

**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*.

**Dean Jancsar, 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.**

## 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.

The Applicant and the Applicant's wife both made submissions.

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

The Notice of Violation dated January 21, 2003, alleges that the Applicant, on or about 10:30 hours on the 7<sup>th</sup> day of August, 2002, at Norwich, in the province of Ontario, committed a violation namely: "did remove or cause the removal of an animal to wit: two veal calves, 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.

At the outset of the hearing, considerable discussion ensued regarding whether the Applicant could adduce new evidence at the hearing. Upon ascertaining that the nature of this evidence was not directly related to the facts of the alleged violation but to the character and diligence of the Applicant, the Tribunal did not allow such evidence to be adduced. The character and due diligence of the Applicant are not relevant issues in this matter, as they do not provide defences to a violation. Subsection 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* 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.

The Tribunal allowed evidence to be presented regarding the pros and cons of the tagging program.

From the evidence adduced, it is clear the Applicant was one of the pioneers of the industry in the tagging program when it was discussed and implemented.

The Respondent's evidence is that, between 11:00 and 11:30 on August 7, 2002, the Respondent's inspector found two holstein veal calves in a pen at the Norwich Livestock Sales yard not bearing approved cattle identification tags. The calves were transported either on the morning of August 7<sup>th</sup>, or on August 6<sup>th</sup>, 2002. Upon arrival, the Respondent's inspector went into the pen and inspected the ears of the cattle. He did not find any holes where tags may have been placed.

The calves had been loaded and transported by a shipper on behalf of the Applicant.

The Applicant and his wife both gave evidence that they indeed did not load the calves or witness the loading of the calves, and accordingly had no direct knowledge of whether they were tagged at the time of loading. They did, however, provide considerable evidence of their due diligence, and noted that there was other identification on the calves.

In similar circumstances, the Federal Court of Appeal has ruled that, in the absence of direct evidence to the contrary, where cattle were found untagged within a reasonable time after being unloaded, there is an inference that the cattle were not tagged at the time of loading.

Since there is no direct evidence to the contrary, the Tribunal finds the Respondent has met its burden of proof. It has established on a balance of probabilities that the Applicant committed the violation.

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

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Thomas S. Barton, Q.C., Chairman