



March 19, 2021

Can. American Enterprises Ltd.  
126 – 7475 135 Street  
Surrey, BC V3W 0M8

## **Commissioner's Decision**

### **Can American Enterprises Ltd. (CTC Decision No. 03/2021) (Application for Reconsideration of CTC Decision No. 12/2020)**

#### **Introduction**

1. On December 11, 2020, the Office of the British Columbia Container Trucking Commissioner (“OBCCTC”) received email correspondence from Can American Enterprises Ltd. (“Can American”) that I will be treating as an application for reconsideration pursuant to sections 38 and 39 of the *Container Trucking Act* (the “Act”). The email from Can American effectively asks for reconsideration of the administrative penalty proposed in Can American Enterprises Ltd. (CTC Decision No. 12/2020) (the “Original Decision”) and ordered in the Decision Notice.
2. In the Original Decision, I determined that Can American failed to pay its independent operators (“I/Os”) for all trips performed and violated its Container Trucking Services Licence when it did not retain a record of each trip completed on each day by its I/Os. Can American would not conduct a self-audit or demonstrate that it had changed its payment practices when ordered. An administrative penalty against Can American in the amount of \$10,000.00 was proposed and Can American was ordered to calculate the amounts owing to each of its I/Os. Can American responded to the Original Decision but did not comply with my order. In a Decision Notice, the proposed penalty was imposed and Can American was once again ordered to calculate the amounts owing to each of its I/Os. It was also proposed that Can American’s licence be suspended until such time as it complied with the order.
3. Can American did not provide the calculations as ordered or respond to the proposed licence suspension by the deadline. Can American’s lawyer instead advised that Can American intended to file a judicial review and asked that I refrain from suspending its licence and from imposing the administrative fine until its anticipated judicial review had been heard and determined. In a supplemental Decision Notice issued on November 17, 2020, I declined to do so and instead imposed both the administrative fine and the licence suspension order. Can American was given until November 30, 2020 to apply for reconsideration of the administrative fine.
4. In response, Can American applied to the courts for an emergency stay of my order pending a judicial review. Can-American’s application for an emergency stay was denied by the court which found that Can American had failed to discharge its onus to satisfy the three criteria for a stay or injunction as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. Can American subsequently applied to the OBCCTC for an extension of time to comply with my audit calculation order and seek a reconsideration of the administrative penalty.

5. Can American complied with the audit calculation order and now seeks a reconsideration of the Original Decision. Can American responds to the proposed administrative fine of \$10,000.00 by setting out why I should refrain from imposing the penalty or in the alternative reduce the amount of the penalty. Can American argues the following:
  1. I/Os are contractors and therefore the onus should be on I/Os, not licensees, to ensure correct payment and it should be the responsibility of I/Os to lodge claims with licensees in a “reasonable time frame” (while they are still employed by the licensee). Licensees rely on I/O records to reconcile invoices to customers and pay I/Os.
  2. The unpaid trip legs resulting from the trip splitting were not recorded on the I/O’s records so Can American should not be held responsible for the non-compliant rate payments.
  3. Can American cannot afford to lose its licence.
  4. The Commissioner’s rates are flawed, do not reflect the realities of the supply chain and when followed, result in a “massive financial burden”.
  5. Can American’s drivers earned more money under its pay structure than under the Commissioner’s.
  6. Can American has the best interests of its drivers in mind while other licensees do not.
  7. Can American believed that its payment structure would meet the Commissioner’s approval and points was not provided an opportunity to confirm that to be the case. Can American describes its previous payment methods as a “regulatory misinterpretation”.

### Decision

6. The arguments raised by Can American in its reconsideration request are not new and have been previously addressed. Can American has not put forward anything new. In response to the auditor’s report, Can American argued that the onus is on its drivers to keep proper records and ensure that they are paid for all trips performed. In response, I stated that:

The onus is in fact on licensees to ensure that drivers are paid correctly. The licensee is also required to retain records which show all container trucking services performed and a corresponding payment. It is not up to Can American’s drivers to ensure they are paid correctly.<sup>1</sup>

7. The onus on licensees to be compliant is well established.<sup>2</sup> Nor do I accept Can American’s suggestion that licensees should not be held responsible for correctly remunerating drivers who no longer work at the company. It is entirely appropriate for licensees to implement policies regarding driver pay concerns and the process and timelines by which they would like drivers to raise these issues with the company. The *Act*, however, does not limit the time period in which a driver may make a complaint and I will not accept Can American’s argument that it should not be penalized because the driver complaints were not made immediately following the relevant pay period and within the time required by Can American to reconcile its invoices.
8. Can American’s position on the Commissioner’s rate structure as compared to the rate structure it employed was raised by Can American in response to my order to calculate the money owed to its drivers. Can American’s arguments on these points were dismissed in the Original Decision where I noted that “Can American’s dispatch/pay model does not result in more money for its drivers and the

---

<sup>1</sup> Can American Enterprises Ltd. (CTC Decision No. 12/2020), para. 36.

<sup>2</sup> See, for example, Inter Canadian Trucking Ltd. (CTC Decision No. 06/2019), para. 32.

payment of the required rates is not optional. Licensees are not entitled to assess the practicality of the required rates, or the *Act*, and adjust their rate structures in response.”<sup>3</sup> The BC Supreme Court also noted that “payment of the required rates is mandatory under the [Act], not permissive or discretionary” and “it is not open to licensees to unilaterally determine that not following the requirements of the [Act] and the [Commissioner’s] Rate Order is better for their drivers.”<sup>4</sup>

9. The penalty imposed on Can American was, in part, for its failure to pay compliant rates and it is not enough for Can American to disagree with the rate structure and rely on its position when arguing why a penalty should not be imposed. Again, Can American has not offered any new arguments or evidence to change my assessment.
10. Can American was not penalized for its “intentions” and I do not offer an opinion on its concern for its drivers’ interests or how those concerns may differ from those of other licensees. The only relevant matter with respect to Can American’s drivers was the practical effect of Can American’s actions on its drivers, which, in this case, was underpayment. Can American’s purported altruism is not a defence or a reason to refrain from imposing or reduce the penalty.
11. Can American concludes by restating that it believed that its payment structure would meet the Commissioner’s approval. It submits that it was not provided an opportunity to confirm that to be the case. Can American characterizes its previous payment methods as a “regulatory misinterpretation”.
12. It belies belief that Can American would think it was acting in compliance with the rate requirements of the *Act* when it split trips. Can American ought to have known that its payment structure was non-compliant. The first OBCCTC reference to split trips was in a March 21, 2016 Bulletin, issued by the Commissioner three years before the start of the period during which Can American split trips. Subsequent decisions addressed trip splitting. Indeed, Can American was found to be trip splitting and penalized for it in Can-American Enterprises Ltd. (CTC Decision No. 01/2018).
13. If Can American had questions about its rate structure it was entitled to raise them with the OBCCTC prior to implementing its payment structure, but it did not. Can American was not entitled to interpret the rate structure and pay its drivers accordingly. I do not consider Can American’s actions to be the result of a “misinterpretation,” particularly in light of CTC Decision No. 01/2018 and given that the resulting pay structure led to driver underpayment.

---

<sup>3</sup> Can American Enterprises Ltd. (CTC Decision No. 12/2020), para. 30.

<sup>4</sup> *Can. American Enterprises Ltd. v. The Office of the BC Container Trucking Commissioner*, [2020] BCSC 2156, para. 37.

**Conclusion**

14. Can American's licence is not under consideration here. Can American was penalized for its non-compliance, and it is the imposition of a financial penalty that is under reconsideration.
  
15. I have considered Can American's arguments and responded to them on several occasions. I have not been persuaded by Can American's most recent submissions to change my determinations on these matters. In the result, the application for reconsideration of Can American Enterprises Ltd. (CTC Decision No. 12/2020) is dismissed and the penalty proposed in the Original Decision is confirmed and imposed. Section 35(2) of the Act requires that this fine be paid within 30 days of the issuance of the Decision Notice. Can American must pay the penalty by no later than 30 days from the date of this reconsideration.

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

Dated at Vancouver, B.C., this 19<sup>th</sup> day of March, 2021.



---

Michael Crawford, Commissioner