

**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*.

Stephan Anderson , 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 of the penalty in the amount of \$200.00, to the Respondent, 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 June 14, 2001, alleges that the Applicant, at 17:15 hours on the 14th day of June 2001, at Toronto 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.

The *Health of Animals Regulations* were made pursuant to the *Health of Animals Act*. The primary obligation of a person importing an animal by-product into Canada is set out in subsection 16(1) which states as follows:

16.(1) Where a person imports into Canada any animal, animal product, animal byproduct, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either, before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.

It is clear from the evidence of both the Applicant and Respondent that the Applicant imported from the country of origin of Norway, a few pieces of smoked fish and some dried, smoked meat.

The primary question is whether or not the Applicant complied with subsection 16(1) of the *Health of Animals Act* by presenting the meat to an inspector, officer or customs officer at the time of entry into Canada.

The Applicant did complete a Customs Declaration Form 311, indicating the Applicant was bringing into Canada goods set out in question 3 on that form. Although that form may be used as evidence, declaring, for customs purposes, that a person is bringing into Canada the items set out in question 3 on that form does not, in itself, meet the obligation of presenting an *“animal product”* for inspection pursuant to subsection 16(1) of the *Health of Animals Act*.

The matter, then, boils down to the credibility of the parties. The Applicant states that he did disclose he had a meat product in his luggage at both the primary and secondary customs examination stages. The Respondent alleges the Applicant did not declare the meat at any examination stage and makes the further point that, had the meat been declared at the primary examination stage, he would have been referred for a secondary examination, which was not the case.

The Tribunal considers the evidence of the Respondent to be more compelling and finds the Applicant did not present the meat for inspection. The Tribunal further finds that the Respondent has established, on a balance of probabilities, that the Applicant did not meet the prescribed requirements set out in *section 40* of the *Health of Animals Regulations* and committed the violation.

The Tribunal wishes to note that the allegations by the Applicant of misconduct on the part of the Customs Inspector is not something over which the Tribunal has any jurisdiction. 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, the penalty was properly established in accordance with the Regulations.

Dated at Ottawa this 5th day of September, 2001

Thomas S. Barton, Q.C., Chairman