



October 31, 2019

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

Email: lucky.brar@ameri-canlogistics.com

Attention: Mr. Lucky Brar

Dear Mr. Brar

**Commissioner's Decision – Q1 -2019 Wait Time Payment Audit  
Can. American Enterprises Ltd. (CTC Decision No. 11/2019)**

**Introduction**

1. Can. American Enterprises Ltd. ("Can. American") is a licensee within the meaning of the *Container Trucking Act* (the "Act"). Under sections 23 and 24 of the Act, a licensee must pay remuneration, wait time remuneration and fuel surcharge to an independent operator within a prescribed time frame. In particular, section 24 (2) of the Act states:

A licensee must pay remuneration, wait time remuneration or fuel surcharge owed to an independent operator no later than 30 days after the end of the calendar month in which the independent operator performed the container trucking services for which the remuneration, wait time remuneration or fuel surcharge is owed.

2. It is the practice of the Vancouver Fraser Port Authority ("VFPA") to calculate wait time payments, provide licensees with a list of drivers and corresponding amounts owed, and remit a lump sum payment to licensees with the expectation that the payments will be passed on to eligible trip rate paid drivers.
3. All licensees, including Can. American, were advised in a bulletin issued by the Office of the BC Container Trucking Commissioner ("OBCCTC") on June 14, 2019 that wait time payments had been issued by the VFPA to licensees on June 13, 2019, that licensees were obligated under the Act to ensure that the payments were remitted to eligible drivers within a reasonable timeline and that failure to meet this obligation could result in action by the OBCCTC.
4. The payments issued to licensees by the VFPA on June 13, 2019 corresponded to wait times incurred by drivers for the period January 1 – March 31, 2019 at Deltaport, Vanterm and Centerm and the period January 1 – February 28, 2019 for Fraser Surrey Docks ("Q1 -2019").

### **Wait Time Payment Audit**

5. 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.”
6. On September 11, 2019, the OBCCTC advised Can. American it was conducting an audit to determine if all Q1-2019 wait time payment distributions issued by the VFPA to Can. American on June 13, 2019 had been passed on to the eligible trip rate paid drivers.
7. Can. American provided the following documentation in response to the audit:
  - a. Names, addresses, telephone numbers, email addresses and truck license plate numbers for all I/Os eligible to receive wait time payments;
  - b. Copies of all cancelled pay cheques or bank records confirming direct-deposit amounts for wait time payments during the audit period; and
  - c. Pay statements showing the wait time distributions.
8. The OBCCTC requested and received from the VFPA an email sent by the VFPA to Can. American on June 14, 2019 outlining the breakdown of payments by driver which contained the following statement from the OBCCTC’s June 14, 2019 Bulletin:

*Companies are reminded of their obligations under Section 23 of the Container Trucking Regulation and Appendix E to Schedule 1 of the Container Trucking Services Licence to ensure that all wait time money owed to drivers is remitted in full to every trucker who is, or has been, paid by the licensee on a per trip basis.*

### **Analysis**

9. I reviewed the documentation submitted by Can. American and compared it with the list supplied by the VFPA and noted that the number of cheques issued by Can. American exceeded the number of drivers listed in the June 13, 2019 email.
10. I also noted that some of the cheques were imprinted with “WAITING TIME-JUNE 2019” (“June”) in the Memo section of the cheque while others contained “WAITING TIME-MARCH 2019” (“March”) in the same section.
11. On March 4, 2019, the VFPA forwarded an email to licensees which contained a list of drivers who were owed wait time payments for the period August 1-December 31, 2018 (“Q4 -2018”) at “DPW, Vanterm, Deltaport, and Fraser Surrey Docks”.
12. I compared Q4-2018 and Q1-2019 lists supplied by the VFPA with the cancelled cheques supplied by Can. American and noted that the June cheques were issued to drivers in the correct amounts for Q1-2019 and the March cheques were issued to drivers in the correct amounts for Q4-2018, the latter with the exception of Randhir S. Dhanda, who was paid \$50.00 but was listed to receive \$100.00.

13. Because the Q4-2018 and Q1-2019 payments applied to services completed in the previous quarters, and because of the negotiations between the VFPA and the terminals around the specific amounts owed to drivers, I recognize that it may not be possible for licensees to meet their obligation under section 24(2) of the *Container Trucking Regulation* (the "*Regulation*") to remit payments owed to drivers within the time frame specific by the *Act*.
14. It is, however, the Commissioner's expectation that licensees will adhere to the intent of the legislation and remit the wait time payments to eligible drivers at least within 30 days of receiving these payments from the VFPA. In the opinion of the OBCCTC, the 30 days set out in section 24(2) of the *Regulation* is the maximum amount of time after receipt of the wait time monies that a licensee should take to compensate its drivers for wait time.
15. All cheques issued by Can. American to eligible drivers for both quarters were dated September 12, 2019 which was six months after Can. American received the Q4-2018 payments, three months after it received the Q1-2019 payments from the VFPA, and one day following the OBCCTC's notice of its intent to audit the Q1-2019 wait time payment distribution.

#### Decision

16. As described above, the circumstances of this case are:
  - a. On September 20, 2019, the OBCCTC issued notice to Can. American of its intention to audit the distribution of Q1 2019 wait time payments to eligible trip rate paid drivers.
  - b. The audit found that:
    - i. Can. American remitted Q1-2019 wait time payments to eligible drivers in the correct amounts;
    - ii. Can. American remitted Q2-2018 wait time payments to eligible drivers in the correct amounts except for Randhir S. Dhanda who was eligible to receive \$100.00 but was paid \$50.00;
    - iii. The cheques issued to drivers by Can. American for wait time payments in both quarters were dated September 12, 2019, which was approximately six months after the Q4-2018 and three months after the Q1-2019 payments were received by Can. American; and
    - iv. Can. American did not meet its obligation to remit wait time payments to its drivers in Q4-2018 and Q1-2019 despite being advised to do so by both the OBCCTC and the VFPA in written correspondence and via a bulletin.
17. 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.

18. In this case, it has been determined that Can. American did not meet its obligation to pass on Q4-2018 and Q1-2019 wait time remuneration to eligible drivers in a timely manner and, in fact, only did so after the OBCCTC commenced an audit.
19. I also find that when Can. American did pay drivers for Q4-2018 wait times in September 2019, they underpaid one driver. Can. American is therefore ordered to remit \$50.00 to Randhir S. Dhanda immediately.
20. For these reasons, I have concluded that an administrative fine is appropriate here. Regarding the size of the proposed fine, I have decided that an administrative penalty of \$500.00 is appropriate in this case.
21. As a holder of a Container Trucking Services Licence, Can. American is responsible to know its obligations under the *Act* and to pay its drivers wait time remuneration in a timely manner and in the amounts specified by the VFPA.
22. However, the penalty I have imposed in this instance is relatively low because Can. American does not have the benefit of other decisions on this matter, and because the total amount Can. American received for distribution in Q4-2018 and Q1-2019 was relatively small.
23. 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 in the amount of \$500.00;
  - b. Should it wish to do so, Can. American 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. provides a written response in accordance with the above I will consider its response, and I will provide notice to Can. American. 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.
24. This decision will be delivered to Can. American. and may be published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)) after Can. American's response period has closed.

Dated at Vancouver, B.C., this 31<sup>st</sup> day of October, 2019.



Sheryl Kozyniak, Deputy Commissioner