

**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 140(2) 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*.

Curtis Edwards, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the written submissions 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 \$2,000.00 to the Respondent within 30 days after the day on which this decision is served.

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 Calgary on October 2nd, 2006.

The Applicant made his own submissions.

The Respondent was represented by its solicitor, Ms. Vicky McCaffrey.

The request for a review was filed on behalf of the Applicant by Mr. Marcel Roberge. He also filed requests for a review of the facts of violations given to two other drivers employed by his company, Mr. Allen Sharpe and Mr. Gordon Sharpe, whose hearings were scheduled for the same time.

Mr. Roberge did not show up for the hearing. Considerable time was taken in trying to trace him and finally the Assistant Registrar was able to contact him by telephone. He apologized for not showing up at the hearing and indicated, for his own reasons, he was unable to attend. The three Applicants communicated with Mr. Roberge, following which they decided to allow the Tribunal to proceed on the basis of the previous written submissions.

Following further discussions with Ms. Vickie McCaffrey, solicitor for the Respondent, the Applicant decided to proceed with an oral hearing and to make his own submissions.

The Notice of Violation # 0405CA0064 dated March 22, 2005, alleges that the Applicant on the 26/27th day of October, 2004, between Prince Albert and Calgary in the province of Saskatchewan and Alberta committed a violation namely: "did transport animals to wit: cattle in a motor vehicle by so loading said animals are crowded to such an extent as to likely cause injury or undue suffering to any animal therein the vehicle" contrary to provision 140(2) of the *Health of Animals Regulations*, which states as follows:

140.(2) No person shall transport or cause to be transported any animal in any railway car, motor vehicle, aircraft, vessel, crate or container that is crowded to such an extent as to be likely to cause injury or undue suffering to any animal therein.

At the outset of the hearing I ascertained whether each party had copies of the following key documents in this file:

- Notice of Violation dated March 22, 2005.
- Letter dated April 26, 2005, from Marcel Roberge of Roberge Transport Inc. requesting a review on behalf of the Applicant.
- Report of the Respondent received by the Tribunal on May 12, 2005.

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

I then corrected an obvious clerical error in the Notice of Violation and subsequently corrected an error in the calculation of the gravity value. The penalty was amended from \$500.00 to \$2,000.00 as is prescribed in the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

I have subsequently ascertained that the Applicant's name, Curtis Edwards, has not been accurately reflected in the documentation, including the Notice of Violation. Being a clerical mistake, I hereby amend the documentation on the record to reflect the proper name of the Applicant.

The Respondent's evidence establishes that the Applicant loaded 45 cattle at Prince Albert on October 26, 2004, and arrived at his destination being XL Beef in Calgary on October 27th, 2004, at noon.

In accordance with the *Recommended Code of Practice for the Care and Handling of Farm Animals/Transportation* published by the Canadian Agri-Food Research Council, the belly of the trailer contained one animal over the maximum recommended limit, and the back compartment contained 2 animals over the maximum recommended limit. High loading density may cause a loss of balance and animals may involuntary go down and be trapped underfoot.

The Respondent's inspector further indicated the trailer was not littered with straw or wood shavings to protect animals from injury during transportation.

The Recommended Code of Practice further states that non-ambulatory animals should not be transported.

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The Applicant testified he had the assistance of two other experienced drivers to help

load the cattle, which he said took 3 hours. He stated he was careful to load the cattle in a manner that would be in compliance with the provincial weight restrictions.

He also stated that while loading the cattle, he was told to put two additional cows on the trailer. Although he acknowledged he could have refused, he still considered the load to be within the provincial highway weight restrictions and to be properly balanced.

En route to Calgary he indicated he inspected the trailer at Hanna, Alberta, and found one holstein had fallen down. In the trade, an animal that is down is called a “downer”. He was unable to get her up.

When he reached Calgary he indicated that this downer had died and there were two other downers. He testified the other two were down because he had to wait a considerable period of time after arriving at XL Beef for the Respondent’s inspectors to arrive. He said it was this time delay after the lengthy trip that contributed to their condition. He also indicated that during the trip the cattle had relieved themselves, making the flooring more slippery, and that this also may have caused the cattle to fall.

On cross-examination, two major discrepancies were exposed in the Applicant’s evidence.

- Firstly, he testified that he spent 3 hours loading the cattle while the log book, completed by the Applicant, showed the loading took 15 minutes.
- Also he had indicated two cattle were down at XL Beef as a result of waiting for a long period for the arrival of the Respondent’s veterinarian. However, the log book shows the Applicant arrived in Calgary at noon and unloaded in 15 minutes, while the *Inspector’s Non Compliance Report* was filled out at 12:45.

The Applicant admitted the log book may not have accurately reflected the events.

I am satisfied the Respondent has established, on a balance of probabilities, that the Applicant committed the violation.

Although lack of bedding material and other factors may have contributed to the three animals falling down (one of which subsequently died), and even though the provincial highway weight restrictions may have been followed, I conclude that the primary cause of the condition of the three downed animals was the overcrowding and that the Applicant should have refused to accept to load additional cattle as demanded by the dispatcher.

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Notwithstanding that I am satisfied a violation was committed, I feel that the driver was put in a difficult situation by being ordered to load additional cattle when he may have

been reluctant to do so. As a practical matter, he may have considered he had no option. I also note that the inspector indicated the Applicant was very co-operative during his inspection and readily supplied what documents he had.

However, these circumstances unfortunately do not afford the Applicant a defence to the violation.

Dated at Ottawa this 26th day of October 2006.

Thomas S. Barton, Q.C., Chairman