

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

DECISION

In the matter of an application for a review of the facts of a violation of paragraph 138(2)(a) 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*.

Ferme du Porc Bonheur Inc., Applicant

- and -

Canadian Food Inspection Agency, Respondent

MEMBER H. LAMED

Decision

Following an oral hearing and a review of all the documents on file, including the Tribunal's decision of the transporter, L. Bilodeau et Fils Ltée, in regards to the same event (RTA #60180), the Tribunal, by order, determines that the Applicant committed the violation and is liable for payment of the penalty in the amount of \$2,000 to the Respondent within 30 days after the day on which this decision is served.

REASONS

An oral hearing was held at the Applicant's request in the City of Quebec, on May 16, 2007.

The Applicant was represented by Mr. Simon Marceau.

The Respondent was represented by its counsel, Ms Louise Panet-Raymond.

Each party is in possession of the following documents which have been entered on the record as evidence for the purpose of the hearing:

- Notice of Violation dated April 22, 2005,
- Applicant's request for review of May 27, 2005 and
- Respondent's Summary of evidence

The Notice of Violation #0405QC0247 dated April 22, 2005, alleges that on January 26, 2005, at St-François, in the province of Quebec, the Applicant committed the following violation: "faire charger et faire transporter entre St-François et St-Henri, un porc par véhicule moteur qui, pour des raisons d'infirmité, de maladie, de blessure, de fatigue, ou pour tout autre cause, ne pouvait être transporté sans souffrances indues au cours du voyage prévu", contrary to provision 138(2)(a) of the *Health of Animals Regulations*, which states as follows:

138.(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;

The animal in question was held for ante mortem inspection upon the arrival of a lot of 89 pigs from the Applicant's facilities to the Les Salaisons Brochu slaughterhouse on January 26, 2005, as shown by the goods receipt (Tab 2). The said pig was examined by Dr. Jocelyne Gauthier, the veterinarian on duty at Les Salaisons Brochu at the time the lot in question arrived.

She recorded the results of the ante mortem inspection in the Inspector's Non-Compliance Report (Tab 5). The pig was smaller than normal (by about 50 percent) and was thin and trembling. It was very severely lame, moving with great difficulty, and leaned on the wall to support itself.

The left forelimb deviated outwardly at the carpus and was very swollen at the tarsus. A large necrosis exposed the subcutaneous tissues. The tail was necrotic. The left hock was very swollen, and the swelling was red and hot to the touch. It had a wound on the right hind foot and a crusted wound on the right thorax. These findings are corroborated by the photographs taken by Dr. Gauthier during the ante mortem inspection.

Dr. Gauthier testified that, in her opinion, none of the lesions were recent, and it was clear that the pig had been in that condition prior to transport. It is also her opinion that the pig should never have been transported.

To establish a violation, the Respondent must establish the identity or provenance of the afflicted animal and demonstrate that transporting the animal caused it undue suffering.

In response to the first point, the Applicant's representative, Mr. Marceau, testified that it was unclear whether the pig described in the report belonged to the Applicant.

The Tribunal has no reason to believe that the animal identification and tracking procedure at the slaughterhouse is unreliable. The documentation (Tabs 2, 4 and 5) is detailed and contemporary with the arrival of the animals. The Tribunal is of the view that the Respondent has established that the pig belonged to the Applicant.

The second element of proof of the violation rests on the issue of whether an animal that is already injured or ill before being transported would experience further suffering by being transported, considering that it is already weak. When the answer is affirmative, which would be the case in the vast majority of situations, then the animal should not be transported, and its transport would result in a notice of violation under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

On that point, the Tribunal deemed itself bound by the position of the Federal Court of Appeal in *Canadian Food Inspection Agency v. Samson* [2005] F.C.A. 235 which sets out as follows in paragraph 12:

What the provision contemplates is that no animal be transported where having regard to its condition, undue suffering will be caused by the

projected transport. Put another way, wounded animals should not be subjected to greater pain by being transported. So understood, any further suffering resulting from the transport is undue. This reading is in

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harmony with the enabling legislation which has as an objective the promotion of the humane treatment of animals.

An animal's suffering prior to its loading and transport, and the issue as to whether it cannot be loaded or transported without undue suffering are questions of fact to be assessed in each case, taking into consideration the animal's condition and the circumstances of the journey. Dr. Gauthier's findings as to the pig's condition upon arrival at the slaughterhouse, and the fact that it had multiple lesions incurred well before its transport on January 26, 2005, constitute proof that the animal could not have been loaded and transported without undue suffering.

For these reasons, the Tribunal finds that the Respondent established that the Applicant committed the violation, and orders the Applicant to pay the penalty in the amount of \$2,000 to the Respondent within 30 days after the day on which this decision is served.

Dated at Montreal this 3rd day of October, 2007

H. Lamed, Member