



# Civil Resolution Tribunal

Date Issued: March 7, 2024

File: SC-2023-004632

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sandhar Trucking Ltd. v. Gill*, 2024 BCCRT 231

BETWEEN:

SANDHAR TRUCKING LTD.

**APPLICANT**

AND:

HARJINDER GILL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute involves an employer's claim against a former employee for "time theft".
2. The applicant, Sandhar Trucking Ltd. (Sandhar), employed the respondent, Harjinder Gill, as a container truck driver between May 2021 and November 2022.

3. Sandhar says after Mr. Gill resigned, it investigated his daily timesheets back to the start of his employment. Sandhar says Mr. Gill overstated his time worked by 180.2 hours. Based on Mr. Gill's applicable hourly wage, Sandhar says it is owed \$5,005.32. Sandhar limits its claim to \$5,000, which is the monetary limit for small claims at the Civil Resolution Tribunal (CRT).
4. Mr. Gill denies overstating his hours on his timesheets. He says Sandhar verified his timesheets before paying him and there were never any issues until he quit and filed an overtime wage complaint with the Employment Standards Branch (ESB). Mr. Gill asks me to dismiss the claim.
5. Sandhar is represented by a principal or employee. Mr. Gill represents himself. As I explain below, I dismiss Sandhar's claim.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

8. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

## **ISSUE**

9. The issue in this dispute is whether Mr. Gill breached his employment contract by overstating his hours worked, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Sandhar must prove its claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. Mr. Gill began his employment with Sandhar on May 10, 2021. His last day was November 3, 2022. During his employment, Mr. Gill generally started and finished each day at the yard where Sandhar parked its trucks. At the end of each workday Mr. Gill submitted his timesheet to an office at the yard.
12. Sandhar says that upon hiring Mr. Gill, it informed him that it would pay him based on the time recorded on his timesheets, so he must accurately note his start and end times. Mr. Gill does not dispute this, so I accept that it was a term of his employment contract to be honest and reasonably accurate when completing the timesheets. Sandhar's payroll records show that Mr. Gill was paid without deduction for meal breaks, assuming any were taken, so I find it was a term of his employment contract that any breaks were paid.
13. Sandhar says in October 2022, a dispatcher noticed irregularities in Mr. Gill's start and end times. According to an October 26, 2022 incident report, Mr. Gill overstated his hours in October by 9.5 hours. The report said that Sandhar would not pay those hours or would deduct them from an upcoming pay period, as applicable. It said any further incident of time theft would result in immediate termination.

14. Mr. Gill does not dispute that Sandhar gave him the incident report in person and he refused to sign it. He quit a few days later. He says he quit was because he was forced to work overtime and denied sick leave, but I find nothing turns on the reason. Sandhar says Mr. Gill wrote a note on his last timesheet acknowledging the discrepancy in hours. The note says he put 8 extra hours in October by mistake. Mr. Gill does not address this note in his submissions, so I find he made the note. However, Sandhar admits it required Mr. Gill and 2 other employees to write similar notes on their November 3 timesheets. I find the confession was ordered by a supervisor, so I do not give it the same weight as a voluntary confession.
15. Sandhar says after Mr. Gill resigned, it decided to investigate his entire employment period for time theft. Mr. Gill says Sandhar only decided to investigate after he filed an overtime wage complaint with the ESB. As noted, he suggests Sandhar's claim is in retaliation for the ESB complaint. The parties participated in the ESB complaint investigation process in 2023, leading to a voluntary resolution. On the evidence I cannot determine whether Sandhar's investigation was launched in response to the overtime claim or Mr. Gill's resignation, but ultimately it does not matter. With that background set out, I turn to the applicable law.

### ***"Time theft"***

16. In *Sandhar Trucking Ltd. v. Sandhu*, 2024 BCCRT 227, I described how the courts and the CRT have considered "time theft". In short, I found that to be successful in a claim for time theft, Sandhar must establish that its employee breached the term of their employment contract to report their hours worked honestly and with reasonable accuracy. Sandhar must also prove its claimed damages – the amount it says it overpaid Mr. Gill. Sandhar must establish both on a balance of probabilities with evidence that is sufficiently "clear, convincing and cogent" (see *FH v McDougall*, 2008 SCC 53).
17. As I explain below, I find Sandhar has not established that Mr. Gill overstated his hours on his timesheets or that it overpaid him.

***Did Mr. Gill overstate his hours worked, and if so, by how much?***

18. Sandhar says Mr. Gill falsified his daily timesheets by stating that he started work earlier, and finished later, than he actually did. Mr. Gill denies this.
19. Sandhar did not have a “punch-in, punch-out” system. Mr. Gill says that security camera footage would provide the most accurate information about when he entered and left the yard. I accept that Sandhar only keeps its footage for 2 weeks and I find the absence of such footage is not fatal to Sandhar’s claim.
20. Sandhar relies largely on reports from Samsara, a GPS tracking system installed in its trucks. Sandhar explains that Samsara documents each truck’s location when it is turned on and again when it is turned off. Mr. Gill drove several trucks for Sandhar. Sandhar provided the Samsara reports for each truck for the days Mr. Gill drove them. Mr. Gill does not dispute, and I accept, that the Samsara reports generally provide an accurate account of each truck’s location at the stated times. That said, there are days where Sandhar acknowledges, without explanation, that there are no Samsara reports available. Also, for at least some of the trucks, the times are all shifted 3 hours later, which I address below.
21. Sandhar took the Samsara start and end times and compared them to the start and end times that Mr. Gill recorded on his timesheets. It then calculated the allegedly overstated hours for each semi-monthly pay period. Sandhar’s calculations show 180.2 hours paid but allegedly not worked between May 2021 and November 2022.
22. Sandhar says the Samsara reports verify when a driver starts and ends their shift. I disagree. As explained above, the Samsara reports verify when a driver starts and turns off their truck’s engine. Sandhar implicitly acknowledges that a driver’s shift does not start when the driver starts the engine, and it does not finish when the driver turns off the engine. The driver must report to the yard, receive and review their delivery assignments, and conduct a pre-trip inspection. Mr. Gill says the law requires a 15-minute pre-trip inspection and a 15-minute post-trip inspection. He submitted completed logbooks that show he at least completed a daily pre-trip inspection.

Sandhar says Mr. Gill likely never physically inspected the vehicle and only filled out the inspection sheets as a formality, but I disagree. Mr. Gill noted things like windshield chips in his inspection reports. Sandhar says drivers must turn on their truck to note down their odometer reading before conducting the pre-trip inspection, but it does not explain why or provide evidence of a policy. Sandhar's pre-trip inspection form in evidence does not indicate that drivers must complete the form in any order.

23. Mr. Gill also completed the section of the log where drivers indicate the times they were off-duty, driving, or on duty but not driving – which can only be finalized at the end of the workday. Between that paperwork, exiting and securing the truck, completing his timesheet and submit his paperwork in the office, I find that Mr. Gill worked at least five minutes each day after turning off his truck.
24. Many of the allegedly overstated hours on the timesheet are simply rounding differences. It is clear from the timesheets and from Sandhar's calculations that rounding to the nearest quarter-hour on timesheets was the accepted practice. However, at times in its calculations Sandhar has rounded down when it should round up, or failed to account for pre-trip and post-trip work, or both. For example, on November 2, 2022, Mr. Gill recorded on his timesheet that he worked from 8 am to 5:30 pm, for 9.5 hours. Sandhar says he should be paid from 8:15 am to 5:15 pm, for 9 hours. The Samsara report shows that he started the truck at 11:10 am (which I find means 8:10 am) and shut it off for the day at 8:23 pm (which I find means 5:23 pm). Sandhar does not explain why it has rounded a 5:23 pm shut-off time to a 5:15 working time, given 5:23 is closer to 5:30 than 5:15 even before factoring in 5 minutes of post-trip work. Further, adding even 5 minutes for the pre-trip inspection shows that Mr. Gill's timesheet is more accurate than Sandhar's calculation for that day. Much of Sandhar's time theft allegation is made up of these small, 15-minute increments on either side of the day. Given Sandhar's rounding errors and its failure to consider pre-trip and post-trip work time, I am not persuaded that any material time theft occurred on these days.

25. I place significantly more weight on Mr. Gill's timesheets, which Sandhar undisputedly received daily and used to determine Mr. Gill's payroll. Sandhar does not dispute Mr. Gill's allegation that management reviewed his timesheets on a daily basis. There is no statement, for example, from a manager or an accounting employee saying that Sandhar's policy was simply to accept the hours stated on the timesheets without any scrutiny. In that way, this dispute is similar to an Ontario Superior Court case where the court found the employer was well aware of the employee's presence or absence and paid his salary without complaint or deduction before making a "time theft" claim months after the employment relationship ended (see *2261897 Ontario Inc. v Quest Audio Visual Inc.*, 2015 ONSC 2428, at paragraph 71). The court said the "time theft" claim was entirely without merit and dismissed it. Like the employer in that decision, Sandhar has not provided convincing evidence to rebut the presumption that Mr. Gill earned the wages it paid.
26. Even if Sandhar had established that Mr. Gill overstated his hours, I would not award the damages it claims because I find that its calculations are unreliable. First, Sandhar did not provide calculations for May 2021, June 2021, or January 2022, but alleges 32.5 hours of combined time theft in those months. Without the calculations I cannot verify that Sandhar's figures are reliable.
27. One example of unreliability is September 10, 2021. On that day, Mr. Gill reported working 6:30 am to 8:15 pm, for 13.75 hours. The Samsara report said Mr. Gill started his truck at 9:39 am (6:39 am) and shut it off for the day at 11:05 pm (8:05 pm), supporting the hours stated in the timesheet. Yet Sandhar says Mr. Gill worked just 6.75 hours that day, without explaining how it reached this conclusion. Another example is March 14, 2022, where Mr. Gill's timesheets and the Samsara report indicate that he worked 12.5 hours, but Sandhar's calculation indicates that he worked 0 hours.
28. Another example of the unreliability of Sandhar's calculations is October 2022. Sandhar says that Mr. Gill's October timesheets document 208.75 hours worked. It says based on the Samsara reports that he actually worked 197 hours, so it claims

an overpayment of 11.75 hours. Yet Sandhar's October payroll records show that it only paid Mr. Gill for 188.25 hours. Accepting Sandhar's calculations as the basis of an order would therefore result in Sandhar paying Mr. Gill for 176.5 October hours when it says he worked 197 hours.

29. Overall, I find Sandhar has failed to establish that Mr. Gill overreported his hours, intentionally or otherwise. Sandhar has also failed to establish that its calculations of alleged wage overpayments are reliable. It follows that I dismiss Sandhar's claim.

30. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Gill was successful but did not pay CRT fees. I dismiss Sandhar's claim for CRT fees. Neither party claims dispute-related expenses.

## **ORDER**

31. I dismiss Sandhar's claims and this dispute.

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Micah Carmody, Tribunal Member