

***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 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*.

Michel Doyon, 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 \$2000 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 was held in Sherbrooke on May 27, 2008. Note that a Notice of Violation was also issued against Ferme Grenier Pouliot Inc. (NOV #0506QC0198) and to the carrier, 9048-7539 Québec Inc. (NOV #0506QC0182)

The Applicant is represented by his counsel, Mr. Ghislain Richer.

The Respondent was represented by its counsel, Ms. Anne-Marie Lalonde.

The Notice of Violation #0506QC0183, dated April 27, 2006, alleges that the Applicant, on January 16, 2006, at Yamachiche, in the Province of Quebec, committed a violation, namely, “a fait transporter un porc par véhicule moteur qui, pour des raisons d’infirmité, de maladie, de blessure, de fatigue ou pour toute autre cause, ne pouvait pas être transporté sans souffrance 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 evidence reveals that on January 16, 2006, the Applicant caused a lot of 84 hogs from Michel et Pauline Doyon Enr. to be transported by 9048-7539 Québec Inc. to a slaughterhouse operated by A. Trahan Transformation Inc. (“The Establishment”), as appears from the [TRANSLATION] “Bill of Lading” (Tab 2) issued by the Establishment. Tab 2 states that a hog bearing the Applicant’s tattoo, namely No. 37865, and identified by the Establishment under the number S20, was detained for non-compliance. The Tribunal is satisfied that the identity and origin of the hog has been established, especially since the Applicant did not contest those findings.

Mr. Gomez, an employee of the Establishment who is responsible for receiving, called Dr. Yvonne Dolbec, the veterinary surgeon on duty, to have her conduct an ante mortem examination of hog S20. Dr. Dolbec testified to those findings, which are recorded in the Non-Compliance Report (Tab 5). Hog S20 was tall, very pale and very emaciated and had a long, heavy coat of hair (bristles). According to Dr. Dolbec, such a coat is a sign of very poor health, as the sick animal tries to conserve body heat by growing additional hair. Hog S20 could not put any weight on its left hind leg or hold itself up at all. More specifically, S20 presented with articular arthritis of the left shoulder and compensatory swelling of the right carpus and tarsus.

Dr. Dolbec concluded that the presence of arthritis necessarily implied that the animal was in pain, which was visually confirmed by the fact that the animal held its head low, showed no curiosity and was reluctant to walk.

It should be noted that, in light of the condition of hog S20, Dr. Dolbec deemed it necessary to euthanise it immediately, even before it could be photographed alive, which explains why the hog appears soaked in blood in the photographs on record.

Mr. Doyon, the owner of hog S20, testified that the hog's left shoulder had been treated three months previously (but did not specify the condition), but the hog had been able to move around on its own on the day it was transported. Mr. Doyon states that he was aware of the affliction on the right side, but there was no longer any problem with the hog's left shoulder. Mr. Doyon confirmed that the animal was thin, but not emaciated, in his opinion. On a scale of 1 to 5, he estimated the animal's thinness to rate a 2. Mr. Doyon states that he informed the carrier that hog S20 was in a compromised state and would have asked the carrier if it agreed to transport the hog. Moreover, hog S20 was transported in isolation. Mr. Doyon states that he took a course on the transportation and euthanization of compromised hogs at the continuing education centre of the Collège de Sherbrooke and submits a certificate to that effect as Exhibit R-1. He also submitted a publication by the Fédération des producteurs de porcs du Québec (Exhibit R-2) on the same subject and states that he followed the recommendations in it in respect of the transport of hog S20. Mr. Doyon states that, in his opinion, hog S20 was not suffering before it was shipped.

It is uncontested that hog S20 was compromised at the time of transport and that the producer and carrier were aware of this. The parties agree that the hog's left shoulder had been treated, that the hog had swelling on its right side and that the hog was, at the least, thinner and paler than normal. At issue is whether the hog was suffering when it was loaded, which would mean that its transport would have caused it increased, and therefore undue, suffering. On this point, the Tribunal is of the opinion that it is bound by the position of the Federal Court of Appeal in *Canadian Food Inspection Agency v. Samson*, [2005] F.C.A. 235, which wrote at paragraph 12:

What the provision contemplates is that no animal be transported where having regard to its condition, undue suffering will be caused by the projected transport. Put another way, wounded animals should not be subjected to greater pain by being transported. So understood, any further suffering resulting from the transport is undue. This reading is in harmony with the enabling legislation which has as an objective the promotion of the humane treatment of animals.

In his submissions, Mr. Richer refers the Tribunal to Exhibit R-2, more specifically, at page 4, entitled [TRANSLATION] "Decision Tree", and the heading [TRANSLATION] "On-Farm Euthanasia", which prescribes that an animal be euthanized on the farm on the following conditions:

[TRANSLATION]

- Animal is sick or injured and is dying
- Emaciation (extremely thin/gaunt hog)
- Prolapse of the uterus
- Arthritis (infected joints) or abscesses (three or more)
- Category 4 or 5 limping animal (laying or on the ground)
- Rectal stenosis with bloating and emaciation

The Tribunal notes that just one of those conditions is enough to require that an animal be euthanized on the farm. In the case of hog S20, its thinness and its long, coarse coat would have been enough to conclude that it was emaciated (see the explanation of emaciation at page 9 of Exhibit R-2) and had to be euthanized. Although that information and those recommendations do not have force of law, they do help producers to make sensible decisions regarding the transport of hogs. On the basis of the evidence introduced at the oral hearing, assessed in light of the recommendations in Exhibit R-2, the Tribunal concludes that the animal's thinness and the presence of other injuries (inability to put weight on the left hind leg because of arthritis and swelling of the right carpus and tarsus)

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rendered the hog unfit for transport, and that the hog experienced undue suffering within the meaning of the Regulations and the case law. The Tribunal concludes that the Respondent has shown that the Applicant committed the alleged violation and orders the Applicant to pay the amount of \$2000 to the Respondent within 30 days of the date on which this decision is served.

Dated at Montréal, this 26th day of August 2008.

Member H. Lamed