

**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 paragraph 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*.

Porcherie des Cèdres Inc., 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 did not commit the violation and is not liable for payment of the penalty.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated June 23, 2003, alleges that the Applicant, on the 10th day of March, 2003, at St Nicéphore, in the Province of Quebec, committed a violation, namely: “A fait charger et transporter un animal de ferme (porc) dans un véhicule moteur (Serbo Transport Inc.) alors qu’il ne pouvait être transporté sans souffrances”, contrary to section 138(2)(a) of the *Health of Animals Regulations*, which states:

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 Applicant acknowledges the pig in question was at risk at the time of loading, indicating the pig had a wound on its foot measuring approximately 2 inches in diameter. The Applicant states the pig got on the van on its own and at its own pace. Being at risk, it was placed in a pen with five or six other pigs (pens usually hold about 20 pigs) to prevent jostling during transport.

The Respondent’s evidence is that an employee of the slaughter house telephoned a veterinarian of the Respondent to report the Applicant’s sick hog at the unloading area. The hog was described as panting, trembling considerably, and unable to get up. It had an open fracture in the lateral section of the hind left leg with considerable necrosis. In the opinion of the veterinarian, the hog must have been in this condition for at least 10 days prior to being transported.

The truck driver told the veterinarian that the hog was hobbling on three legs when it was loaded. The report states a stretcher had to be used to unload it from the truck.

There was no evidence as to the duration of the trip or other conditions surrounding the loading and transportation of this animal.

The Tribunal finds that the pig in question was injured prior to loading, and that the extent of the injuries were more severe than stated by the Applicant. However, the issue is not whether an unfit animal was loaded and transported, but whether the injured hog could be transported without undue suffering during the expected journey. A common dictionary definition of “undue” is “excessive”.

The Tribunal finds that although the hog had an injury both before and after being loaded, the loading and transportation of the hog could not have exacerbated the injury to the extent there would be excessive suffering during the expected journey.

The Tribunal notes that the Recommended Code of Practice for the Care and Handling of Farm Animals set out in section 4 of Tab 8 of the Respondent’s report indicates that swine are transported lying down, and further recommends individual pens be available for injured animals. Although the pig in question was not given an individual pen, it was sufficiently segregated to prevent undue suffering while being transported.

The Respondent has failed to establish, on a balance of probabilities that the pig could not be transported without undue suffering.

Dated at Ottawa this day of September, 2003.

Thomas S. Barton, Q.C., Chairman