

**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 176(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*.

**Robert Reesor, Applicant**

**- and -**

**Canadian Food Inspection Agency, Respondent**

**CHAIRMAN BARTON**

**Decision**

**Following an oral hearing and a review of the written submissions of the parties including the report 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 \$500.00 to the Respondent within 30 days after the day on which this decision is served.**

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**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 Toronto on September 13, 2004.

The Applicant made his own submissions.

The Respondent was represented by its solicitor, Mr. Robert Jaworski.

The Notice of Violation April 10, 2003, alleges that the Applicant, on the 19<sup>th</sup> day of November, 2002, at Cookstown, in the province of Ontario, committed a violation namely: “did remove or cause the removal of an animal to wit: twenty-three mixed breed “fat” cattle, not bearing an approved tag from a farm or ranch other than the farm of origin” contrary to subsection 176(2) of the *Health of Animals Regulations* which states:

176(2) Subject to section 183, no person shall remove, or cause the removal of, an animal from a farm or ranch other than its farm of origin unless the animal bears an approved tag.

The evidence presented by the Respondent establishes that a number of cattle were not bearing approved identification tags while being unloaded at Cookstown, Ontario. The load was transported from the Applicant’s feedlot operation.

Although it is not clear that section 183 of the *Health of Animals Regulations* applies to the removal of an animal from other than its farm of origin, the Tribunal is satisfied, in any event, that all of the conditions in that section were not met.

The Applicant stated that when he received the Notice of Violation he believed that approved tags were only required to be used when animals were being removed from their farm of origin, and not from a feedlot such as his.

The Tribunal has no reason to doubt the bona fides of the Applicant. However, such a belief is not a defence to a violation by reason of subsection 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* that states as follows:

18.(1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of the facts that, if true, would exonerate the person.

Cattle were transported directly from the Applicant's farm to the abattoir. At the abattoir they were found not bearing approved tags. In similar circumstances, the Federal Court of Appeal has held that there is an inference that the cattle were not bearing approved tags at the time of removal, and in this case there is no direct evidence to overcome this inference.

Accordingly, the Respondent, has established, on a balance of probabilities, that the violation was committed.

Dated at Ottawa this 22<sup>nd</sup> day of September 2004.

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Thomas S. Barton, Q.C., Chairman