimum regulated rate of \$889.00 (trip rate and PMR) for work performed on March 15, 2023, and was only paid \$511.56 (\$416.08 + \$95.48), for a difference of \$377.44.

Reasons for Dismissal of Stay Application

19. On November 6, 2023, I advised counsel for Simard that I had received its request for reconsideration and was awaiting the court's reasons in *Simard Westlink Inc. v. Office of the BC Container Trucking Commissioner 2023 BCSC 2007* before issuing a reconsideration. I also advised that I may invite Simard to make additional submissions before issuing a Reconsideration.
20. I have now reviewed the court's reasons and I invite Simard to make any additional submissions on those reasons no later than January 5, 2024.

Conclusion

21. Based on the above, I find that Mr. Kim was paid the minimum regulated for work performed on March 15, 2023, after taking into consideration his benefits.
22. Based on the above, I find that Mr. G. Brar was not paid the minimum regulated trip rates or PMR for the container moves (including the bobtail move) on March 15, 2023. I also find that Mr. Brar received a discount on diesel fuel and based on that discounted rate he was not entitled to a fuel surcharge rate. Therefore, I find that Simard owes Mr. Brar \$377.44.
23. This Supplemental Decision is issued after Simard's request for reconsideration of the Decision, and I will provide Simard until January 5, 2024, to provide any submissions on the findings set out above.
24. This Supplemental Decision will be delivered to Simard Westlink Inc. and will be published on the Commissioner's website after the Reconsideration Decision.

Dated at Vancouver, B.C. this 18th, day of December 2023.



Glen MacInnes
Commissioner