

**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 section 39 of the *Plant Protection 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*.

Berta Apolonia Yacolca Diaz, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

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 violation and is liable for payment of the penalty in the amount of \$200.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated March 13, 2004, alleges that the Applicant, at 17:40 hours on the 13th day of March, 2004, at MCIA, Ottawa, in the province of Ontario, committed a violation, namely: “Fail to declare potatoes as prescribed” contrary to section 39 of the *Plant Protection Regulations*, which states:

39. Every person shall, at the time of importation into Canada of any thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest, declare that thing to an inspector or customs officer at a place of entry set out in subsection 40(1).

Section 2 of the *Plant Protection Act*, under which the *Regulations* were passed, states:

2. The purpose of this Act is to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada.

Section 3 of the *Plant Protection Act* contains the following pertinent definitions:

“pest” means any thing that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants, and includes any plant prescribed as a pest;

“plant” includes a part of a plant;

“prescribed” means prescribed by regulation;

“thing” includes a plant and a pest.

The uncontradicted evidence of the Respondent is that a number of potatoes were found in the luggage of the Applicant upon her arrival from Cuba. Expert evidence was adduced to indicate these potatoes could pose a potential threat as a pest to the agriculture and forestry sectors of Canada.

The Applicant contends she did not commit the violation because she was denied the right to be represented by a person who could communicate in both languages in order to

facilitate the inspection process at the time of importation. She alleges the Customs Declaration Form was filled in by a flight attendant who did not speak Spanish. Further, she states she was not allowed an interpreter during the investigation process who could communicate in both languages.

The assistance given by the flight attendant was a courtesy, and there was no obligation upon the airline to provide this service, let alone provide it in both official languages.

The potatoes were found in the luggage of the Applicant by a detection dog prior to the discussion that took place at the secondary examination zone. At this point, the violation had already occurred as the potatoes had already been found to have been imported without being declared to an inspector. Therefore, it is unnecessary to determine whether the *Canadian Charter of Rights and Freedoms* applies to the ensuing discussion, and if so, whether the Applicant was denied any rights under it.

The fact that the Applicant was unaware of the Canadian import requirements is not a defence to the violation by reason of subsection 18(1) of the *Agriculture and Agri-Food Monetary Penalties Act* which states as follows:

18.(1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

Dated at Ottawa this 3rd day of June, 2004.

Thomas S. Barton, Q.C., Chairman

