

**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*.

Allen 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 Doutre and Ms. Vickie McCaffrey.

Evidence for the Respondent was given by Dr. Brenda Bryan, Veterinary Inspector.

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. 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 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, that 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 # 0506CA0045 dated January 19, 2006, alleges that the Applicant on the 31st day of August, 2005, at Clyde 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 19, 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.

The uncontested written evidence of the Respondent in the record and the oral evidence of Dr. Bryan establish that the Applicant loaded 49 cows on a semi-trailer in Clyde, Alberta and transported the cattle to XL Beef in Calgary, Alberta, arriving at about 1:30 in the afternoon on August 31st, 2005.

The belly of the trailer was overloaded by seven cows in accordance with the recommended loading density formula for cattle, and another compartment was overloaded by one cow.

On checking the cattle at Nisku, Alberta, the Applicant found one cow down in the belly of the trailer which would not get up.

The Applicant further checked the animal at Lacombe, Alberta, and found it still down but appearing to be comfortable. The animal could have been off-loaded at Ponoka, Red Deer, Innisfail, or Olds Auction Markets.

On arrival at XL Beef, the downed animal had no bedding and was covered in soupy urine and feces and other animals were stepping on it. The downer showed nicks and excoriations on its exposed and trampled skin and had hoof marks on its chest, abdomen and udder. The cow was euthanized on the trailer.

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I am satisfied that the downed cow was unfit for transport during its journey to Calgary and should have been unloaded at the nearest suitable place at which it could have

received proper care and attention. Accordingly, the Respondent has established, on a balance of probabilities, that the Applicant committed the violation.

Dated at Ottawa this 26th day of October 2006.

Thomas S. Barton, Q.C., Chairman