

**AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE  
MONETARY PENALTIES ACT**

**DECISION**

In the matter of an application for a review of the facts of a violation pursuant to subsection 139(2) of the *Health of Animals Regulations*, alleged by the Respondent, and requested by the Applicant pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

**K & R Poultry Ltd., Applicant**

**- and -**

**Canadian Food Inspection Agency, Respondent**

**CHAIRMAN BARTON**

**Decision**

**Following an oral hearing and a review of the submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$2,200.00 to the Respondent within 30 days after the day on which this decision is served.**

## REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The oral hearing was held in Vancouver on December 11, 2002.

Mr. Ken Huttama represented the Applicant.

The Respondent was represented by its solicitor, Ms. Vickie McCaffrey and evidence on behalf of the Respondent was given by Dr. Ken Moll.

The Notice of Violation dated July 8, 2002, alleges that the Applicant, on or about 23:00 hours on the 19<sup>th</sup> day of June, 2002, at Abbotsford, in the province of British Columbia, committed a violation, namely: “load or unload, or cause to be loaded or unloaded, an animal in a way likely to cause injury or undue suffering to it”, contrary to subsection 139(2) of the *Health of Animals Regulations*. Subsection 139(2) states as follows:

139(2). No person shall load or unload, or cause to be loaded or unloaded, an animal in a way likely to cause injury or undue suffering to it.

At the commencement of the hearing, I indicated that the Applicant had not provided any evidence in its application nor did it respond to the report of the Respondent, and consequently, the Applicant was cautioned that it could not introduce evidence at this point in the proceedings unless there were extraordinary circumstances.

The report of the Respondent indicates that the Applicant loaded 3,168 mature chickens on the premises of Walter Siemens, which were subsequently transported to the Applicant's live holding area prior to slaughter.

Although an ante-mortem inspection disclosed that the chickens appeared to be okay, following a post mortem inspection and other inquiries, 215 chickens were condemned for bruising. Many other carcasses had been trimmed for bruised parts by employees of the Applicant.

The evidence further disclosed that the damage to the chickens was consistent with ante-mortem trauma caused by removing the chickens from the cages and putting them into the crates prior to transportation.

The Respondent pointed out the considerable percentage difference between the extent of bruising in this case, and the extent of bruising shown on tab 14, (being condemnation details for the Province of British Columbia for the year 2001).

The Applicant contended that the loading of the chickens was done at the seller's expense, although it was acknowledged that the persons carrying out the loading were employees of the Applicant. The Applicant also pointed out that the statistics set out in tab 14 were misleading for various reasons, including the fact that they included both heavy and light fowl, as well as brown feathered fowl. On cross-examination, the Applicant further established that the photographs in tab 7 of the report could also have included fowl that were not bruised. In addition, the Applicant established that the killing was done at the end of the day, rather than shortly after the ante-mortem inspection, implying that some bruising could have taken place between the inspections.

The Applicant also pointed out the irony that, had spent hens been slaughtered on the Siemens property and not brought to the Applicant's slaughter house, the circumstances giving rise to this violation would not have arisen. The Applicant stated it was attempting to handle the spent hens as best it could.

Notwithstanding that the details of condemnation in tab 14 may be misleading, the Tribunal finds the bruising of the chickens was extensive and that the damage was primarily caused by the Applicant in loading the chickens. The fact that the employees of the Applicant, in this instance, were paid for the loading by the seller, is not a valid defence to the violation.

Accordingly, the Tribunal finds the Respondent has, on a balance of probabilities, established that the Applicant committed the violation. Further, the Tribunal confirms the Respondent has established the amount of the penalty in accordance with the Regulations.

Dated at Ottawa this 23<sup>rd</sup> day of December, 2002.

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Thomas S. Barton, Q.C., Chairman