

**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*.

Longhorn Farms Ltd., 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 \$2,000.00 within 30 days after the day on which this decision is served.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated January 3, 2001, alleges that the Applicant, at 11:30 hours on the 11th day of June, 2000, at Kelowna in the Province of British Columbia, committed a violation, namely: *“Load, transport or cause to be loaded or transported an animal that cannot be transported without suffering”*, 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 evidence discloses that Mr. William J. Marshall is the President of Longhorn Farms Ltd., and at all material times was acting as its agent.

The Respondent alleges in its record that the violation identified in the Notice of Violation is that the Applicant loaded and transported a mature Charolais bull, that by reason of illness, injury and fatigue, could not be loaded or transported from the farm of the Applicant to Cloverdale, British Columbia, an expected journey of 300 kilometres, without undue suffering.

The bull was loaded on the Applicant's trailer at about 11:30 a.m. on June 11, 2000.

At about 2:30 p.m., the officer at the Hunter Creek scales observed the bull lying down with open wounds on its knees, foaming at the mouth and vocalizing.

At about 3:30 p.m. at Abbotsford, an inspector of the Respondent observed the bull had advanced foot rot in all four feet with swollen front feet and large open erosions on the knee areas. The inspector further observed significant numbers of maggots moving within the knee wounds and surrounding areas.

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At about 4:55 p.m. a veterinarian inspected the bull and observed the bull was in distress but not critical distress, and that the bull looked worse than it was. The veterinarian

subsequently provided a statement that the bull appeared to be exhausted from trying to stand, that the right hind leg hoof was swollen above the coronary band which partially extended up the leg, and that both knee joints had open wounds with fresh blood. He further stated that this was a pre-existing condition causing a considerable amount of pain.

Pictures supplied in the report of the Respondent provide graphic illustrations of the wounds and foot rot.

The evidence of the Applicant is that the bull had scabs on his front knees when he walked on to the truck, and had somehow rubbed them off. The Applicant further implies the condition of the bull could not have been too bad, because the bull's temperature was normal, the bull ate hay, and the Applicant was allowed to transport the bull the following morning to be put down.

The evidence provided by the Applicant that the dressed bull was well fleshed and passed meat inspection is not relevant, as the infected parts of the bull were removed prior to dressing. Further, the evidence of the Applicant that approximately one quarter of the cows that go to the stock yard where the bull was slaughtered, were lame, had open wounds, infections, foot rot, or are sick, is also not relevant.

Based on all the evidence, the Tribunal finds that the illness and considerable injury sustained by the bull was sustained before the time of loading and that the bull could not have been loaded and transported without undue suffering during the expected journey.

Accordingly, the Tribunal finds the Applicant committed the violation and that the penalty, (including the calculation of the gravity value of the violation,) was properly established in accordance with the *Regulations*.

Dated at Ottawa this 5th day of March, 2001.

Thomas S. Barton, Q.C., Chairman