

**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 section 142 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*.

Hilda Carolina Galvis-Montenegro, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following 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 100.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

The Applicant requested an oral hearing, but subsequently requested a decision be based on written submissions.

The Notice of Violation dated February 27, 2004, alleges that the Applicant, on or about 17:30 hours, on the 27th day of February, 2004, at Ottawa, in the province of Ontario, committed a violation namely: “transport or cause to be transported animal that cannot stand in their natural position”, contrary to section 142 of the *Health of Animals Regulations*.

142. No person shall transport or cause to be transported animals in a railway car, motor vehicle, aircraft or vessel unless

(a) each animal is able to stand in its natural position without coming into contact with a deck or roof; and

(b) provision is made for the drainage or absorption of urine from all decks or levels.

The allegation in this case is that the Applicant transported a dog aboard an aircraft in a cage in which it was unable to stand in its natural position without coming into contact with the roof of the cage.

On this point, the most salient evidence was provided by the Respondent in the picture shown in Exhibit 6 of the record. Clearly the dog is standing in its natural position and would not be able to do so if in the cage.

The Applicant provided evidence that she had earlier transported a larger dog in an identical cage in similar circumstances, and was not questioned about the size of the cage. The Applicant further made numerous accusations concerning the conduct of the officers at the airport.

The Tribunal wishes to point out its legislated mandate is to determine whether or not the Respondent has established, on a balance of probabilities, that the Applicant committed the violation set out in the Notice of Violation. The prior similar circumstances, and the alleged misconduct of the officers in this case are not matters over which the Tribunal has jurisdiction, and are not relevant in determining whether, in this instance, a violation was committed.

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Although hearsay evidence, when asked why she did not get a larger cage for the dog so

it could stand up, the Applicant stated she would have had to put the dog in the hold and she wanted to keep it with her (on the airplane). The Applicant did not deny making this statement.

The Tribunal finds the Respondent has established, on a balance of probabilities, that the violation was committed by the Applicant.

Dated at Ottawa this 22nd day of September 2004.

Thomas S. Barton, Q.C., Chairman