

**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 176(2) 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*.

Byron Sedore, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the written 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 requested an oral hearing pursuant to ss. 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The oral hearing was held in Barrie, Ontario, on November 14, 2003.

The hearing for Notice of Violation # 0203ON0139 and Notice of Violation # 0203ON0140 were held together. Both violations were alleged to have taken place on the same day, and have similar facts.

The Applicant made his own submissions.

The Respondent was represented by its solicitor, Mr. Robert Jaworski.

The Notice of Violation # 0203ON0140 dated April 10, 2003, alleges that the Applicant, on or about 11:10 hours on the 19th day of December, 2002, at Cookstown, in the province of Ontario, committed a violation namely: “did remove or cause the removal of an animal to wit: twelve mixed breed cattle, not bearing an approved tag from a farm or ranch other than the farm of origin” contrary to ss. 176(2) of the *Health of Animals Regulations* which states:

176(2) Subject to section 183, no person shall remove, or cause the removal of, an animal from a farm or ranch other than its farm of origin unless the animal bears an approved tag.

The uncontradicted evidence is that the Applicant shipped thirty nine purchased mixed heifers and steers not bearing approved tags to the Ontario Stockyards in Cookstown.

There was some question at the hearing whether the exception in s. 183 of the *Regulations* applied to the circumstances, and the Tribunal held that it did not.

The sole remaining issue to be determined is whether or not the places from which the animals were removed were the farms of origin of the animals.

The Applicant purchased one load from an undisclosed person on the south side of Rice Lake, and purchased the other load from an undisclosed person near the St-Lawrence River in the Cornwall area.

The Respondent presumed, that, since these were purchased animals, they were not shipped from their farm of origin. However, since these animals did not come from the Applicant's farm or ranch, this presumption is not valid.

The locations from which the animals were purchased and removed by the Applicant could very well have been the farms of origin of the animals.

The Respondent argued that the purpose of the legislation is to regulate the tagging of animals, and it should not matter whether the Applicant was charged under ss. 176(1) or ss. 176(2) as both subsections create violations where untagged animals are removed from farms. The Respondent further argued that it was not possible to ascertain the farm of origin in this case because the cattle were not tagged.

In order for an Applicant to know the case that has to be met, it would not be proper, and indeed not fair, to merely allege the violation to be a contravention of s. 176 of the *Health of Animals Regulations*.

The *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* and the *Health of Animals Regulations* clearly establish these two situations as separate violations and the essential difference between the two violations is the farm of origin of the animals.

Further, these subsections are distinguished by the fact the exception in s.183 of the *Health of Animals Regulations* appears to apply to one subsection and not to the other. Whether or not the removal is from the "farm of origin" is an essential element of either violation.

Not having proven that the animals were removed by the Applicant from a farm or ranch other than their farm of origin, the Respondent has not established on a balance of probabilities, that the Applicant committed the violation.

Dated at Ottawa this 20th day of November, 2003.