



August 21, 2019

A-Can Transport Ltd.  
13160 English Place  
Surrey, B.C. V3W 2X5

## **Commissioner's Decision**

### **A-Can Transport Ltd. and MDW Express Transport Ltd.**

**(CTC Decision No. 09/2019)**

**(Application for Reconsideration of CTC Decision No. 07/2019)**

#### **I. Introduction**

1. On August 19, 2019, the Office of the British Columbia Container Trucking Commissioner ("OBCCTC") received an application filed by A-Can Transport Ltd. ("A-Can") pursuant to sections 38 and 39 of the *Container Trucking Act* (the "Act"). The application seeks reconsideration of the administrative penalty proposed in A-Can Transport Ltd. and MDW Express Transport Ltd. (CTC Decision No. 07/2019) (the "Original Decision") and ordered in the Decision Notice.
2. In the Original Decision, I determined that A-Can violated sections 23 and 25 of the Act and section 6.17 of its Container Trucking Services Licence when it failed to supply complete records that demonstrated the total number of hours its drivers performed container trucking services and engaged in an unapproved truck tag transfer. An administrative penalty against A-Can in the amount of \$20,000.00 was proposed and A-Can was ordered to pay the fine in the Decision Notice by no later than August 24, 2019.
3. A-Can seeks a reconsideration of the Original Decision and responds to the proposed fine of \$20,000.00 by reminding the OBCCTC of its compliant hourly pay structure and advising the OBCCTC of its efforts to amend its record keeping and payroll practices to ensure future compliance.
4. MDW Express Transport Ltd. has not sought a reconsideration of the Original Decision and has paid its administrative penalty.

#### **II. Decision**

5. A-Can states that "all employees of A-Can are directly employed operators and not independent operators" and therefore are "not entitled to any fuel surcharge or Positioning Movement Rate...". A-Can also states that it does not consider vacation pay to be a benefit.
6. I accept A-Can's positions and note that A-Can's audit was only for directly employed operators paid by the hour. Further, in paragraphs 11 and 29 of the Original Decision, the OBCCTC acknowledges that A-Can "was found to have paid compliant rates to the drivers whose records were reviewed by the auditor." The audit and Original Decision did not raise any concerns regarding A-Can's vacation pay calculations.

7. A-Can's audit did reveal, however, that its record keeping practices were deficient and as a result some of its drivers did not get paid for all hours of container trucking services performed. A-Can recognizes this in its reconsideration request when it seeks to assure the OBCCTC that it is "rectifying its previous errors" and plans to "keep track of correct number of hours [worked] for each employee."
8. A-Can also accepts that it violated section 6.17 of its Container Trucking Services Licence and commits to doing everything possible "to have payroll sorted out with MDW Express Transport Ltd. to reflect sub-contracting."
9. A-Can asks that the Original Decision and corresponding administrative penalty be changed on the basis that it is rectifying its mistakes. I do not accept this argument. It is expected that the audit and decision processes of the OBCCTC will result in changes to licensee business practices when required. Proposed penalties will not generally be rescinded or reduced on the basis that a licensee is making required changes to its business practices after these non-compliant practices have been identified by the OBCCTC.
10. A-Can has not offered additional information or new arguments in support of its reconsideration request. For these reasons, and for the reasons set out in the Original Decision and Decision Notice, I confirm my decision to impose a \$20,000.00 administrative penalty and hereby dismiss A-Can Transport Ltd.'s application for reconsideration.

### III. Conclusion

11. In summary, the application for reconsideration of A-Can Transport Ltd. and MDW Express Transport Ltd. (CTC Decision No. 07/2019) and Decision Notice is dismissed, and the penalty proposed in the Original Decision is confirmed and the penalty is imposed. Section 35(2) of the Act requires that this fine be paid within 30 days of the issuance of the Decision Notice. Imposition of the penalty requires that A-Can pay the penalty by no later than August 24, 2019.

This reconsideration will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 21<sup>st</sup> day of August, 2019.



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Michael Crawford, Commissioner