

**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 paragraph 148(1)(a) 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*.

Little Rock Farm Trucking, 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 the payment of the penalty in the amount of \$2000.00 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 Kitchener on September 14, 2004.

Mr. Mark Reuber made representations for the Applicant.

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

The Notice of Violation dated June 3, 2004, alleges that the Applicant, on the 15th day of January, 2004, at Norval, in the province of Ontario, committed a violation namely: did confine a monogastric animal to wit: 10,368 hens, in a conveyance for longer than 36 hours without meeting the requirements of subsection 148(7) of the *Health of Animals Regulations*” contrary to paragraph 148(1)(a) of the *Health of Animals Regulations* which states:

148.(1) Subject to subsection (2), (3) and (7), no person shall confine in a railway car, motor vehicle, aircraft or vessel

(a) equines, swine or other monogastric animals for longer than 36 hours; or

The parties agreed that the exceptions to subsection 148(1) did not apply in this instance.

The uncontested evidence of the Respondent is that 10,368 leghorn light fowl were confined in a motor vehicle for up to 47.5 hours. This was the duration between the time they were loaded in New Brunswick and unloaded in Ontario.

The Applicant confirmed the layers were monogastric animals, that the birds were confined for over 36 hours, and were not watered or rested on route. Further, the Applicant took no issue with the report of the Respondent.

The Applicant gave evidence as to the hostile weather conditions during the trip and the 9.5 hour delay in the Montreal area due to poor weather. The Applicant indicated he had no control over the weather which was unpredictable. In his opinion, the delay was caused by an act of God.

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Unfortunately for the Applicant, these are not defences that can be used against 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.

Accordingly, the Tribunal has no discretion in this matter, and it must find the Applicant committed the violation and that the penalty assessed is in accordance with the *Regulations*.

Dated at Ottawa this 22nd day of September 2004.

Thomas S. Barton, Q.C., Chairman