

***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 69(1)b) 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*.

1648291 Ontario Inc., carrying on business as Butch Clare Livestock, Applicant

-and-

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of all written submissions, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$1,400.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

On October 17th and 20th, 2006, the Applicant, by its solicitors, requested the matter proceed by way of an oral hearing.

On December 12th, 2006, following receipt of the Respondent's report containing its written submissions, the Applicant's solicitors were advised that any and all additional representations had to be made to the Review Tribunal on or before January 11th, 2007. No submissions were received.

On July 10th, 2007, the Applicant's solicitors withdrew their request for an oral hearing.

On September 7th, 2007, the Respondent provided further submissions with the prior consent of the Tribunal. The Applicant's solicitors were given until October 10th, 2007 to respond. No response was received.

As such, this decision is rendered on the material received in accordance with section 40 of the *Rules of the Review Tribunal* (Agriculture and Agri-Food).

The Notice of Violation is in the name of 1648291 Ontario Inc./Butch Clare Livestock. Although there is no direct evidence, I am satisfied from the written material that at the time of the alleged violation, 1648291 Ontario Inc. was carrying on business as Butch Clare Livestock.

The written material of the Respondent contains affidavit material. As the deponents of these affidavits are not subject to cross-examination, the statements contained in the affidavits will be given no more weight than other statements in the written material not made under oath.

Notwithstanding the Applicant has not denied any of the Respondent's allegations and has not provided any written submissions pursuant to section 19 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the Minister must still establish, on a balance of probabilities, that the Applicant committed the violation identified in the Notice of Violation.

Notice of Violation

The Notice of Violation #0506ON0088-03 dated March 14th, 2006, alleges that the Applicant, on the 2nd day of August, 2005, at or near Windsor, in the province of Ontario, committed a violation, namely: "Did export out of Canada, livestock, to with: 8 pregnant heifers bearing Tags 267777955, 1240001011220372, 272157480, 124000101698633, 124000267407043, 124000101226887, 124000007175240, 124000101778334, without meeting the requirements of the destination country.", contrary to provision 69(1)(b) of the *Health of Animals Regulations*. Subsection 69(1) states as follows:

69.(1) Subject to this Part, no person shall export out of Canada livestock, poultry, animal embryos or animal semen unless

(a) the person has obtained a certificate of a veterinary inspector or a certificate of an accredited veterinarian endorsed by a veterinary inspector issued before shipment that clearly identifies the livestock, poultry, animal embryos or animal semen and shows

(i) that a veterinary inspector or an accredited veterinarian has inspected the livestock, poultry, animal embryos or animal semen and found it to be free from any communicable diseases,

(ii) the date and place of inspection, and

(iii) where tests have been performed, the nature of each test and that the livestock, poultry, animal embryos or animal semen proved negative to such tests; and

(b) the importation requirements of the country to which the livestock, poultry, animal embryos or animal semen are exported have been complied with.

Paragraph “(b)” is a separate violation pursuant to the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

Import Requirements

Until mid July, 2005, the United States (U.S.) border had been closed to cattle imports due to the risk of spreading bovine spongiform encephalopathy (BSE). When the border was opened for Canadian imports, it was a requirement of the United States Department of Agriculture (USDA) that imported bovines not be pregnant. There is no indication that these “importation requirements” need be legislated requirements.

There are other importation requirements to be met, but this case deals primarily with whether livestock was pregnant at the time of importation into, and slaughter in the U.S.

Protocol - Exporting Livestock for Slaughter

As established from the written material, the following is the protocol followed from the time of export to the time of slaughter:

- The exporter (or the exporter’s agent) completes a Canadian Veterinary Health Certificate (CVHC) being Respondent’s form HA2183, listing the particulars and tag identification numbers of all cattle to be exported and containing a certificate by a veterinarian practitioner accredited by the Respondent that the cattle are less than 30 months of age and are not pregnant. This certificate is endorsed by an official veterinarian of the Respondent.

- The vehicle carrying the cattle is sealed and the Respondent's official seal numbers are set out on the CVHC.
- The animals are presented by appointment to a designated U.S. port of entry and a U.S. Declaration of Importation form completed by a custom's broker is presented to the port veterinarian along with the CVHC. The port of entry in this case was Detroit, Michigan.
- The port veterinarian inspects the animals, examines the health certificates, and verifies that the requirements of the U.S. protocol have been met. If in order, the port veterinarian issues an Animals Imported for Immediate Slaughter form.
- The sealed shipment must be moved directly from the port of entry to the designated slaughter establishment. In this case the slaughter facility was Green Bay Dressed Beef Slaughter House, Green Bay, Wisconsin, a division of American Food Groups Inc.
- The seal can only be broken at the slaughter establishment by a USDA representative.
- After the seals are verified to match the CVHC, and the trailer license number is checked, a Non-Domestic Livestock Verification log is prepared.
- When the vehicles are unloaded, the ear tags are checked and verified with the numbers on the certificate. The animals are placed in a separate pen and identified as Canadian cattle.
- When documentation has been checked, authorization is given to proceed with the slaughter.
- Canadian cattle loads are slaughtered separately and individual carcasses are given a pink card.
- During slaughter, if a pregnant heifer is found, the foetus is placed in a container and tagged. The carcass and parts of the animal from which the pregnancy was discovered are also tagged to correspond with the uterine material, and are removed from the line.
- A USDA inspector is then called to verify the status of the animal.

I am satisfied from the documentation that the Applicant was the exporter of the 35 cattle set out in CVHC #05TW0K0846, of which 8 were found by the Food Safety Inspection Service (FSIS) of the USDA, to have been pregnant.

There is no evidence that the protocol was not followed, and the identification removed from the pregnant animals corresponds with the tag identification numbers of the animals set out in the CVHC.

The Respondent has accordingly met its onus of proof and has established that the Applicant committed the violation.

Penalty

In calculating the gravity value of the penalty in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalty Regulations*, the Respondent has indicated that Butch Clare Livestock committed two previous violations, one on March 14th, 2005 and the other on May 28th, 2005.

The records of the Review Tribunal indicate that on these dates, Butch Clare Livestock was carried on by Richard Walter Clare. The Applicant, 1648291 Ontario Inc., which now carries on business as Butch Clare Livestock, was not incorporated until June 14th, 2005.

Accordingly, the Applicant in this case could not have committed those two previous violations. The total gravity value is then reduced by 5 points for a total of 6 points.

In addition, the Respondent has requested the gravity value for “intent” be reduced by 3 points to 0 points. The total gravity value is then further reduced to 3 points and the penalty reduced by 30% to \$1,400.00.

Dated at Ottawa this 3rd day of March, 2008.

Thomas S. Barton, Q.C., Chairman