



June 12, 2018

Aheer Transportation Ltd.  
8970 River Road  
Delta, BC V4G 1B5

Via email  
Original via mail

Harjinder Badh

Via email  
Original via mail

### **Commissioner's Decision**

### **Harjinder Badh (the "Complainant") and Aheer Transportation Ltd. ("Aheer") (CTC Decision No. 17/2018)**

#### NATURE OF THE COMPLAINT

1. The Complainant, an Independent Operator ("I/O"), alleges that Aheer owes him \$10,920.00 in pay for container trucking services performed in November and December 2014. It is further alleged that upon making a complaint to the Office of the BC Container Trucking Commissioner ("OBCCTC") about his pay, Aheer stopped dispatching the Complainant.
2. The Complainant seeks a ruling from the Commissioner that he receive the money he is allegedly owed for performing container trucking services in 2014 and that Aheer's conduct constitutes a violation of section 28(a) of the *Container Trucking Act* (the "Act"). The Complainant seeks to have Aheer penalized and the Complainant returned to work.

#### BACKGROUND

3. The Complainant alleges that he filed three payroll inquiries with Aheer on January 6<sup>th</sup> and 22<sup>nd</sup>, 2015 and February 6, 2015 seeking a total of \$10,920.00 in pay owed for container trucking services performed in November and December 2014. He says that these inquiries were never answered and alleges that when asked, the owner of Aheer, Shinda Aheer, advised the Complainant that it was a matter to be discussed at a later date. Those discussions, he states, never occurred.
4. Aheer does not dispute that the Complainant provided container trucking services for Aheer in November and December 2014 but contends that portions of the Complainant's pay were held back after a verbal agreement was reached between Aheer and the Complainant to compensate Aheer, in part, for damages done to a Aheer truck/chassis by the Complainant's brother (an Aheer company driver) in 2014.
5. Aheer states that the Complainant's brother, while intoxicated, damaged an Aheer truck and chassis. In exchange for not pressing charges against the Complainant's brother, Aheer states that the Complainant agreed to wage hold backs. The Complainant acknowledges that his brother damaged an Aheer truck but denies that there was an agreement to hold back his pay.
6. The Complainant maintains that he sought his missing pay from Aheer for three and a half years but his requests were ignored.

7. On or about March 4, 2018 a meeting occurred between Aheer drivers, including the Complainant, and representatives of Unifor. Mr. Aheer states that he was in attendance at this meeting. His attendance is disputed by the Complainant and the Unifor representatives in attendance.
8. A Notice of Civil Claim has been filed in the Supreme Court of British Columbia by Mr. Aheer and a compliant was also lodged by Mr. Aheer at the British Columbia Human Rights Tribunal in response to the events alleged to have taken place at the March 4, 2018 meeting. Mr. Aheer claims that the Complainant “falsely and maliciously spoke” against him at the meeting, while intoxicated, in front of the meeting participants.
9. The Complainant states that he went on sick leave from Aheer following the March 4, 2018 meeting on or about March 8, 2018. Aheer was subsequently advised that the Complainant was cleared from sick leave and deemed able to return to work on April 10, 2018 but Aheer did not approve the Complainant’s return to work at that time.
10. On April 17, 2018 an Unfair Labour Practice Complaint was filed by Unifor seeking, *inter alia*, the Complainant’s return to work. Unifor notes that the Complainant was unilaterally reinstated following resolution of the complaint. A letter dated April 20, 2018 from Aheer to the Complainant confirms that Aheer set April 25, 2018 as the Complainant’s return date to work. Trip sheets indicate that the Complainant performed container trucking services on April 25, 26, 27, 30 and May 1, 2018 for Aheer.
11. On May 1, 2018 at 4:00pm, the OBCCTC advised Aheer in writing that a complaint for missing remuneration had been lodged by the Complainant and requested that Aheer provide evidence which showed that Aheer had paid in full all outstanding compensation owed to the Complainant or demonstrate that the funds were not owed as claimed.
12. The Complainant states that he received a dispatch from Aheer at 7pm on May 1, 2018 for the next day but at 9:45pm the dispatch was cancelled with no explanation given for the cancellation. It is the Complainant’s allegation that the dispatch was cancelled in retaliation for lodging a compliant with the OBCCTC and the subsequent letter sent by the OBCCTC on May 1, 2018. The Complainant states he has not received a dispatch since May 1, 2018.
13. Aheer, however, contends that the issue of the Complainant’s return to work following his sick leave was never settled and that the Complainant has not been dispatched since March 5, 2018 except for one accidental dispatch for May 2, 2018 which was cancelled immediately such that the Complainant did not work in response to that dispatch. Aheer denies the Complainant’s allegation that it has violated section 28(a) of the *Act* and opposes the Complainant’s application for a ruling from the Commissioner.

III. DECISION

14. The Complainant is seeking to be made whole for monies allegedly owed to him by Aheer for container trucking services performed in November and December 2014.
15. The Complainant states that Aheer's payroll is structured such that Aheer pays an advance of 35% of total gross earned each month to a driver on the 15<sup>th</sup> of the following month. The balance is then paid at the end of that month. The Complainant confirms that he was paid 35% of the money owed to him for November 2014 on December 15, 2014 but says that he was not paid the balance owed on December 31<sup>st</sup>, 2014. Rather, following an inquiry, he was paid some money on January 26, 2015. He then notes that he was paid 35% of the money owed to him for December 2014 on January 15, 2015 but was not paid the balance owed on January 30, 2015.
16. The Complainant has not provided bank records indicating payment or otherwise for the balance of monies that he says are owed for December 2014 or January 2015. The OBCCTC requested payroll records for these periods from Aheer on May 15, 2018 in order to confirm the amounts owed and paid to the Complainant during the period in question. On May 29, 2018 Aheer confirmed that the records requested no longer existed and that the \$10,920.00 allegedly owed was the accurate number. It is Aheer's position that the \$10,920.00 allegedly owed is "unrelated to Mr. Badh's compensation or work as an owner-operator, but is rather a personal matter relating to a personal debt owed by Mr. Badh to Mr. Aheer."
17. The OBCCTC conducted an audit of Aheer (begun in August 2015 and concluded in February 2016) which covered the period between April 3, 2014 and December 31, 2014. OBCCTC audit records indicate that the Complainant was found to be owed \$2,525.09 over the audit period and the Complainant was paid by Aheer the amount found owing as a result of the audit on or before February 1, 2015. I note that at no time during the audit or in the years proceeding did the Complainant raise the issue of missing pay until he lodged his complaint on April 11, 2018.
18. Although Aheer should have retained the records in question, in these circumstances Aheer's failure to keep records is not particularly important because Aheer has confirmed that money was held back from the Complainant and it is Aheer's position that this was done following a verbal agreement between Aheer and the Complainant to compensate Aheer, in part, for damages done to an Aheer truck/chassis by the Complainant's brother. The Complainant denies that he agreed to Aheer's holdback but confirms that his brother did damage an Aheer truck/chassis.
19. There is agreement by all parties that damage did occur to an Aheer truck/chassis driven by the Complainant's brother and there is no dispute that Aheer held back money from the Complainant to cover damage to this truck. While the Complainant states that this hold back was not agreed to, the Complainant chose to wait three and a half years to lodge a complaint with the OBCCTC. It is also significant that the Complainant had an opportunity to raise his complaint when the audit was being conducted (and any time thereafter) but did not do so. Therefore, it is more likely than not that the Complainant has chosen to seek a remedy at this time as a result of the events of March 2018.
20. As to the legality of the hold back, I note that in Aheer Transportation Ltd. (CTC Decision No. 14/2016), Aheer was advised that a similar hold back was analogous to holding

back monies to cover business costs – an activity the OBCCTC prohibits.<sup>1</sup> Under other circumstances and timing, Aheer would be ordered to return the money to the complainant, however as the hold back occurred prior the OBCCTC’s clarification Bulletin of May 26, 2016 and Aheer Transportation Ltd. (CTC Decision No. 14/2016), I am not prepared to order Aheer to repay the money on the basis that Aheer is not permitted to hold back business costs.

21. For these reasons, and considering the Complainant’s delay in lodging a complaint with the OBCCTC, I am not prepared to make a finding that Aheer owes the Complainant \$10,920.00 as alleged.
22. The Complainant also seeks a ruling from the Commissioner that Aheer’s conduct constitutes a violation of section 28(a) of the *Act*. Section 28 of the *Act* states:

A licensee must not do any of the following because a complaint, inspection or investigation may be or has been made under this Part, because other action may be or has been taken under this Part or because information may be or had been supplied under this Part:

- a) refuse to employ or retain or refuse to continue employ or retain a trucker;
- b) threaten a trucker;
- c) discriminate against or threaten to discriminate against a trucker with respect to container trucking services;
- d) Intimidate or coerce or impose a monetary or other penalty on a trucker.

23. The Complainant alleges that Aheer violated section 28(a) of the *Act* when he ceased dispatching him on May 1, 2018. It is the Complainant’s position that a May 1, 2018 dispatch was cancelled by Aheer after receiving an investigation letter from the OBCCTC on the same day and that no further dispatches have been forthcoming as a result of his complaint.
24. To rule in the Complainant’s favour, I must find on the balance of probabilities that Aheer cancelled the May 1, 2018 dispatch and ceased dispatching the Complainant as a result of receiving the investigation letter from the OBCCTC.
25. Aheer has stated that the Complainant did not receive any dispatches following the March 3, 2018 meeting previously noted. He recognises that a dispatch was inadvertently sent to the Complainant on May 1, 2018 but states that when a senior Aheer dispatcher (“Manny”) found out about the dispatch he called Mr. Aheer, who was on vacation in India, and Mr. Aheer confirmed that he had not approved the dispatch, at which time the dispatch was cancelled.
26. Aheer’s version of events is not consistent with the documentary evidence. On April 20, 2018, Aheer issued a letter (receipt confirmed by the Complainant) acknowledging that the Complainant had not been provided work between April 10 and 20, 2018 because of “derogatory and racist remarks” made by the Complainant. In the letter, the Complainant was advised that his return to work date was April 25, 2018. Aheer trip sheets demonstrate that the Complainant performed container trucking services for Aheer on April 25, 26, 27, 30 and May 1, 2018. Therefore, the Complainant’s lack of dispatches following May 1, 2018 was not a result of ongoing censure on the

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<sup>1</sup> OBCCTC “Owner Operator Remuneration Hold Backs” Bulletin, May 26, 2016.

part of Aheer following the alleged events of March 4, 2018 as Aheer suggests and no other reason has been proffered as to why the Complainant has not been dispatched since May 1, 2018.

27. In addition, the timing of the OBCCTC's investigation letter and the cancelled dispatch is such that, when considered with the facts before me, I find that on the balance of probabilities, a violation of section 28(a) of the *Act* has occurred and Aheer is refusing dispatches as punishment for a complaint lodged with the OBCCTC.
28. As Aheer is in violation of section 28(a) of the *Act*, I hereby order Aheer, pursuant to section 9 of the *Act*, to cease refusing to retain the Complainant's services, and to immediately resume dispatching the Complainant at a level commensurate with the container trucking services previously provided by the Complainant to Aheer.
29. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's licence or imposing an administrative fine. Under section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000.
30. In this case it has been determined that Aheer has violated section 28(a) of the *Act* by refusing dispatch to a driver as a result of a complaint lodged with the OBCCTC. Therefore, I have concluded that an administrative fine is appropriate in this case.
31. Regarding the size of the proposed fine I have decided that an administrative penalty of \$50,000.00 is appropriate. The size of this fine reflects the seriousness of the violation. The statutory protections afforded to truckers under section 28 serve a very important purpose. The mistreatment of a trucker because of a complaint is one type of activity which led to the creation of the current regulatory regime and threatens to undermine the purpose of the OBCCTC if not sufficiently sanctioned.
32. In the result and in accordance with section 34(2) of the *Act*, I hereby give notice as follows:
  - a. I propose to impose an administrative fine against Aheer Transportation Ltd. in the amount of \$50,000.00;
  - b. Should it wish to do so, Aheer Transportation Ltd. has 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
  - c. If Aheer Transportation Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to Aheer Transportation Ltd. of my decision to either:
    - i. Refrain from imposing any or all of the penalty; or
    - ii. Impose any or all of the proposed penalty.

33. This decision will be delivered to Aheer Transportation Ltd. and published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 12<sup>th</sup> day of June, 2018.



Michael Crawford, Commissioner

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