RTA #60008

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 40 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.*

Ms. Evangeline Fernandez, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the 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 to the Respondent of the penalty in the amount of $200.00 within 30 days after the day on which this decision is served.

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REASONS

The Applicant requested an oral hearing, but subsequently requested the Tribunal render it's decision based on the written evidence submitted, without an oral hearing.

The Notice of Violation dated September 24, 2000, alleges that the Applicant, at 18:00 hours on the 24th day of September, 2000, at L.B. Pearson Airport in the Province of Ontario, committed a violation, namely: "*import an animal by product to wit: meat without meeting the prescribed requirements*", contrary to section 40 of the *Health of Animals Regulations,* which states:

> 40. No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part.

In general, *Part IV* of the *Health of Animals Regulations* permits importation into Canada of most of these items, if the country of origin is the United States. If the country of origin is other than the United States, and in this case it is clear the country of origin of the dried beef product was the Philippines, importation into Canada is only permitted if the importer meets one of the four prescribed requirements of *Part IV* of the *Health of Animals Regulations,* namely:

1. Under subsection 41.(1) if the country of origin has a disease- free designation and the importer produces a certificate signed by an official of the government of the country of origin that shows that the country of origin is the designated country referred to in the disease- free designation.

   No such certificate was presented.

2. The importer meets the requirements of subsection 52.(1) which provides as follows:

   > 52.(1) Notwithstanding anything in this Part, a person may import an animal by-product if the person produces a document that shows the details of the treatment of the animal by-product and the inspector is satisfied, based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, where necessary, on an inspection of the animal by-product, that the importation of the animal by-product into Canada would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.

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   No such document was produced.

3. The importer has acquired an import permit pursuant to subsection 52.(2).

   No such permit was tendered.

4. In addition to meeting any one of the above requirements, the Respondent, itself, could have allowed the Applicant to import the animal by-product if a satisfactory inspection had been carried out under *paragraph 41.1(1)(a)* which states as follows:

   > 41.1(1) Notwithstanding section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than a thing described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if
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   > (a) an inspector is satisfied on reasonable grounds that the animal by-product is processed in a manner which would prevent the introduction into Canada of any reportable disease or any other serious epizootic disease to which the species that produced the animal by-product is susceptible and which can be transmitted by the animal by-product, provided that the animal by-product or the thing containing the animal
   > by-product is not intended or use as animal food or as an ingredient in animal food.

There is no evidence that an inspection of this nature took place. The evidence of the Respondent indicates that the dried beef products were seized, forwarded and disposed of pursuant to section 17 of the *Health of Animals Act.*

The Applicant does not deny bringing this dried beef product into Canada, and it is clear the requirements of *Part IV* of the *Regulations* were not met.

The authority of the Review Tribunal is somewhat limited. Pursuant to paragraph 14.(1)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act,* the jurisdiction of the Tribunal is limited to determining whether or not the person requesting the review committed a violation, and if so, whether the penalty was properly established in accordance with the Regulations.

The evidence of the Applicant discloses the Applicant did not declare the meat as the Applicant thought only raw meat could not be imported, and the Applicant had brought back the product many times before and there was never a problem. Although the Tribunal is sympathetic to the Applicant's position, this is not a valid defence to the violation.

The Applicant further stated the custom's declaration form E311 was vague or unclear and that the Applicant was wrongfully harassed by a Customs Officer. As earlier indicated, the Tribunal's authority is limited, and a review of these allegations is outside the scope of the Tribunal's jurisdiction.

It is clear the Applicant did not know what the specific requirements for import were and did not intend to commit a violation. However, the Tribunal must find in these circumstances, that the violation was committed.

Dated at Ottawa this 7th day of February, 2001.

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Thomas S. Barton, Q.C., Chairman