

***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)(e) 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*.

L. Bilodeau et Fils Ltée., Applicant

-and-

Canadian Food Inspection Agency, Respondent

MEMBER H. LAMED

Decision

Following a review of all written submissions, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$2,600.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

A hearing was held in Québec, Quebec on May 16, 2007, at the Applicant's request.

The Applicant was represented by Mr. Gaston Bilodeau.

The Respondent was represented by its counsel, Mr. Réal Dautre.

The file contains the following documents:

- Notice of Violation No. 0506QC0091 dated November 10, 2005;
- The Applicant's application for a review dated November 22, 2005; and
- The Respondent's summary of the evidence.

Notice of Violation No. 0506QC0091, dated November 10, 2005, alleges that the Applicant, on June 13, 2005, at Saint-Valérien, in the Province of Quebec, committed a violation, namely, "A transporté des animaux dans un véhicule à moteur sans ventilation suffisante", contrary to provision 143(1)(e) of the *Health of Animals Regulations*, C.R.C., c. 296, which reads 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

...

(e) inadequate ventilation.

The Respondent's evidence can be summarized as follows. Mr. Jonathan Roy, an employee at the Olymel abattoir during the period in question, testified that he was working at live animal receiving on June 13, 2005, around 11:45 p.m., when a truck driver of the Applicant arrived to deliver a load of 232 hogs from the producer Don Frew & Sons Ltd., located in Nestleton, Ontario, and 74 hogs from the producer SD and R County Pork PDRS, located in Finch, Ontario (see tabs 2, 3 and 5 in the Respondent's report). The distance travelled from Nestleton to the Olymel abattoir in Saint-Valérien was 600 km and the trip lasted at least 9 hours, not including breaks and stops due to traffic. Mr. Roy immediately noticed that some 50 hogs were dead, namely, all those that had been loaded in the truck's lower deck, commonly called "the belly". Another dead hog was found in the middle deck. Mr. Roy removed the dead hogs from the truck, and scratched them in order to find their tattoos and thus determine their provenance (all came from the same producer, Don Frew & Sons Ltd.).

Since the hogs were inedible, he immediately placed them in the livestock waste container provided for that purpose. Mr. Roy noted that all the other hogs loaded in the upper decks of the truck were short of breath but in good health.

There was no veterinarian on night shift duty, but on the next day, Dr. Marcel Bouvier, the head veterinarian at the abattoir and the person responsible for animal health and hygiene, was informed of the number of dead hogs discovered when the shipment was unloaded the night before.

In his Non-Compliance Form (Tab 6), Dr. Bouvier identified the probable cause of the death of the hogs loaded in the lower deck of the truck as heatstroke, also called "heat stress". He stressed the following contributing factors: the hot and humid weather conditions on the day they were transported, the loading density and the duration of the trip.

The uncontradicted evidence adduced by the Respondent indicated that the temperature was between 27 and 29.5⁰ C in the area concerned on the afternoon of June 13, 2005, with a humidex factor between 36 and 38⁰ C.

During the hearing, Dr. Bouvier testified that, in general, hogs produce a lot of heat and do not perspire. They cool themselves by panting and have difficulty breathing when it is hot. The lower deck of the truck is the hottest, because of its proximity to the ground. More air circulates in the upper two decks of the truck. When the truck stops, the hot air in the belly cannot be expelled. Dr. Bouvier explained that the loading standards for hogs call for a 25% reduction in the load in the belly when it is hot, which means that for the average weight of these hogs (196.3 pounds), no more than 48 hogs should have been loaded, and not 50 or 51. Moreover, the hogs that arrived alive from Don Frew & Sons Ltd. were in good health, with no pathology noted.

The Applicant's witness, Patrick Auger, the truck driver during the trip in question, testified that, given the heat, he had loaded fewer hogs in the front of the truck (15 instead of 20), and he said that when he stopped at Finch (which is approximately 3 hours from Nestleton, where the hogs from Don Frew & Sons Ltd. were loaded) to load more hogs, he saw that there were dead hogs in the centre of the truck. At that point, there were still 4 or 5 hours remaining in the trip from Finch to the abattoir.

Mr. Bilodeau, the Applicant's representative, testified that there were 47 hogs loaded in the belly, in accordance with the standards (all of which were dead), and 3 or 4 dead hogs in the upper deck. He argued that this fact shows that the hogs were already in a weakened state.

Given the weather conditions, which called for special attention to be paid to the loading density for the hogs, given the fact that Mr. Auger had noticed dead hogs in the truck just 3 hours after the trip started, given that the surviving hogs from Don Frew & Sons Ltd. did not have any particular pathology, given that almost all the dead hogs were found in the belly of the truck, which is the hottest part, given that all the hogs in the belly were dead, and given the lack of evidence of any procedure for cooling the hogs or maximizing circulation, the Board finds, on a balance of probabilities, that the Applicant transported the hogs in circumstances where undue suffering was likely to be caused to them.

The Board finds that the Applicant committed the violation in question and orders the Applicant to pay the sum of \$2,600 to the Respondent within 30 days of the date on which this decision is served.

Dated at Montréal this 28th day of January, 2008.

H. Lamed, Member