

**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 provision 143(1)(d) 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*.

Maple Lodge Farms Ltd., Applicant

-and-

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

This case was heard in conjunction with the cases in RT File # 1335 & # 1336. For this reason, the decision in this case will apply mutatis mutandis to the other two cases.

Decision

Following an oral hearing and a review of the written submissions of the parties, including the report of the Respondent, the Tribunal, by order, determines the Applicant did not commit the violation and is not liable for payment of the penalty.

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 Brampton on May 4, 2006. The Applicant was represented by its solicitor, Mr. Ron E. Folkes.

Evidence for the Applicant was given by Mr. Jack Hamilton, Manager of the Applicant, and by Mr. Casey Scherders.

The Respondent was represented by its solicitor, Mr. Derek Edwards.

Evidence for the Respondent was given by Dr. Dennis Barran, Mr. Santosh Pachai, Mr. Ladislav Terban and Mr. Andrew Gomulka.

At the outset of the hearing, the solicitors for both parties agreed to amend the Notice of Violation by deleting the name "Robert J. May" and by confirming that the Notice of Violation is issued to Maple Lodge Farms Ltd.

Further, in file RT # 1335, both solicitors agreed to amend the Notice of Violation by changing the number of chickens set out therein from "10,008" to "10,080".

The solicitor for the Applicant indicated that with minor changes, he did not challenge the evidence of the Respondent as set out in its report.

The Notice of Violation dated November 7, 2005, alleges that the Applicant, on or about 2:30 hours on the 31st day of August, 2005, at Norval, in the province of Ontario, committed a violation, namely: "did transport or cause to be transported an animal, to wit: 10,008 chickens with undue exposure to the weather, contrary to provision 143(1)(d) of the *Health of Animals Regulations*. Subsection 143(1) states as follows:

143(1) No person shall transport or cause to be transported any animal in a railway car, motor vehicle, aircraft, vessel, crate or container if injury or undue suffering is likely to be caused to the animal by reason of

- (a) inadequate construction of the railway car, motor vehicle, aircraft, vessel, container or any part thereof;
- (b) insecure fittings, the presence of bolt-heads, angles or other projections;

(c) the fittings or other parts of the railway car, motor vehicle, aircraft, vessel or container being inadequately padded, fenced off or otherwise obstructed;

(d) undue exposure to the weather; or

(e) inadequate ventilation.

Paragraph (d) is a separate violation pursuant to the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

Prior to the *viva voce* evidence I ascertained whether each party had copies of the following key documents in this file:

1. Notice of Violation
2. Letter dated December 14, 2005, from the Applicant's solicitor requesting a review.
3. Letter dated January 5, 2006, from the Respondent enclosed its record.
4. Letter dated January 11, 2006, from the Applicant's solicitor regarding witnesses.
5. Letter dated January 12, 2006, from the Respondent's solicitor regarding witnesses.
6. Letter dated February 3rd, 2006, from the Applicant's solicitor regarding witnesses and enclosing further documentation.

Having confirmed both parties had copies, these documents were entered on the record as evidence for the purpose of the hearing.

The undisputed facts of the Respondent are that the Applicant acquired six loads of spent hens from Ohio Fresh Eggs L.L.C., Croton, Ohio. The hens were loaded on August 30th, 2005, and transported by Little Rock Farm Trucking to the Applicant at its facility in Norval, Ontario. Three of the loads arrived at the Applicant's premises on August 30th, 2005, and three other shipments on August 31st, 2005. It is these latter three shipments that gave rise to the three Notices of Violation.

The number of hens in these loads that were dead on arrival at the Applicant's facility was 53%, 14% & 10%, while the percentage number of hens dead on arrival for the other loads that arrived on August 30th, 2005, was significantly lower.

At all relevant times, as set out in the Live Load Report at tab 1 of the Respondent's report, the outside temperature ranged from the mid 60s to the low 70s on the Fahrenheit scale, and it was raining. The rain varied in intensity throughout, and this was one of the reasons given why the loads that arrived on August 30th, 2005, had considerably fewer hens dead on arrival.

The Applicant gave evidence that loading and transporting spent hens at these temperatures while raining is a normal occurrence and although the transportation took place during the tail end of hurricane Katrina, there is no evidence to suggest the conditions were more severe than heavy rainfall.

The two main issues to be decided are whether the Applicant "caused" the transportation in these circumstances, and if so whether there was undue suffering during the transportation caused by undue exposure to the weather

In order to establish the violation was committed, the Respondent must establish that the Applicant caused the birds to be transported.

Dealing with the causal issue first, there is a total dearth of evidence by the Respondent.

As established by the Applicant's witnesses, Little Rock Farm Trucking is an independent outside contractor and the Applicant has no ownership association with it by shareholding or otherwise.

The Applicant further testified it has a trucking division of its own, but uses the services of Little Rock Farm Trucking for its international loads. The Applicant's practice is to notify the transporter in advance from where, at what time and how many birds are available for transportation to the Applicant's slaughtering facility. This is done in order to coordinate its slaughtering schedule. Any changes to the scheduling due to adverse weather conditions or otherwise, would be mutually agreed upon.

There is no contract between the Applicant and the transporter and the loads are arranged on a case by case basis. The evidence showed that the transporter was not obligated to pick up any load that had been requested by the Applicant (although there may be practical consequences in the loss of future business if it does not do so).

Although it contributed to some of the costs of crating, an unusual feature of the Applicant's acquisition of the birds from Ohio Fresh Eggs L.L.C. was that the Applicant was not required to pay anything for the birds, the spent hens no longer being useful for egg production. Nor did it take legal title to the birds until after delivery to its facility in Norval, Ontario.

Further, until after slaughter, the birds were entirely at the risk of the transporter, which got paid only on the basis of live birds slaughtered and not condemned.

In conclusion, I find that although the Applicant requested particular scheduling of deliveries, which was for the benefit of both the Applicant and the transporter, the Applicant could not have forced the transporter into taking any loads it had requested and had no input into the manner of crating, loading or transportation of the birds. In other words, the Applicant had no authority or control over the actions of the transporter.

Having no ownership interest in the birds prior to receiving them, and no authority or control over the transporter, I find that the Respondent has not established that the Applicant caused these birds to be transported.

Having decided this threshold issue in favour of the Applicant, it is unnecessary to decide the other main issue.

Dated at Ottawa this 11th day of May 2006.

Thomas S. Barton, Q.C., Chairman