



Citation: *Ferme Miporc v. Canada (Canadian Food Inspection Agency)*, 2013 CART 24

Date: 20130821
Docket: CART/CRAC-1692

Between:

Ferme Miporc inc., Applicant

- and -

Canada (Canadian Food Inspection Agency), Respondent

[Translation of the official French version]

Before: Chairperson Donald Buckingham

**With: Miguel Boisvert, President, representative for the applicant; and
Louise Panet-Raymond, counsel, representative for the respondent.**

In the matter of an application made by the applicant, pursuant to subsection 8(1) of the *Agriculture and Agri-Food Administrative Penalties Act*, for a review of the facts of a violation of paragraph 138(2)(a) of the *Health of Animals Regulations*, alleged by the respondent.

DECISION

[1] Following a review of all of the written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant did not commit the violation and that the Notice of Violation with Warning issued by the Agency is invalid.

By written submissions only.

REASONS

Alleged Incident

[2] The respondent, the Canadian Food Inspection Agency (Agency), alleges that on July 14, 2011, in Coaticook, Quebec, the applicant, Ferme Miporc inc. (Ferme Miporc), loaded, caused to be loaded, or caused to be transported an animal that could not be transported without suffering, in violation of paragraph 138(2)(a) of the *Health of Animals Regulations* (Regulations).

[3] Subsections 138(2) and (3) of the Regulations provide that:

(2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal

(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey;

(b) that has not been fed and watered within five hours before being loaded, if the expected duration of the animal's confinement is longer than 24 hours from the time of loading; or

(c) if it is probable that the animal will give birth during the journey.

(2.1) For the purpose of paragraph (2)(a), a non-ambulatory animal is an animal that cannot be transported without undue suffering during the expected journey.

(2.2) Despite paragraph (2)(a), a non-ambulatory animal may be transported for veterinary treatment or diagnosis on the advice of a veterinarian.

(3) Paragraph (2)(b) does not apply to a chick of any species if the expected duration of the chick's confinement is less than 72 hours from the time of hatching.

[4] The Tribunal must determine whether the Agency has established all of the elements required to support the impugned Notice of Violation, that is:

- a. whether Ferme Miporc is the person who committed the alleged violation;
- b. whether, by reason of illness, infirmity, injury, fatigue or any other cause, the animal in question could not be transported without undue suffering during the expected journey from Coaticook to Rivière-du-Loup, Quebec.

Record and Procedural History

[5] Notice of Violation #1112QC0340-2, dated January 14, 2013, alleges that, on July 14, 2011, in Coaticook, Quebec, Ferme Miporc [Translation - All quotations in this version are translated as they appear in the French version] “committed a violation, namely to load, transport, or cause to be loaded or transported an animal that cannot be transported without suffering, contrary to paragraph 138(2)(a) of the *Health of Animals Regulations*, thus committing a violation under section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.” Under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, the violation is a serious violation, for which only a warning was issued, rather than a monetary penalty.

[6] In a letter dated January 22, 2013, which was sent by registered mail to the Tribunal on January 23, 2013, Ferme Miporc, through its president, Miguel Boisvert, requested a review by the Tribunal of the facts of the violation, as provided by subsection 8(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. Communicating by telephone with Tribunal staff, the applicant requested a review by written submissions in French. The Tribunal therefore conducted the review on the basis of the written submissions with which it was provided by the parties.

[7] The Agency sent its report (Report) regarding the Notice of Violation issued to Ferme Miporc, along with a letter dated February 11, 2013, to the Tribunal; the Tribunal received its copy of the Report on February 13, 2013.

[8] In a letter dated February 13, 2013, the Tribunal invited Ferme Miporc, as well as the Agency, to file with it any additional submissions (Additional Submissions) in this matter, no later than March 15, 2013.

[9] On March 13, 2013, in response to the Tribunal’s request, the Agency filed its additional submissions (Agency’s Additional Submissions) by e-mail. On the same date, Ferme Miporc also sent an e-mail with appendices attached (Ferme Miporc’s Additional Submissions).

Evidence and Issue

[10] The evidence before the Tribunal in this case consists of written submissions from the Agency (Notice of Violation, Report, and Agency’s Additional Submissions) and from Ferme Miporc (Request for Review and Ferme Miporc’s Additional Submissions).

[11] The parties agreed on the following facts:

- a. On July 14, 2011, Ferme Miporc staff caused to be transported, using the services of Transport d’Animaux Michel Ménard (Transport Ménard), hogs from its farm

in Coaticook to the slaughterhouse Les viandes du Breton Inc. (slaughterhouse) in Rivière-du-Loup; and

- b. while the truck was being unloaded at the slaughterhouse, one hog was detained with severe lameness.

[12] The Tribunal's first issue is essentially to determine whether the Agency has proven that the hog detained with severe lameness was owned by Ferme Miporc. The Agency argued that "yes," it was indeed Ferme Miporc that caused the hog in question to be transported by Transport Ménard on July 14, 2011 (see the Agency's Report and Agency's Additional Submissions). Ferme Miporc disagreed, stating, "We do not believe that it was one of our hogs that was detained with severe lameness" (see Ferme Miporc's Request for Review).

[13] Let us examine the evidence presented by the parties on this matter.

Ferme Miporc's Request for Review

- a. Mr. Boisvert stated, "... we shipped 103 hogs that day together with other producers in the same truck."

Ferme Miporc' Additional Submissions

- a. Mr. Boisvert stated, "... here are the official receipts from the Breton slaughterhouse (pages 2-3) as you can see there were 2 producers in the same truck during the delivery on July 14, 2011, by Michel Ménard, me and another producer..."
- b. In his additional submissions, Miguel Boisvert stated, "... in the photos [in tab 7 of the Agency's Report] it is very difficult to see the tattoo number on the animal in question..."
- c. To support its arguments, Ferme Miporc submitted two official receipts from the slaughterhouse that prove, according to Ferme Miporc, that the load transported on July 14, 2011, was made up of hogs owned by multiple producers. The first of the two receipts, which is dated July 14, 2011, and bears the title "Receiving Slip Official Receipt Lot 1815382," indicates that a total of 90 hogs were expected to be delivered that day and that 90 hogs were delivered. Sixty-three hogs were from account number 10657, assigned to Porcherie R.G. D'Amours Inc. (ENG. #1) with tattoo number 07870, while twenty-seven hogs were from account number 10657, assigned to Porcherie R.G. D'Amours Inc. (ENG. #1) with tattoo number 07880.
- d. The second of the two receipts, which is dated July 14, 2011, and bears the title "Receiving Slip Official Receipt Lot 1815381," indicates that a total of 121 hogs were expected to be delivered that day, but that only 103 hogs were delivered,

all from account number 10896, assigned to Porcherie Lavoie-Hébert Inc. with tattoo number 12250. Although account number 20095, which is assigned to Ferme Miporc inc. (with no tattoo number), was mentioned on the receiving slip, there is only a note about the number of hogs expected to be delivered that day (101), and nothing recorded in the column to indicate the number of hogs actually delivered. Furthermore, the receipt indicates that of the 103 hogs, one was dead and three others were owned by the producer with account number 10896 (with tattoo number 12250), with the comment "lame."

Agency's Report

- a. Tab 2 – A document identical to the second receipt (for lot 1815381) from Ferme Miporc's Additional Submissions, accompanied by a second document with the slaughterhouse's logo, acknowledging receipt of 103 hogs from Porcherie Lavoie-Hébert Inc. bearing tattoo number 12250 and having been transported by Transport Ménard, with one hog dead and three other animals ill or injured.
- b. Tab 4 – An ante mortem inspection report, prepared by the Agency and dated July 14, 2011, for lot 1815381, noting that detained hog #03 was lame and was condemned. The same report also indicates that the owner of the hog was "010896 Porcherie Lavoie Hébert Inc." and that the transporter of the animal was Transport Ménard.
- c. Tab 5 – A statement signed by Frédéric Gauthier, a slaughterhouse employee, stating that during the unloading of the hogs transported by Transport Ménard on July 14, 2011, "I detained 1 hog (detained animal #3) that was having trouble walking and following the group," but Mr. Gauthier does not name the owner of the hog in his statement.
- d. Tab 6 – The Inspector's Non-Compliance Report prepared by Dr. Line Pelletier, DVM, dated July 14, 2011, in which the "Suspected Violation" section indicates paragraph 138(2)(a) of the *Health of Animals Regulations*, the "Suspected Violator" section indicates Transport d'Animaux Michel Ménard, and the "Company Type" section indicates transporter and producer. The "Factual Information" section of the report does not indicate the name of the owner of the compromised hog, other than, "... this hog is identified as detained animal #3 and an ante mortem inspection card (1438) has its number on it..." The animal's condition is then described in detail, and the last sentence in that section reads: "Photos were taken at the barn to show the animal's condition and the correspondence with the tattoo." A subsequent section called "Information on the owner of the animals" reads "Porcherie Lavoie-Hébert Inc."
- e. Tab 7 – The photos mentioned in Dr. Line Pelletier's Inspector's Non-Compliance Report. The Tribunal cannot make out the tattoo numbers on any of the hogs in the five photos.

- f. Tab 10 – An e-mail exchange between Solange Lachance, Operations Technician, Marketing Division, Fédération des producteurs de porcs du Québec, and Véronique Dumontier, Investigator for the Agency, dated October 30 and 31, 2012, and November 1, 2012, in which Ms. Dumontier asks for the full contact information for the producer corresponding to tattoo number 12250 for a load transported on July 14, 2011, to the slaughterhouse Les viandes du Breton in Rivière-du-Loup. Ms. Lachance answers, “In this delivery there was a producer error so tattoo 12250 goes with producer ... 20095 Ferme Miporc inc (Breault site).”

Agency's Additional Submissions

- a. A document with the title “Hog Grading Certificate” produced by the Fédération des producteurs de porcs du Québec, the first page of which indicates that Ferme Miporc was paid on July 21, 2011, for 101 hogs transported by Transport Ménard and slaughtered at the slaughterhouse on July 14, 2011. That same document indicates that the producer’s account number is 20095 and that the assigned tattoo number is 12250. On page 2, “Hog Details,” the document, using an assortment of codes, seems to indicate that 101 hogs were slaughtered, with only one hog given an additional note stating that it was condemned after being diagnosed with arthritis. That page also indicates that two other hogs were condemned, seven had no tattoo on their shoulders, and the tattoo of one hog was “not dark enough”.

[All quotations translated as they appear in the French version.]

Analysis and applicable law

[14] The Tribunal’s mandate is to determine the validity of agriculture and agri-food administrative monetary penalties (AMPs) issued under the authority of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (Act). The purpose of the Act is set out in section 3:

3. The purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts.

Section 2 of the Act defines “agri-food Act:”

2. “agri-food Act” means the Canada Agricultural Products Act, the Farm Debt Mediation Act, the Feeds Act, the Fertilizers Act, the Health of Animals Act, the Meat Inspection Act, the Pest Control Products Act, the Plant Protection Act or the Seeds Act.

[15] Pursuant to section 4 of the Act, the Minister of Agriculture and Agri-Food, or the Minister of Health, depending on the circumstances, may make regulations:

4. (1) The Minister may make regulations

(a) *designating as a violation that may be proceeded with in accordance with this Act*

(i) *the contravention of any specified provision of an agri-food Act or of a regulation made under an agri-food Act,*

[16] The Minister of Agriculture and Agri-Food has made one such regulation, the *Agriculture and Agri-Food Monetary Penalties Regulations*, SOR/2000-187, which designates as a violation the contravention of several specified provisions of the *Health of Animals Act*, the *Health of Animals Regulations*, the *Plant Protection Act* and the *Plant Protection Regulations*. These violations are listed in Schedule 1 to the *Agriculture and Agri-Food Monetary Penalties Regulations*, which includes a reference to paragraph 138(2)(a) of the *Health of Animals Regulations* (Regulations).

[17] However, the Agency must establish that it issued the Notice of Violation to the person who committed the violation, that is, the person who loaded or transported the animals in question. The Federal Court of Appeal also points out in *Doyon v. Canada (Attorney General of Canada)*, 2009 FCA 152, that the Act imposes an important burden on the Agency. At paragraph [20], the Court states:

[20] Lastly, and this is a key element of any proceeding, the Minister has both the burden of proving a violation and the legal burden of persuasion. The Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice: see section 19 of the Act.

[18] Section 19 of the Act reads as follows:

19. *In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice.*

[19] Furthermore, in *Doyon*, the Federal Court of Appeal cautions the Tribunal and advises it “[to] be circumspect in managing and analysing the evidence and in analysing the essential elements of the violation” when dealing with an alleged contravention of the Act. See the context in which this guideline is set forth (paragraphs [27] and [28]):

[27] In short, the Administrative Monetary Penalty System has imported the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor’s burden of proof. Absolute liability, arising

from an actus reus which the prosecutor does not have to prove beyond a reasonable doubt, leaves the person who commits a violation very few means of exculpating him- or herself.

[28] Therefore, the decision-maker must be circumspect in managing and analysing the evidence and in analysing the essential elements of the violation and the causal link. This circumspection must be reflected in the decision-maker's reasons for decision, which must rely on evidence based on facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay.

[20] Paragraph 138(2)(a) of the Regulations is in Part XII, entitled "Transportation of Animals". The purpose of this Part of the Regulations is to assist producers, transporters and all other parties in humanely transporting animals intended for human consumption. When those provisions are contravened, Part XII enables the Agency to take action against the persons who have committed the offences.

[21] To facilitate the humane transportation of animals, paragraph 138(2)(a) of the Regulations provides that no person shall "*load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal . . . that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey.*" For there to be a violation of paragraph 138(2)(a), the Agency must establish the following elements, as identified by the Federal Court of Appeal at paragraph [29] of *Doyon*:

1. that the animal in question was loaded (or was caused to be loaded) or transported (or caused to be transported);
2. that the animal in question was loaded onto or transported on a railway car, motor vehicle, aircraft or vessel;
3. that the cargo loaded or transported was an animal;
4. that the animal could not be transported without undue suffering;
5. that the animal suffered unduly during the expected journey;
6. that the animal could not be transported without undue suffering by reason of infirmity, illness, injury, fatigue or any other cause; and
7. that there was a causal link between the transportation, the undue suffering and the animal's infirmity, illness, injury or fatigue, or any other cause.

[22] However, under the stringent administrative monetary penalty system, it is the Agency's responsibility to first establish the identity of the person who committed the violation in question. It should also be noted that subsection 20(2) of the Act holds a person "*liable for a violation that is committed by any employee or agent of the person acting in the*

course of the employee's employment or the scope of the agent's authority, whether or not the employee or agent who actually committed the violation is identified or proceeded against in accordance with this Act." In this case, the Tribunal is by no means certain about the ownership of the hog regarding which the penalty was issued. The Tribunal's uncertainty with regard to the ownership of that hog casts doubt on the identity of the person who allegedly committed the violation.

[23] The equivocal nature of the evidence presented supports the Tribunal's uncertainty in this regard. The Tribunal notes:

- a. The receiving slip (tab 2 of the Agency's Report, and Ferme Miporc's Additional Submissions), the ante mortem inspection report (tab 4 of the Agency's Report), and the Inspector's Non-Compliance Report (tab 6 of the Agency's Report) all indicate that the hog producer is Porcherie Lavoie-Hébert Inc.
- b. The photos provided by the Agency (tab 7 of the Agency's Report) depicting the hog to which the violation relates by no means allow the definite identification of the tattoo that would irrefutably prove the hog's ownership.
- c. The sworn statement of Frédéric Gauthier, an employee of Les viandes du Breton Inc., that was provided by the Agency (tab 5 of the Agency's Report) refers only to the hog's health status and makes no mention of its farm of origin or owner.
- d. The truck that transported the hogs to the slaughterhouse on July 14, 2011, contained hogs from at least two different producers (Request for Review and Ferme Miporc's Additional Submissions).

[24] Furthermore, the Tribunal was asked to accept that all of the documentation prepared on the day of the incident by the Agency and slaughterhouse regarding the ownership of the hog in question was flawed. If the Tribunal accepts that all of that documentation is flawed, can it be confident that all of the other information provided by the Agency is reliable? The Agency asked the Tribunal to consider that the e-mails in tab 10 of the Agency's Report, as well as the "Hog Grading Certificate" provided by the Agency when it filed its Additional Submissions, definitively answer the question of who is the owner of the hog in question. However, these documents also contain uncertainties. For example, the "Hog Grading Certificate" states that one of Ferme Miporc's hogs had a tattoo that was "not dark enough" and that seven other hogs had no shoulder tattoo. That statement increases the Tribunal's doubts regarding the identification of the ownership of the hog to which the violation relates. Furthermore, the certificate uses an esoteric coding system; by omitting to provide a single piece of official information explaining the precise meaning of the codes, the Agency failed to meet its burden of persuasion as imposed by the Federal Court of Appeal in *Doyon*.

[25] Lastly, the Agency showed that it relied on assumptions in two key pieces of evidence. By alleging that "Ferme Miporc admits in its letter of January 22, 2013, that it shipped 103 hogs for slaughter on July 14, 2011," the Agency neglected the key element

that is the source of the Tribunal's major uncertainties, namely that the shipped hogs mentioned by the Agency in its Additional Submissions were not all owned by Ferme Miporc, but by a group of hog producers. Furthermore, by alleging in its Additional Submissions that "The bill of lading, also produced by the slaughterhouse, states that the 103 hogs, with tattoo number 12250, were 'scheduled' for slaughter on July 14, 2011," and by claiming in its Report that "a load of 103 hogs identified with tattoo #12250 (...) came from Ferme Miporc inc.," the Agency neglected a crucial practice in Canadian agriculture, namely the identification of the ownership of an animal by a tattoo. Tab 2 of the Agency's Report (Receiving Slip Official Receipt from the slaughterhouse) indicates that the Agency was aware that the load was shared between Ferme Miporc and another producer (Porcherie Lavoie Hébert Inc. or another producer). The Agency made a generalization about the hogs' loading and tattoos, even though hogs from the two different farms were combined in the load, without clearly ascertaining and establishing the identity of livestock by reference to their tattoos. This state of affairs contributed to the Tribunal's serious doubts about the ownership of the hog to which the violation relates.

[26] In the final analysis, these elements contributed to the Tribunal's circumspection, as tacitly demanded by the legislation and reinforced by the Federal Court of Appeal in *Doyon*. In paragraph [28] of that decision, the Court told the Tribunal to "*be circumspect in managing and analysing the evidence and in analysing the essential elements of the violation and the causal link. This circumspection must be reflected in the decision-maker's reasons for decision, which must rely on evidence based on facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay.*"

[27] In this case, the receiving, sales and payment documentation and the documentation for the investigation of the alleged violation contained inconsistent data on the identity of the person who allegedly committed the violation. In order for the Tribunal to conclude that Ferme Miporc was the owner of the compromised hog found at the slaughterhouse on July 14, 2011, even on a balance of probabilities, the Tribunal would need to rely on conjecture, speculation, hunches and impressions. In attempting to support the validity of the administrative penalty imposed and issued by one of its employees, the Agency neglected its duty to be thorough and precise.

[28] In light of the facts, the Tribunal is of the opinion that, on a balance of probabilities, the ownership of the hog cannot be established and the identity of the person who committed the violation is therefore not defined. The analysis of the seven elements required to establish the violation, as set out by the Federal Court of Appeal in *Doyon*, therefore does not come into play. Accordingly, the Tribunal finds that Ferme Miporc did not commit the violation and that the Notice of Violation with Warning issued by the Agency is invalid.

Dated at Ottawa, Ontario, this 21st day of August, 2013.

Dr. Donald Buckingham, Chairperson