

***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 subsection 8(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Transport Patenaude Inc., Applicant

- and -

Canadian Food Inspection Agency, Respondent

PETER ANNIS, MEMBER

Decision

Following a review of the written submission of the parties, including the report of the Respondent, the Tribunal, by order, determines the Applicant committed the alleged violation.

The Applicant did not request an oral hearing.

The Notice of Violation with warning issued to Transport Patenaude Inc. on February 12, 2004, alleges that the application, on August 21, 2003, in St-Cyrille-de-Wendover, Quebec, committed a violation: “namely loading on a motor vehicle and transporting cattle that by reason of infirmity, illness, injury, fatigue or any other cause could not be transported without undue suffering during the expected journey”, contrary to paragraph 138(2)(a) of the *Health of Animal Regulations*, C.R.C. 296, which states:

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.

On August 21, 2003, the 32 cattle were loaded and transported by the Applicant, Transport Patenaude Inc., on behalf of Produits de Viande Levinoff Ltée. The truck was driven by Alain Larivière to Abattoir Colbex Inc. (Establishment 53). The shipment arrived at 2:00 a.m. on August 22, 2003, and the truck was unloaded seven hours later, around 9:00 a.m.

The Respondent’s evidence shows that the veterinarian and inspector for the Canadian Food Inspection Agency, Dr. Peter O’Donnell, found three cattle dead and two lying on their side in the well of the trailer. The animals presented signs of severe dehydration. The cattle were identified as follows: #2016, #6369, #1085, #1901 and #9298.

The photographs at Tab 5 and Dr. O’Donnell’s observations indicate that the three dead cattle were lying on the floor.

The Applicant acknowledged that it loaded the truck to transport the cattle to Abattoir Colbex Inc.

The Applicant stated that inspections were conducted regularly, that the driving times were more than reasonable and that the waiting time at the client, Levinoff, was 10 hours. It also attached weather reports for August 21 and 22, 2003, indicating that the high temperature played a major role in the poor condition of the cattle when they arrived. According to the Applicant, the circumstances were beyond its control.

However, the trucker's comments show that the cattle were very weak when they were loaded. Further, according to the driver's log, one cow was lying down at the time of the first stop two and a half hours into the trip. The driver ought to have known that the condition of the cattle could deteriorate during the trip. The company loaded and transported cattle with the intention of transporting them more than 730 kilometres despite their precarious health.

Transport Patenaude Inc. was responsible for ensuring that the cattle to be transported were suitable for transport. The carrier failed to meet its responsibility; as a result, cattle experienced undue suffering resulting in death.

The Tribunal believes that the Respondent has established on a balance of probabilities that the Applicant committed the violation by neglecting and thus causing serious injury to the five animals.

In view of the record of the offender, Transport Patenaude Inc., which committed one minor violation in the three years preceding this violation, and considering the seriousness of the offence, the warning is consistent with section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

Dated at Ottawa this 25th day of May, 2004.

Peter Annis, part-time member