

***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*.

473629 Ontario Inc., Applicant

-and-

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of all oral and written submissions, the Tribunal, by order, determines the Applicant did not commit the violation and is not liable for the 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 Kitchener, Ontario, on April 4th, 2008.

The Applicant was represented by its solicitor, Mr. G. Edward Oldfield.

Evidence for the Applicant was given by Mr. Roger Dunning and Mr. Mark Reuber.

The Respondent was represented by its solicitor, Mr. Samson Wong.

Evidence for the Respondent was given by Mr. Santosh Pachai, Dr. Andrew Gomulka and Mr. Jim Paterson.

The Notice of Violation # 0607ON0012 dated March 28th, 2007, alleges that the Applicant, on the 6th day of March, 2006, at Brampton, in the province of Ontario, committed a violation, namely: "Transport or cause to be transported animals, to wit: 10,728 chickens, with undue exposure to 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*.

Having confirmed that both parties had copies, the following documentation was put on the record for the purpose of the hearing:

- Notice of Violation # 0607ON0012, dated March 28th, 2007.
- Report of the Respondent received by the Tribunal on April 27th, 2007.

Although there are minor discrepancies in the times of certain events among the various documents comprising the Respondent's report, these time differences are not significant and the times set out in this decision are approximate times.

On March 6th, 2006, the Applicant transported a load of spent fowls from Midwest Poultry North Manchester, Indiana, USA, to Maple Lodge Farms Ltd. in Brampton, Ontario. Mr. Roger Dunning, an employee of the Applicant, was the driver of this load identified as shipment #DEL-730 and trailer # C72. The load consisted of 10, 728 birds. Loading commenced at 9:15 a.m. and continued until 1 p.m. and the trip to Brampton took approximately 8.5 hours, arriving at 9:30 p.m. At time of slaughter 2, 684 birds (25% of the load) were found dead (DOA) and a further 1,147 birds were condemned.

The trailer sat in the holding barns at Maple Lodge Farms Ltd. until the commencement of slaughter, more than 7 hours after arrival.

There were 2 other shipments on March 6th, 2006, from Midwest Poultry to Maple Lodge Farms Ltd., one before and one after the load in question. They experienced weather conditions and wait times prior to slaughter similar to those of the load in question, although their loading times were considerably shorter. These 2 loads had 6.86% and 2.73% DOA's.

Issue

The sole issue is whether the Applicant transported the birds in trailer #C72 in circumstances where the birds were likely to be injured or suffer unduly because of undue exposure to the weather.

The loading of the bottom-caged birds was carried out by an independent company and did not take an unusually long time to complete. Following loading there were no signs of problems with the load.

On arrival, the storage conditions and slaughter schedules were within the complete control of Maple Lodge Farms Ltd.

The issue then, as more narrowly defined, is whether, over the course of the 8.5 hour trip, the chickens were likely to be caused injury or undue suffering from undue exposure to the weather.

Trip Conditions

The Applicant's Exhibit #1, being the Load Condition Report dated March 6th, 2006, from Little Rock Farm Trucking, was put on the record.

I accept as fact the undisputed evidence from Mr. Dunning set out in the Live Load Report at Tab #1 of the Respondent's report. Once loading was completed, the inside trailer temperatures were as follows: 12.8 °C at the front of the trailer, 14.4 °C in the middle of the trailer, and 13.9 °C at the rear of the trailer. These temperatures were taken by probes in the middle of the trailer at 4 foot heights, and measured 10 feet in from the front of the trailer, the dead center of the trailer, and 10 feet in from the rear of the trailer.

Those temperatures were considerably lower than 30 °C, the approximate temperature at which the birds were kept at Midwest Poultry. During the period of loading, then, there was a considerable drop in temperature. Although I am satisfied that during this period tarping was carried out properly to minimize the birds from being exposed to the weather, it is possible the birds did experience some wetness due to high winds.

The weather during the trip grew steadily, but not dramatically colder and flurries became drizzle, and then changed to become cloudy and dry. These conditions were not unusual for this time of year, and there were no significant weather events during the trip.

I further accept the driver's evidence that, apart from short stops where the load was checked and a short border crossing, there were no unexpected delays along the way.

Once the load got under way, as can be seen from the probe temperatures in Tab #1, the temperatures in the trailer warmed up, and at the plant arrival when the outside temperature was -3.5 °C, the inside temperatures were 26.7 °C, 21.1 C and 13.9 °C (from front to back) respectively.

Throughout the trip the trailer was fully tarped with protective boards over the wheels to protect the load from road spray.

Stress on load #DEL-730

Although I am satisfied from the evidence that the chickens were not likely to be unduly exposed, and in fact were not unduly exposed to weather during the trip, the fact remains there was an abnormal level of DOAs at time of slaughter in this load, while the other 2 loads experienced considerably fewer mortality rates.

These birds were called “spent fowls”, meaning their usefulness as egg producers was over. They were 116 weeks old, and according to Mr. Paterson’s evidence, the oldest birds he has heard of coming to slaughter.

From the specimens selected for Dr. Gomulka’s report, the average feather loss of the birds was approximately 30%. Further, the birds on this load were loaded from the bottom cages in the Midwest Poultry barns and, as such, were dampened due to being covered in feces.

Also, these birds took longer than those in the other trailers to load as they had to be transferred from the bottom cages and handed up for crating.

In addition to the stresses suffered by being taken off water and feed and loaded into crates, all these additional factors compounded the stress levels of the birds, making them a very delicate cargo.

Cause of undue suffering

If not undue exposure to weather while being transported, what other factors might have contributed to the high level of DOA’s?

Dr. Gomulka testified that his findings were consistent with birds which die in shock from adverse weather conditions and inadequate protection during transportation, but admitted that his findings were also consistent with death from other conditions.

The distinguishing feature of this load compared to the other 2 was that it contained birds from the bottom cages which took longer to load and which were more stressed than the birds in the upper levels.

Because of this, during the loading process, the birds in the front end and top of the trailer would have been exposed to the cold temperatures for a longer period of time than the rest of the load. The temperature dropped from 30°C in the Midwest Poultry barns to 12.8 °C in the front of the trailer when loading was finished, as shown in Tab #1.

Although fully tarped during the trip to Maple Lodge Farms Ltd., on arrival at the holding barns, the top tarps were removed to provide better ventilation, at the same time exposing the load to the outside temperature, which at that time was -3.5 °C. These already highly stressed birds cooled down and sat in these cold temperatures overnight for more than 7 hours.

As can be seen by comparing the temperature inside the trailer at the time of arrival at the Maple Lodge Farms Ltd. holding facility, (26.7 °C in the front, 21.1 °C in the middle and 13.9 °C at the rear of the trailer), the temperature dipped to just above freezing levels and remained there until the time of slaughter (Tab #1 of the Respondent's report).

The preponderance of evidence leads me to conclude that the probable cause of the undue suffering that led to the high number of deaths in this load was the exposure to just above freezing temperatures for 7 hours after having been transported in relatively warm conditions. As well, the chickens in the front part of the load were more vulnerable as they had been on the trailer the longest and accordingly were more stressed than the others before the trip began. Neither of these factors occurred during the trip and were not within the control of the Applicant.

I find, then, on a balance of probabilities, that the Respondent's evidence does not establish the Applicant committed the violation of transporting these chickens where injury or undue suffering was likely to be caused by undue exposure to the weather.

Dated at Ottawa this 29th day of April, 2008.

Thomas S. Barton, Q.C., Chairman