



January 9, 2018

Can. American Enterprises Ltd.  
126-7475 135 St.  
Surrey, BC V3W 0M8

## **Commissioner's Decision**

### **Can-American Enterprises Ltd. (CTC Decision No. 01/2018)**

#### **Introduction**

1. Can-American Enterprises Ltd. ("Can American") is a licence holder within the meaning of the *Container Trucking Act* (the "Act"). Under Sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services are established by Regulation, and a licensee must comply with those statutorily established rates. In particular, 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.

2. Under Section 31 of the *Act*, the Commissioner may initiate an audit or investigation to ensure compliance with the "Act, the regulations and a licence..." whether or not a complaint has been received by the Commissioner.
3. In June of 2017, the Commissioner directed an auditor to audit Can American's records to determine if its company drivers and Independent Operators ("I/O's") were being paid the minimum rates required under the Container Trucking Regulation (the "*Regulation*"). The auditor was directed to audit the periods June 1-30, 2014 and March 1-31, 2017 (together the "Initial Audit Period")

#### **Initial Audit Period**

4. The auditor requested, obtained and reviewed relevant records and determined that during the Initial Audit Period, Can American paid its company drivers a rate consistent with the *Act* and *Regulation*. However, Can American was found to have not paid its three sponsored I/O's correct trip rates in March 2017 because, in eight instances, the auditor found that Can American was splitting trip rates for I/O's who could not complete their deliveries within one day. The auditor concluded that during the Initial Audit Period, Can American owed its I/O's adjustment payments totaling \$557.23.

### Expanded Audit Period

5. Having established that Can American had paid incorrect trip rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the periods from June 29, 2015 (the date which Can American began sponsoring I/O's) to September 15, 2017 (the date Can American claimed to have ceased its trip splitting practices). This is referred to as the "Expanded Audit Period".
6. Under the direction of the auditor, Can American reviewed its records and concluded that its three sponsored I/O's were owed \$7,112.50 (inclusive of the \$557.23 found owing by the auditor for March 2017). The auditor confirmed Can American's calculations and further confirmed, following a spot audit, that Can American did correct their pay structure and ceased trip splitting by September 16, 2017.
7. The auditor reports that Can American accepted that its trip splitting practices were in contravention of the *Act* and *Regulation* and that Can American has now paid out all the required adjustment amounts calculated to be owing and provided copies of records confirming that the adjustment payments were in fact made as represented.
8. The audit report concludes by noting that Can American has now brought itself into compliance with the *Act* for the period June 29, 2015 to September 15, 2017. The auditor reports that Can American was cooperative and helpful throughout the audit process.

### Decision

9. I accept the findings of the auditor.
10. As described above, the circumstances of this case are that:
  - a. The Commissioner ordered an audit of Can American's company drivers and I/O's;
  - b. The audit process disclosed that Can American paid its company drivers trip rates and hourly rates consistent with the *Act* and *Regulation*;
  - c. Between June 29, 2015 and September 15, 2017, Can American failed to pay its I/O's the correct trip rates required under the *Act* and *Regulation*;
  - d. Adjustments totaling \$7,112.50 was owed to three I/O's;
  - e. Can American has accepted the audit results and has paid the amounts determined to be owing;
  - f. Can American was co-operative and helpful during the audit process; and
  - g. Can American is now substantially compliant with the legislation.
11. As Can American has paid the amounts owing to its I/O's there is no need to issue an order pursuant to Section 9 of the *Act* requiring the company to pay its I/O's in compliance with the legislation.
12. 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.

13. The seriousness of the available penalties indicates the gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and independent operators in compliance with the rates established by the legislation (*Act* and *Regulation*). Licensees must comply with the legislation, as well as the terms and conditions of their licences, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.
14. In this case it has been determined that between June 29, 2015 and September 15, 2017, Can American failed to comply with the minimum trip rates required under the *Act* and *Regulation*. The audit findings indicate that over this period Can American owed three I/O's adjustments totaling \$7,112.50. The adjustment payments were required because Can American was splitting trip rates for I/O's who could not complete their deliveries within one day.
15. As recorded above, Can American was cooperative during the audit and conceded their non-compliant behaviors and failure to pay the required minimum rates. Can American is now paying compliant trip rates and have paid out the adjustment amounts calculated by the auditor to be owing.
16. Nevertheless, as a holder of a Container Trucking Services Licence, Can American is responsible to know its obligations under the *Act* and to pay its I/O's the correct trip rates. This audit makes clear that Can American ultimately failed to fulfill this obligation. For this reason, I have concluded that an administrative fine is appropriate here.
17. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$1,500.00 is appropriate in this case. On March 21, 2016 the then Commissioner and Deputy Commissioner issued a Bulletin regarding the practice of "trip splitting". The Bulletin responded to queries questioning if the practice of trip splitting (as defined in the Bulletin) complied with the *Act* and *Regulation*. The Bulletin concluded by stating that:

"The OBCCTC considers the practice of trip splitting to be a contravention of the *Act* and the *Regulation*. The OBCCTC has instructed its auditors to investigate instances of trip splitting. A determination of such a contravention could result in a penalty, fine or any orders the Commissioner may impose as per Sections 9, 34 and 35 of the *Act*."
18. In proposing this fine, I am aware that all stakeholders, including Can American, were advised on March 21, 2016 that the practice of trip splitting was in contravention of the *Act* and *Regulation*. This audit establishes that Can American did not alter its trip splitting practices following the release of the March 21, 2016 Bulletin, rather it continued, until audited, to trip split.

19. In Olympia Transportation (CTC Decision No. 02/2016) and Seaville Transportation Logistics Ltd. (CTC Decision No. 12/2016), the then Commissioner stated that:

“The onus to become and remain compliant with the requirements of the Act rest entirely with the Licensee. Licensees should not rely on Commission auditors to determine whether or not they are compliant, nor should they wait until a Commission audit process is undertaken before taking steps to ensure compliance.”

20. Therefore, the size of this fine is intended to strike a balance between Can American’s efforts to pay the legislated rate to its company drivers; its cooperation and efforts during the audit process; its acceptance of its non-compliant behaviors and Can American’s failure to recognize directives of the Commissioner and act upon those directives to correct its pay practices prior to audit.

21. 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 Can-American Enterprises Ltd. in the amount of \$1,500.00;
- b. Should it wish to do so, Can-American Enterprises 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 Can-American Enterprises Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to Can. American Enterprises 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.

22. This decision will be delivered to the Companies and published on the Commissioner’s website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 9<sup>th</sup> day of January, 2018.



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Michael Crawford, Commissioner