



# Civil Resolution Tribunal

Date Issued: March 7, 2024

File: SC-2023-006795

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sandhar Trucking Ltd. v. Singh*, 2024 BCCRT 232

BETWEEN:

SANDHAR TRUCKING LTD.

**APPLICANT**

AND:

JASKARAN SINGH

**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, Jaskaran Singh, as a container truck driver between July 2022 and March 2023.

3. Sandhar says after ending Mr. Singh's employment for dishonesty, it investigated the time he recorded on his daily timesheets back to the start of his employment. Sandhar says Mr. Singh overstated his time worked by 159.53 hours. Based on Mr. Singh's applicable hourly wage, Sandhar claims \$4,406.08.
4. Mr. Singh denies overstating his hours on his timesheets. He says he submitted his timesheets daily and Sandhar approved them at the end of each shift. He says Sandhar's claim is in retaliation for an overtime wage complaint he made with the Employment Standards Branch (ESB). Mr. Singh asks me to dismiss the claim.
5. Sandhar is represented by a principal or employee. Mr. Singh represents himself. As I explain below, I dismiss Sandhar's claim.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). 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. Singh 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. Singh began his employment with Aaron Trucking Ltd. and later moved to Sandhar. The parties do not say exactly when this move happened, but I find from the timesheets and payroll records his first day with Sandhar was July 18, 2022 and his last day was March 21, 2023.
12. During his employment, Mr. Singh generally started and finished each day at the yard where Sandhar parked its trucks. At the end of each workday, Mr. Singh submitted his timesheet to an office at the yard.
13. Sandhar says that upon hiring Mr. Singh, 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. Singh 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. Singh 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.
14. Sandhar says in March 2023, it terminated Mr. Singh's employment for cause because he forged a doctor's note to receive paid sick days. Mr. Singh does not

dispute that he forged the doctor's note. Sandhar says this dishonestly is what triggered its time theft investigation. As noted, Mr. Singh says the time theft investigation was in retaliation for his overtime wage complaint with the ESB. Sandhar says they merely overlapped in time. On balance, I accept that the dishonesty was at least part of the reason Sandhar investigated Mr. Singh's timesheets.

15. 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. Singh. 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. Singh overstated his hours on his timesheets or that it overpaid him.

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

18. Sandhar says Mr. Singh falsified his daily timesheets by stating he arrived to work earlier and finished later than he actually did. Mr. Singh denies this. He says he filled out his timesheets as instructed, with the start time when he started his shift and the end time when he finished his shift. Mr. Singh further 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.

19. Sandhar did not have a "punch-in, punch-out" system. 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. Singh drove several trucks for Sandhar. Sandhar provided the Samsara reports for each truck for the days Mr. Singh drove them. Mr. Singh does not dispute, and I accept, that the Samsara reports are generally an accurate account of each truck's location at the stated start and end times. That said, there are days where Sandhar acknowledges, without explanation, that there are no Samsara reports available.

20. Sandhar took the Samsara start and end times and compared them to the start and end times that Mr. Singh recorded on his timesheets. It then calculated the allegedly overstated hours for each semi-monthly pay period. Sandhar's calculations show 159.53 hours paid but allegedly not worked between July 2022 and March 2023.
21. 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. Although Mr. Singh does not specify that he completed pre-trip inspections, I find based on Sandhar's submissions that he did.
22. 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 the drivers must complete the form in any order.
23. As for the end of a shift, I find drivers must exit and secure the truck, complete their timesheet, and submit their paperwork to the office. Sandhar says it should take a driver no more than 5 minutes to do these things, which I accept given that Mr. Singh did not specifically dispute it.

24. Some of the allegedly overstated hours on Mr. Singh's timesheet, particularly for the starting times, 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 work. For example, on August 5, 2022, Mr. Singh recorded that he started work at 6 am and his first trip started at 6:15 am. Sandhar says he should be paid starting at 6:15 am. The Samsara report shows that Mr. Singh started his truck at 6:12 am. Taking into account even 5 minutes for a pre-trip inspection and any other pre-trip work shows that Mr. Singh's timesheet is more accurate than Sandhar's estimation of his start time. Given Sandhar's rounding errors and its failure to consider pre-trip work time, I am not persuaded that any material time theft occurred on such days.
25. Most of the allegedly overstated hours for Mr. Singh come at the end of the day. The timesheets have space for "start time" and "end time" at the top, and then a table to provide each driving trip's start time, origin, destination, end time, and other information. Mr. Singh's recorded end time at the top of his timesheets is often anywhere from 15 minutes to as much as 3 hours later than when the Samsara reports and his timesheet indicated that he returned to the yard. However, on many of those timesheets he wrote that he worked in the yard. On others, he simply noted his location in the yard with no end time on the table, just the end time indicated at the top of the timesheet.
26. I considered the effect of the forged doctor's note on Mr. Singh's overall credibility. While forging the note was dishonest, the seriousness is tempered by Mr. Singh's explanation that he had difficulty getting an appointment with a doctor but wanted to satisfy Sandhar's demand for a note to excuse his absence. This exchange is shown in an email with a Sandhar human resources employee. I do not consider this single act of dishonesty to undermine Mr. Singh's evidence about his hours worked.
27. On balance, I accept that Mr. Singh was working in the yard until the end times indicated on his time sheets. It is difficult to accept Sandhar's claim that Mr. Singh

fraudulently overstated his hours essentially every day of his employment. Sandhar has not explained how he was able to do this without its knowledge. It is undisputed that Mr. Singh turned in his timesheet every day. It is also undisputed that Sandhar used those timesheets to determine how much to pay Mr. Singh. So, at least one Sandhar payroll employee or manager reviewed each of his timesheets. Sandhar did not provide a 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.

28. Further, Sandhar has not explained why it approved Mr. Singh's timesheets if he reported working in the yard when he had already gone home. Sandhar does not say, for example, that there were no supervisors at the yard to notice if an employee left earlier than indicated on their timesheet. I find it is more likely than not that Mr. Singh was working in the yard at the end of his shifts at Sandhar's request or least with its awareness. In these ways, 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. Singh earned the wages it paid.
29. For these reasons, I find Sandhar has not established that Mr. Singh overstated his hours. I find the timesheets are the best evidence of Mr. Singh's hours of work.
30. Even if Sandhar had established that Mr. Singh overstated his hours, I would not award the amount of damages it claims because I find that its calculations are unreliable. For example, Sandhar did not provide the Samsara reports for July 2022, so I have no way to verify Sandhar's July 2022 overpayment calculations.
31. Sandhar's calculations also place unreasonable reliance on the Samsara reports. For example, Sandhar says on February 15, 2023, Mr. Singh should only be paid until

12:30 pm because that is when the Samsara report says his truck was last turned off. That turn-off time and location are consistent with Mr. Singh's timesheet, but the timesheet then says he left the Delta yard at 12:40 pm and completed further pick-ups and drop-offs, with destination and origin addresses and booking reference numbers. Sandhar does not say that these addresses and reference numbers are not legitimate. I find Sandhar is in the best position to provide the records that could prove or disprove whether these deliveries and pick-ups happened. Sandhar notes that on several days there are no Samsara reports at all, which suggests the technology was not infallible. So, I find it is more likely that Mr. Singh completed the deliveries noted on his timesheet and that the Samsara system simply failed to record the truck's location after 12:30 pm.

32. Overall, I find Sandhar has failed to establish that Mr. Singh 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.
33. 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. Singh was successful but did not pay CRT fees. I dismiss Sandhar's claim for CRT fees. Neither party claims dispute-related expenses.

## **ORDER**

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

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Micah Carmody, Tribunal Member