

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170503

Docket: A-292-16

Citation: 2017 FCA 94

[ENGLISH TRANSLATION]

**CORAM: NADON J.A.
GAUTHIER J.A.
TRUDEL J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

**F. MÉNARD INC.
and
SERBO TRANSPORT INC.**

Respondents

Heard at Montreal, Quebec, on May 3, 2017.

Judgment delivered from the bench at Montreal, Quebec, on May 3, 2017.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

Federal Court of Appeal



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BETWEEN:

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montreal, Quebec, on May 3, 2017.)

TRUDEL J.A.

[1] In this case, the parties agree that Pig #19 was non-ambulatory and unfit for transport when it arrived at its destination and was unloaded from the transport trailer.

[2] The main issues were that the Canada Agricultural Review Tribunal (the Tribunal) had to decide first (a) whether Pig #19 was also unfit for transport at the start of the trip—in other words, within the meaning of the applicable Act and Regulations, could the animal, isolated for lameness at the fattening farm, be transported without undue suffering—and (b) whether undue suffering was experienced during the expected journey (see *Doyon v. Canada (Attorney General)*, 2009 FCA 152, at paragraph 27, cited at paragraphs 11 and 13 of the decision under judicial review, the neutral citation for which is 2016 CART 19). Clearly, before this Court, the issue is not whether we would have come to a conclusion similar to that of the Tribunal, but rather whether our intervention is warranted.

[3] In this case, in the absence of lay witnesses, the Tribunal's hearing quickly became a debate among experts. The Tribunal preferred the theory of the respondents' expert for explaining the physical condition of Pig #19 that was noted in the unloading area.

[4] Without endorsing all of the Tribunal's reasons, we are of the view that the Tribunal was entitled to, on the evidence accepted, make the finding it did and reject the Canadian Food Inspection Agency's argument that the *ante mortem* and *post mortem* clinical observations of the animal after it was unloaded were sufficient to demonstrate, on the balance of probabilities, that the pig could not be transported without undue suffering.

[5] Since we are not satisfied that the Tribunal made errors that warrant this Court's intervention, the application for judicial review will be dismissed with each party paying its own costs.

“Johanne Trudel”

J.A.

Certified true translation
Janine Anderson, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-292-16

STYLE OF CAUSE: THE ATTORNEY GENERAL OF
CANADA v. F. MÉNARD INC. and
SERBO TRANSPORT INC.

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: MAY 3, 2017

REASONS FOR JUDGMENT BY: NADON J.A.
GAUTHIER J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

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