

**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 138(2)(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*.

Richard Samson, 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 did not commit the violation and is not liable for payment of the penalty.

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 Ottawa on September 22, 2004.

The Applicant made his own submissions.

The Respondent was represented by its solicitor, Ms. Diane Guilmet-Harris.

The Notice of Violation dated May 19, 2004, alleges that the Applicant, on the 4th day of January, 2004, at North Lancaster, in the Province of Ontario, committed a violation, namely: "Avoir fait charger et avoir fait transporter un animal de ferme (porc), dans un véhicule moteur de la compagnie Guy Latouche, qui ne pouvait être transporté sans souffrances" contrary to section 138(2)(a) of the *Health of Animals Regulations*, which states:

138(2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal

(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey.

The Respondent's uncontested evidence is that on January 4, 2004, the Applicant caused a number of pigs to be loaded and transported to establishment # 12, Les Viandes du Breton at Rivière-du-Loup in Quebec. The pigs were transported by Guy Latouche, and arrived at their destination at 12:10 hrs.

One of the pigs was segregated and identified with the number "07", and was later inspected at around 13:40 hrs. by Dr. Yves Lamothe, a veterinarian employed by the Respondent. Dr. Lamothe's observations are set out in Tab 5 of the Respondent's report.

The main defence raised by the Applicant was that this injured pig could not have been his, for the following reasons:

1. The Applicant gave evidence he personally witnessed the loading of the truck and saw no injured animals.
2. The Applicant indicated the pigs came from his new swine facility recently constructed to be state-of-the-art as far as the health and welfare of the animals. Although impressed with the Applicant's facilities, this is evidence of due diligence, which is not available to the Applicant as a defence.
3. The Applicant presented a handwritten note from the driver of the transporter indicating that the pigs were in perfect condition when loaded, and in the same condition when unloaded.
4. The Applicant produced the hog carcass grading certificate # 25462B from Les Viandes du Breton Inc. indicating that 210 pigs arrived with tattoo # 51707 from the Applicant on January 4, 2004 indicating that none had been graded as "condemned". The document shows the shipper as Aliments Breton Inc. and not Transport Guy Latouche.

The following evidence from the Respondent contradicts that of the Applicant:

1. Tab 3 of the Respondent's report, being a receipt document by du Breton shows 210 pigs received with tattoo # 51707 from the Applicant with one shown as sick or wounded. This document is signed both by du Breton and by the driver, Sylvain Tanguay. The document also shows the transporter to be Aliments Breton Inc. and not Guy Latouche.
2. Dr. Lamothe gave evidence that he personally inspected the injured pig in its pen and clearly identified the Applicant's tattoo # 51707.
3. The Respondent produced a statement from Les Viandes du Breton Inc. for slaughters done on January 4th and 5th, and pointed out that one of the pigs (with the sequence number 1083) did not correspond to the lot from the Applicant's farm. It might have been improperly attributed to the Applicant's farm as it was not in the sequence of numbers given to the Applicant's pigs. This would mean the Applicant was only paid for 209 pigs as the remaining pig from the shipment would have been the condemned pig.

From all this evidence, despite the inconsistencies in the paperwork, the Tribunal is satisfied, on a balance of probabilities, that the injured pig was part of the load from the Applicant's farm transported on January 4th, 2004.

The sole question remaining is whether, by reason of the condition of the pig, it could not have been transported without undue suffering during the expected journey.

The Tribunal accepts the nature and extent of the injuries and condition of the pig at the time of his inspection, as set out in Tab 5 of the Respondent's report. Dr. Lamothe further testified at the hearing that the loading and transportation did not produce any further injuries to those already sustained by the pig, although transportation could have caused the pig additional pain.

The issue in this case is not whether an injured animal was loaded and transported, but whether the injured pig could have been transported without undue suffering during the expected journey. A common dictionary definition of "undue" is "excessive".

This is clearly a subjective determination. Although there is little doubt the animal was injured and likely very uncomfortable during its loading and transportation as a result of the wounds it sustained a week before the shipment, there is no evidence that the pig's condition was any worse after shipping than before shipping, or that there was any undue suffering.

This being the case, the Tribunal finds the Respondent has not established, on a balance of probabilities, that the loading and transportation of the pig caused undue suffering.

Dated at Ottawa this 29th day of September, 2004.

Thomas S. Barton, Q.C., Chairman