

**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 *subsection 140(1)* 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*.

Bryn Jones, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Not having received the report of the Respondent within the prescribed time limit under the *Rules of the Review Tribunal (Agriculture and Agri-Food)*, or a request by the Respondent for an extension of the time limit for filing its report, and following a review of the submission of the Applicant, the Tribunal, by order, determines the Applicant did not commit the violation and is not liable for payment of the penalty.

REASONS

The Notice of Violation dated November 13th, 2001 alleges that the Applicant, at 17 25 hours on the 3rd day of October, 2001, at Aldergrove, in the province of British Columbia, committed a violation contrary to *section 140(1)* of the *Health of Animals Regulations*.

For some reason, the Respondent did not use the short-form description of the violation as required by *section 3* of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

The Tribunal received the Applicant's request for a review on December 28th, 2001. On December 31st, 2001, the Tribunal, by fax and by regular mail, sent a copy of the request for review to the Respondent, asking that, pursuant to *section 36* of the *Rules of the Review Tribunal*, the report be forwarded to the Review Tribunal and to the Applicant by January 14, 2002.

Not having received the report or a request for a time extension for sending the report, the Tribunal on January 15, 2002, called the Respondent's British Columbia office leaving a message requesting the report be forwarded as soon as possible. No response to this message has been received.

Also on January 15, 2002, the Tribunal telephoned and e-mailed the Respondent's established Ottawa contact to leave similar messages requesting the report as soon as possible. No response to the telephone message or the e-mail message has been received.

In order that the review process be carried out expeditiously and fairly, the Tribunal has repeatedly informed the Respondent that it would proceed with a review without the report, if neither the report nor a request for extension of the time limit was sent to the Tribunal within the prescribed period, or if a request for a time extension was denied.

It should be noted that there is no similar means for an Applicant to extend the time limit fixed in the *Agriculture and Agri-Food Monetary Penalties Regulations* for filing a request for a review.

Subsection 140(1) of the *Health of Animals Regulations* provides as follows:

140.(1) No person shall load or cause to be loaded any animal in any railway car, motor vehicle, aircraft, vessel, crate or container if, by so loading, that railway car, motor vehicle, aircraft, vessel, crate or container is crowded to such an extent as to be likely to cause injury or undue suffering to any animal therein

The material provided by the Applicant indicates that he loaded the turkeys “*shoulder to shoulder*”, delivered them to a processing plant that was within ten minutes of the Applicant’s farm, and that the processing plant was to look after the birds from that point on.

The Applicant further indicated the birds looked cramped, but were all healthy when he left them at the processing plant.

Since there is no evidence to the contrary, the Applicant has not been proven to have committed the violation.

Dated at Ottawa this 17 of January, 2002.

Thomas S. Barton, Q.C., Chairman