

**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 143(1)(d) 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*.

Stephen Johnson, 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 \$1,800.00 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 Niagara Falls on November 8, 2006.

The Applicant gave his own evidence.

The Respondent was represented by its solicitor, Ms. Cheryl A. Braun.

Evidence for the Respondent was given by Dr. Ayman Soryal, Dr. Arthur King and Ms. Olga Hocevar.

The Notice of Violation # 0506ON0026-2 dated August 16, 2005, alleges that the Applicant, on the 29th day of April, 2005, on or about 11:00 hours, at Smithville, in the province of Ontario, committed a violation, namely: “did transport or cause to be transported an animal, to wit: 5,760 broiler chickens with undue exposure to the weather” contrary to provision 143(1)(d) of the *Health of Animals Regulations*. Subsection 143(1) states as follows:

143(1) No person shall transport or cause to be transported any animal in a railway car, motor vehicle, aircraft, vessel, crate or container if injury or undue suffering is likely to be caused to the animal by reason of

- (a) inadequate construction of the railway car, motor vehicle, aircraft, vessel, container or any part thereof;
- (b) insecure fittings, the presence of bolt-heads, angles or other projections;
- (c) the fittings or other parts of the railway car, motor vehicle, aircraft, vessel or container being inadequately padded, fenced off or otherwise obstructed;
- (d) undue exposure to the weather; or
- (e) inadequate ventilation.

Provision 143(1)(d) of the *Health of Animals Regulations* is a separate violation pursuant to the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

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The undisputed evidence of the Respondent is that the Applicant transported a shipment of 5,760 broiler chickens from a farm near Quebec City to Niagara Country Fresh Poultry 2003 Inc. in Smithville, Ontario arriving at approximately at 11:00 a.m. on April 29, 2005. 990 birds were dead on arrival (DOA). It was snowing when the Applicant left the farm at about 8:00 p.m. on the previous evening. The snow eventually changed to rain although the weather remained cool throughout the trip.

Another load of chickens was transported from the same farm earlier in the day, and the travel time was significantly less than that of the Applicant. That load of 6,084 birds arrived with a DOA count of 128, or approximately 2%, having come through similar weather conditions.

The medical evidence of the Respondent clearly establishes that most of the DOA's and most of the birds condemned in the post mortem examination suffered from cyanosis due to undue exposure to the weather (rain, snow and wind chill during transportation).

The Applicant testified that prior to this load he had only one training trip, but has subsequently received further training. He said his driving record was impeccable, with over one million miles accident free.

He further indicated he was not given a sufficient number of bungees to properly secure the tarps to protect the load, but did the best he could by placing the bungee cords on every second eyelet.

Although he stated he stopped for an hour en route to rest, he did not consider the overall transportation time to be excessive.

He testified he did what he was trained to do, but admitted this obviously was not enough in the circumstances and he did not try to excuse what had transpired.

Although I am satisfied the Applicant did everything he was trained to do in the circumstances, and although he exercised due diligence throughout, he did not have the proper tools at his disposal to avoid the problems that occurred. His employer placed him in an untenable situation.

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It is unfortunate that circumstances giving rise to this violation were, to a large extent, outside of the control of the Applicant. He was given an insufficient number of bungee cords, and the communication system in his truck was not working.

Be that as it may, due diligence on the Applicant's part is not a defence to a violation by reason of subsection 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* which 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 facts that, if true, would exonerate the person.

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

The gravity level for "intent" was assessed at 3 points on the basis that the violation was committed through a negligent act, being improper ventilation of the load during transportation.

Although I agree the injuries were sustained as a result of undue exposure to the weather, I believe the Applicant did not act with intent to harm the birds, and did not act negligently in the circumstances.

Accordingly, I am reducing the total gravity value from 8 points to 5 points and order that the penalty be reduced from \$2,000.00 to \$1,800.00.

Dated at Ottawa this 5th day of December 2006.

Thomas S. Barton, Q.C., Chairman