

**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 subsection 177(1) 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*.

Kevin Clarke c/o Clarke Transport, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following 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 did not request an oral hearing.

The Notice of Violation dated February 27, 2004, alleges that the Applicant, on or about 12:15 hours on the 9th day of September, 2003 at Tara, in the province of Ontario, committed a violation, namely: “did transport or cause the transportation of an animal to wit: three Charolais cross steers, not bearing an approved tag,” contrary to section 177(1) of the *Health of Animals Regulations* which states:

177(1) Subject to section 183 and subsection 184(2), no person shall transport, or cause the transportation of, an animal that does not bear an approved tag.

There is no dispute that the Applicant transported a number of cattle from Maplane Farms to the Keady Livestock Market, and that three of these cattle were subsequently found not to have been bearing approved tags.

The question is whether the cattle were bearing approved tags during their transportation.

The Applicant’s evidence is that he and the owner of the animals loaded the cattle between 7:00 pm and 9:00 pm on the evening of September 8, 2003, and that he personally did not see any tags missing, going on or off the truck. He also stated the staff at the auction market “were also checking as that is part of their job.” Further, he said the owner walked through his herd on the afternoon of the loading and checked to make sure every animal had its tag.

The Respondent’s evidence is that three tags were missing from the herd some 15 hours following the loading of the cattle. There is no evidence as to when they arrived at the auction market, or when they were unloaded.

Approximately four months after the incident, the Respondent said it had a conversation with the owner of the cattle who reported he did not check the cattle before they were shipped, but that all of them should have been wearing approved identification tags.

The Respondent must establish, on a balance of probabilities, that the Applicant committed the violation.

Due to the time lapse prior to the inspection and the contradictory hearsay evidence regarding whether the owner inspected the herd prior to loading, I find the Respondent has failed to overcome its burden of proof.

Subsection 177(1) is subject, inter alia, to subsection 184(2).

Paragraph 184(2)(b) states as follows:

184(2) Subject to subsection (3), an animal that loses its approved tag while being transported may continue to be transported until it reaches the next place at which it is unloaded, and it may be received at that place, if

(b) in the case of an auction barn, the operator of the auction barn keeps a record of enough information about the origin and subsequent destination of the animal to enable the origin and subsequent destination to be traced, including, if it is known by the operator,

(i) the name and address of the owner or person having the possession, care or control of the animal when it was brought to the auction barn and the date when it was brought to the auction barn, and

(ii) the name and address of the owner or person having the possession, care or control of the animal when it was removed from the auction barn and the date when it was removed from the auction barn.

Although unnecessary to decide, even if the approved tags were lost during transport, the cattle were being transported to an auction barn. If the operator of the auction barn kept the required information about the animals required by the *Regulations* to enable their origin and subsequent destination to be traced, (which appears to be the case), the Applicant would not have committed the violation.

Dated at Ottawa this 9th day of June, 2004.

Thomas S. Barton, Q.C., Chairman