

***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 176 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*.

Vold, Jones and Vold Auction Co. Ltd., Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of all written submissions, the Tribunal, by order, determines the Applicant did not commit the violation.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated June 4th, 2008, alleges that the Applicant, on the 16th day of January, 2008, at St-Cyrille-de-Wendover, in the province of Quebec, committed a violation, namely: “Removed an animal that did not bear an approved tag from a farm or ranch”, contrary to provision 176 of the *Health of Animals Regulations*. Section 176 states as follows:

176. Subject to section 183, no person shall move, or cause the movement of, an animal or the carcass of an animal from its farm of origin or from any other farm or ranch unless it bears an approved tag issued under subsection 174(1) to the operator of the farm or ranch where the approved tag was applied to it.

Section 183 is not applicable in these circumstances.

The Applicant operates a cattle auction facility in Panoka, Alberta. The evidence discloses that, on January 9th, 2008, Cantriex Livestock purchased 37 cows at the Applicant’s auction and arranged for the cattle to be transported by Hyndman Transport (1972) Ltd., to Levinoff Meats, a slaughter facility in St-Cyrille-de-Wendover, Quebec.

The Respondent carried out an inspection at the slaughter facility on January 16, 2008, and alleges that one of the cows from this lot of 37 did not bear an approved tag, nor was there any evidence of any holes in its ears. The Applicant challenges this evidence on the basis that the cow in question is not his as the cattle in this lot were transported over 4,500 km and co-mingled with hundreds of animals after leaving the auction.

Assuming the cow in question did come from the Applicant’s auction facilities, the other substantive issue is whether the Applicant moved, or caused the movement of this animal from its auction facilities.

Causation

There is no evidence as to who loaded the cattle at the Applicant’s facilities after they were sold to Cantriex Livestock. It is clear, however, from the Bill of Lading at Tab #4 of the Respondent’s report that Cantriex Livestock, as consignor, engaged the services of Hyndman Transport (1972) Ltd. to remove and transport these animals from the Applicant’s facility to Levinoff Meats.

The question remains, assuming the cow in question did come from the Applicant's facilities, whether the Applicant caused the removal of the animal from its premises.

The Respondent assumes that since the cow passed through the Applicant's auction, the Applicant caused the removal of the cow from its premises. However, there is no evidence from the Respondent that the Applicant had any ownership or proprietary interest in the cow, or that the Applicant exercised any authority or control over its removal.

On the other hand, the Applicant stated "on the date stated, Vold, Jones and Vold Auction Co. Ltd., did not purchase cattle for any companies in Quebec...after the cattle have sold, the responsibility of the destination of the livestock become the direction of the purchaser."

Consistent with the findings of this Tribunal in the case of *Denfield Livestock Sales Ltd.*, RTA #60328, and the cases referred to in that decision, I find that there is no evidence the Applicant had any ownership or proprietary interest in the cattle and no evidence that it had any authority or control over the actions of the purchaser, Cantriex Livestock, or the transporter, Hyndman Transport (1972) Ltd.

Accordingly, the Applicant did not cause the movement of this animal from the Applicant's auction facilities.

Identity of the cow

Having decided the Applicant did not move, or cause the movement of this cow, it is unnecessary to determine whether the cow identified as having no approved tag or no holes in its ears, was part of the lot of 37 cows sold to Cantriex Livestock on January 9th, 2008.

Dated at Ottawa this 28th day of October, 2008.

Thomas S. Barton, Q.C., Chairman