

***AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE  
MONETARY PENALTIES ACT***

**DECISION**

In the matter of an application for a review of the facts relating to a violation of provision 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*.

**Les Fermes C. Girard Inc., Applicant**

**-and-**

**Canadian Food Inspection Agency, Respondent**

**MEMBER H. LAMED**

**Decision**

**Following an oral hearing and a review of all written and oral submissions of the parties, the Tribunal, by order, determines that the Applicant did not commit the alleged violation.**

## REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

The hearing was held in Sherbrooke on May 28, 2008.

The Applicant was represented by its counsel, Ms. Michèle Gérin.

The Respondent was represented by its counsel, Ms. Louise Panet-Raymond.

Notice of Violation No. 0708QC0141, dated November 8, 2007, alleges that the Applicant, on August 6, 2007, at St-Alexandre, in the Province of Quebec, committed a violation, namely: “Avoir fait transporter des animaux dans un véhicule à moteur qui, pour des raisons d’infirmité, de maladie, de blessure, de fatigue ou pour toute autre cause, ne peut être transporté sans souffrances indues au cours du voyage prévu”, contrary to provision 138(2)(a) of the *Health of Animals Regulations*, which reads as follows:

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 case concerns three hogs delivered on August 6, 2007 to a slaughterhouse operated by Aliments Asta Inc. (“the Establishment”). The parties did not contest that these three hogs should not have been transported. What was contested, however, was the identity and the origin of said hogs, and that was the issue the Tribunal had to consider.

In the course of presenting its evidence, the Respondent produced a document entitled [TRANSLATION] “Bill of lading” (Tab 2), an official acknowledgment of receipt issued by the Establishment when it receives a delivery. The document states that five lots of hogs from three different producers were delivered on August 6, 2007. The tattoo number for each load was indicated at Tab 2. Also indicated at Tab 2, the hogs from the Applicant may have borne the numbers 08883 or 08893; those from 2418-7064 Québec Inc., number 08683; and those from Le Gîte Porcin Inc., numbers 15390 or 05931.

The parties agreed that these tattoos came from these producers and, in the case of the Applicant, were applied a few days before shipment, according to Jonathan Girard’s testimony. At the bottom of Tab 2, there was a note to the effect that the three detained hogs bore tattoo No. 08893, which indicates they came from the Applicant.

However, the Non-Compliance Report (Tab 8) prepared by Dr. Yves Lamothe, the veterinarian on duty at the Establishment at the time of the delivery in question and author of the ante-mortem examination of the three detained hogs, stated the following in the last paragraph:

[TRANSLATION]

It should be noted that the hogs did not bear any tattoo numbers normally found on hog skin. However, the information provided by the truck driver, Mr. Bryan Fontaine, which was written on the bill of lading for the delivery of the hogs and on report CFIA/ACIA 1438, corresponds to tattoo No. 08893. The tattooed carcass number also appeared on the computerized compilation for the August 6, 2007 slaughter, and the numbers 08883 and 08893 were the two possible tattoos for detained hogs 1, 2 and 3. Les Fermes C. Girard of Ayers Cliff use both of these numbers to identify their animals.

The Tribunal immediately noted that no other documents concerning the carcasses and tattoos were introduced, and there were no other documents on that subject in the Agency’s report submitted to the Applicant and the Tribunal. It should also be noted that the file containing the Agency report in this case was file number 1436, whereas the Report, at Tab 8, refers to the Agency report number 1438. This discrepancy also remained unresolved.

In his testimony, Dr. Lamothe reiterated that scraping the skin of the three hogs had not revealed any tattoos in any of the three cases. He stated that he had relied on [TRANSLATION] “documents” from the Establishment—without specifying which one in particular, other than the Bill of lading (Tab 2)—to conclude that the hogs had come from the Applicant. On cross-examination, Dr. Lamothe stated that he knew that the truck, which had unloaded the three hogs, was carrying several loads from several producers, but could not say whether the Applicant’s hogs had been loaded and transported separately from the others.

The uncontradicted, highly credible testimony of Jonathan Girard, who is the son of the owner of the Applicant and works for the company, clarified this important element of the story for the Tribunal. Mr. Girard explained that he is in charge of sorting hogs for slaughter. He weighs the hogs about one week prior to shipment, and he indicated that at least as far as hog #2 was concerned, he would have noticed its pitiful condition during the weigh-in and would have euthanized it immediately. He stated that he tattooed 42 hogs himself with number 08893 on the Saturday morning before they were shipped and confirmed that none of the hogs were ailing. He also stated that he took care of loading that lot. The truck was equipped with three decks, and the Applicant was the second producer on the truck driver’s route. The driver had loaded the first producer’s hogs on all three decks of his truck, so there were already hogs on all three decks when the Applicant’s load bearing the tattoo 08893 was loaded. The driver also loaded the Applicant’s load onto all three decks of the truck. Later, hogs from two other producers were loaded in the same manner onto all three decks.

The Tribunal determined that hogs from four producers were thus intermingled in the truck. There was no way to identify the hogs, apart from their tattoos, and the three detained hogs did not have any.

The Tribunal accepts Ms. Gérin’s argument that the Bill of lading, in Tab 2, which indicated that the detained hogs bore tattoo No. 08893, was falsified. This was evident in light of the Non-Compliance Report (Tab 8), which noted that the three detained hogs did not have tattoos. The Respondent did not provide any explanation for this flagrant contradiction.

The Tribunal concluded that the Respondent did not meet the burden of proof with respect to the identity and origin of the detained hogs and, worse yet, did not adequately verify its own file before issuing the Notice of Violation.

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Consequently, the Tribunal declares that the Applicant did not commit any violation.

Issued in Montréal, on this 10<sup>th</sup> day of September, 2008.

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Member H. Lamed