

**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(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*.

F. Ménard Inc., Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the written 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 \$2,000.00 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 March 17, 2004, alleges that the Applicant, on the 4th day of August 2003, at Ste-Hélène-de-Bagot in the province of Québec, committed a violation, namely: “transporter un animal dans un véhicule surchargé,” contrary to subsection 140(2) of the *Health of Animals Regulations* which states:

140(2) No person shall transport or cause to be transported any animal in any railway car, motor vehicle, aircraft, vessel, crate or container that is crowded to such an extent as to be likely to cause injury or undue suffering to any animal therein.

On August 4th, 2003, the Applicant picked up a total of 115 distressed hogs from several farms and transported them to the slaughterhouse L.G. Hébert et Fils Limitée (Hébert).

The first animals were loaded at about 7 a.m. Additional animals were to be picked up at five different farms in the immediate vicinity of the slaughterhouse. The scheduled time of arrival at Hébert was 11 a.m. Although there is no evidence of the time of arrival at Hébert, the Applicant indicated there was a two-hour wait prior to unloading the animals. The Respondent indicated the truck arrived at the slaughterhouse stable (for unloading) at approximately 2 p.m. The truck was required to remain in a queue during this time in order to preserve its priority for unloading.

At the time of unloading 12 hogs were dead and the remainder of the lot was very short of breath and suffering from symptoms related to heat stress.

The Respondent's evidence is that the temperatures on that day approached 29 degrees C with high humidity.

The Applicant contends that the deaths were due to the lengthy wait prior to unloading at Hébert, which, in its opinion, was unforeseeable. The Applicant does acknowledge, however, that the driver made an error in calculating the number of hogs on the truck, thinking there were 105 animals when in fact there were 115.

The main contention by the Respondent is that there were too many animals on the truck for these weather conditions, and that the overcrowding contributed to the undue suffering and death of the hogs.

To support its position, the Respondent relies upon the *Codes of Recommended Practices for the Care and Handling of Farm Animals* set out in Tabs 7 and 10 of its report.

Schedule A, attached to this decision, is an attempt to apply the information provided by the Applicant and the Respondent to the graph at Tab 5 of the Respondent's report in order to determine the recommended densities for the transportation of hogs in normal temperatures and in situations of increased heat and humidity.

This task was made more onerous as the parties provided different sets of slaughterhouse invoices. The Applicant submitted invoice number 53401 for 19 hogs which did not appear on the Respondent's list of invoices. Similarly, the Respondent submitted two invoices, numbers 53056 and 53508 totalling 19 hogs, which invoices did not appear on the Applicant's list. Consequently, the total weight of the 115 hogs on the Applicant's list was 720 pounds lighter than the total weight on the Respondent's list.

As can be seen on Schedule A, the load densities appear to be within the recommended code for normal conditions, but exceed the recommended densities for hot and humid conditions.

The Applicant relied on a Reminder Notice forwarded to it by the Fédération des producteurs de porc du Québec to argue that it was within the recommended density requirements. However, the recommended densities by the Fédération are based on a 236 pound hog (live weight) and the Applicant reduced the density requirement on a direct ratio based on the average weight of the hogs on its load. As can be seen by the graphs at Tab 7 there is no such direct co-relationship. Further, smaller hogs need more space during transportation, especially distressed hogs.

The evidence of the weather on August 4th, 2003 set out in Tab 9 shows temperatures at 25 degrees C at 8 o'clock in the morning and 28 degrees C at 6 o'clock at night. With the precipitation shown, it is conceivable that the temperature at mid-day was well in excess of 29 degrees C, and would have been considerably more than that in the standing truck.

The Applicant's position is that it acted reasonably in the circumstances, and could not have foreseen the events that contributed to the deaths and malaise of the hogs. Unfortunately for the Applicant, this is not a defence to the violation by reason of subsection 18(1) of the *Agriculture and Agri-Food Monetary Penalties Act* which states as follows:

18(1) A person named in a notice of violation does not have a defence by reason

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that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence facts that, if true, would exonerate the person.

The Tribunal is satisfied that there was an overcrowding of animals on the truck which contributed to the deaths of the 12 hogs and to the heat stress suffered by the others hogs while being transported by the Applicant. The Applicant is responsible for the health of the hogs while being transported, which includes the time during the heat of day the truck was sitting in line waiting to be unloaded.

The Tribunal notes that the recommended densities set out in the *Code* and in the recommendation by the Fédération are guidelines only and are not, in themselves, determinative of whether a violation has been committed. There could very well be circumstances under which recommended limits are met but a violation is committed, or in the alternative, where the recommendations are not met and there is no violation.

In this case, the facts speak for themselves. Accordingly, the Tribunal finds the Respondent has shown, on a balance of probabilities, that the Applicant committed the violation and that the penalty has been calculated in accordance with the *Regulations*.

Dated at Ottawa this 26th day of August, 2004.

Thomas S. Barton, Q.C., Chairman