

***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 142(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*.

Sydney Butler, Applicant

-and-

Canadian Food Inspection Agency, Respondent

MEMBER H. LAMED

Decision

Following an oral hearing and a review of all oral and written submissions, the Tribunal, by order, determines that the Applicant committed the violation and is liable for payment of the penalty in the amount of \$500.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The hearing took place in Sherbrooke on May 28, 2008.

The Applicant represented himself.

The Respondent was represented by Ms. Louise Panet-Raymond.

The Notice of Violation 0607QC0233 dated August 14, 2007, alleges that the Applicant, on or about February 20, 2007, at Sherbrooke in the province of Quebec, committed a violation, namely: “Loaded and transported an animal in a motor vehicle, which was unable to stand in its natural position” contrary to provision 142(a) of the *Health of Animals Regulations*, which states:

142. No person shall transport or cause to be transported animals in a railway car, motor vehicle, aircraft or vehicle unless

(a) each animal is able to stand in its natural position without coming into contact with a deck or roof;

The parties’ evidence does not differ substantially as to what happened to generate the issuance of this Notice of Violation.

Mr. André Coderre, inspector for the Respondent, testified on the latter’s behalf that he was carrying out his inspection duties at the Sawyerville bovine auction on February 20, 2007, when he noticed a pick up truck arrive quickly and park frontwards facing the door. This method of parking was unusual, as unloading cattle usually takes place from the back of a truck, and this prompted Mr. Coderre to go outside to see what was going on. He saw a calf lying in a feed bag tied with twine at the calf’s neck, lying on the floor of the cab between the dashboard and the front seat of the pick up truck, which belonged to the Applicant, Mr. Sydney Butler. The calf’s head was sticking out of the feed bag. Mr. Coderre saw Mr. Butler remove the calf from the truck, cut the twine and bring the calf inside. Mr. Coderre ascertained that the calf was in good health.

Mr. Butler did not deny transporting the calf in this manner. He did specify that the twine was tied around the opening of the bag, not around the calf's neck. He also explained that he brought the calf to the auction barn, about a 20 minute drive from his farm, because his regular transporter, Mr. Hébert, had been unable to make his scheduled pick up at Mr. Butler's farm the previous day because of a heavy snowstorm. Mr. Butler testified that the day of the alleged violation was very cold, so he put the calf into the cab of the truck to keep it warm during the drive to the auction barn.

There is no doubt as to the professionalism and competence of Mr. Butler, corroborated by the veterinarian, Dr. Vogel, in his testimony about the excellent animal care and superior herd health at Mr. Butler's farm.

However, the Tribunal finds that all elements of the violation pursuant to subsection 142(a) of the *Health of Animals Regulations* have been established. The animal in question was not transported standing in its natural position. Mr. Butler's request for a replacement of the Notice of Violation with penalty to one with a warning is not provided for in the legislation, and is beyond the powers of the Tribunal to grant.

The Tribunal therefore orders Mr. Butler to pay the monetary penalty of \$500.00 to the Respondent within 30 days after the day of service of this decision.

Dated at Ottawa this 9th day of September, 2008.

Member Helena Lamed