

**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 138(4) 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*.

Gordon Sharpe, 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 Respondent was represented by its solicitors, Mr. Réal Dautre and Ms. Vickie 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. Curtis Edwards and Mr. Allen 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 Mr. Roberge 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 the oral hearing but did not wish to cross-examine any witnesses or make any representations.

The Notice of Violation # 00506CA0062 dated January 30, 2006, alleges that the Applicant on the 15th day of October, 2005, at Golden in the province of Alberta committed a violation namely: “continue to transport an animal that is unfit for transport” contrary to provision 138(4) of the *Health of Animals Regulations*, which states as follows:

138.(4) No railway company or motor carrier shall continue to transport an animal that is injured or becomes ill or otherwise unfit for transport during a journey beyond the nearest suitable place at which it can receive proper care and attention.

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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 January 30, 2006.
- Letter received by the Tribunal on March 1, 2006, from Marcel Roberge requesting a review on behalf of the Applicant.
- Letter dated March 6, 2006, from the Respondent enclosing its report.

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

I amended an obvious clerical error in the Notice of Violation, changing the violation as being contrary to subsection 138(4) of the *Health of Animals Regulations*, rather than to subsection 138(4) of the *Health of Animals Act*.

The solicitor for the Respondent reviewed the key elements of the Respondent's record.

The uncontradicted evidence of the Respondent is that the Applicant transported 35 holstein cows from Chilliwack, British Columbia, to XL Beef in Calgary, arriving there at 11 a.m. on Saturday, October 15th, 2005.

En route the Applicant noticed a downed cow on the top deck of the trailer at Golden, British Columbia. He tried to get her up for a half hour but she would not rise. He continued on to Calgary and there is no evidence to indicate he made an effort to offload the downer.

On inspection by the Respondent at XL Beef in Calgary, the downer was lying in 1.5 inches of runny manure, was shaking and had hoof marks on its exposed side.

The Respondent's evidence is that the downed animal could have been unloaded at Golden at the Rodeo Grounds or other places, and if the Applicant did not know where to unload the animal he could have acquired this information from the RCMP or from the Provincial Scale operations.

I am satisfied the Applicant should not have continued to transport the animal to Calgary in this condition, and accordingly the Respondent has established, on a balance of probabilities, that the violation was committed.

Dated at Ottawa this 26th day of October 2006.

Thomas S. Barton, Q.C., Chairman