Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: *Asare v. Canada (Canada Border Services Agency)*, 2014 CART 37

Date: 20141217
Docket: CART/CRAC-1804

BETWEEN:

Samuel Asare, Applicant

- and -

Canada Border Services Agency, Respondent

BEFORE: **Chairperson Donald Buckingham**

WITH: **Samuel Asare, self-represented; and**
Byron Fitzgerald, representative for the respondent

In the matter of an application made by the applicant, pursuant to paragraph 9(2)(*c*) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of a violation of section 40 of the *Health of Animals Regulations* alleged by the respondent.

DECISION ON ADMISSIBILITY

The Canada Agricultural Review Tribunal ORDERS that the application for a review of Notice of Violation #4971-14-1009 dated October 7, 2014, requested by the applicant, Mr. Samuel Asare, pursuant to subsection 9(2)(*c*) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, in relation to the Canada Border Services Agency alleging that Asare violated section 40 of the *Health of Animals Regulations*, IS INADMISSIBLE and, pursuant to this order, IS HEREBY DISMISSED.

By written submissions only,
made between October 17 and December 12, 2014.

Canada

Reasons for Decision on Inadmissibility

[1] In Notice of Violation #4971-14-1009 dated October 7, 2014, the Canada Border Services Agency (Agency) alleges that, on that date at Airport 4971 (Lester B. Pearson International Airport in Toronto), Ontario, the applicant, Mr. Samuel Asare (Asare) [*verbatim*] "committed a violation, namely: import an animal by-product, to wit: cooked chicken pieces 1.5 kg., without meeting the prescribed requirements Contrary to section 40 of the *Health of Animals Regulations"*. The Agency served the Notice of Violation with Penalty personally on Asare on October 7, 2014. In the Notice of Violation, Asare is advised that the alleged violation is a violation under section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act) and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AMP Regulations). Furthermore, the alleged violation is classified as a "serious violation" under section 4 of the AMP Regulation, for which the mandated penalty is $800.00.

[2] By letter dated October 17, 2014, sent by registered mail to the Tribunal, Asare requested a review by the Tribunal (Request for Review). The letter consisted of a two-page typed document bearing his name and a copy of the Notice of Violation in question, in which Asare requested that the Tribunal "pardon" him. In the letter, he explained [*verbatim*]:

> *...Upon arrival, as I was completing the customs form, I had completely forgotten about few pieces of cooked chicken and beef. I was cleared when a dog with one of the officiers smelled something. I was asked to go to the window and again at this time I not thinking of this little cooked chicken and beef. The officer opened my luggage and asked me what it was and it was at that point that I remembered the chicken and beef. I did apologize and stated that it was an honest error on my part, as I was eating the food and due to the rush, I simply wrapped it and threw it in my luggage and had forgotten about it, and that it was not deliberate. ...I am writing to plead and for you to reconsider and pardon me for this error. This was not done intentionally and I will ensure never to allow this to happen again....*

[3] On October 23, 2014, Ms. Lise Sabourin (Sabourin), Administration, Finance and Registry Services Coordinator of the Tribunal, communicated to Asare and to the Agency, via letter, requesting that Asare provide fuller reasons for his Request for Review. This letter explained to Asare that [*verbatim*]:

> *...The applicant's request for a review with the Tribunal, as made, does not content reasons that would be permissible given section 18 of the* Agriculture and Agri-Food Administrative Monetary Penalties Act. *The applicant must submit further reasons concerning the events of October 7, 2014,* ***on or before November 07, 2014****, or the request risks being held to be inadmissible. Please consult Practice Note 11 and the* Guide for Self-Represented Litigants *(copies attached) for further information....*

[4] On November 20, 2014, Sabourin communicated again to Asare and to the Agency, via letter, requesting that Asare provide fuller reasons for his Request for Review that would substantiate why his actions did not amount to a violaton of section 40 of the HA Regulations. This letter explained to Asare that [*verbatim*]:

> *...If no permitted reasons or defences are provided by the applicant to the Tribunal on or before December 15, 2014, the Tribunal may make a final finding that the applicant's request for review is inadmissible.*

[5] By email dated December 12, 2014, Asare provided additional information concerning the events of October 7, 2014, and legal arguments to the Tribunal.

[6] Rule 34 of the *Rules of the Review Tribunal* (*Agriculture and Agri-Food*) (Tribunal Rules) states:

> …
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> *An applicant who requests a review by the Tribunal must indicate the reasons for the request, the language of preference and, if the notice of violation sets out a penalty, whether or not a hearing is requested.*
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> …

[7] Where the applicant does not meet the requirements of the AMP Act, the AMP Regulations and the Tribunal Rules, the Tribunal may rule that the applicant's request for review is inadmissible.

[8] The Tribunal has addressed admissibility issues in *Wilson v. Canada (Canadian Food Inspection Agency)*, 2013 CART 25 (*Wilson*), *Soares v. Canada (Canada Border Services Agency)*, 2013 CART 39 and *Salim v. Canada (Canada Border Services Agency)*, 2014 CART 18. As discussed in paragraph 10 of the *Wilson* decision:

> *[10] A request for review is a right which Parliament has extended to applicants which allows them, for a very limited expenditure of time and money, to have their Notice of Violation reviewed by an independent body. However, when played out to its full conclusion, including the filing of pleadings, the holding of a hearing and the rendering of a decision, considerable time and money from all parties will be expended. For this reason, legislators have placed some basic requirements on applicants that they must meet for their rights to be preserved. Where the applicant does not meet the requirements of the Act, the Regulations and the Rules, the Tribunal may rule that the applicant's request for review is inadmissible.*

[9] In the present case, the Tribunal has attempted, on at least two occasions, to encourage Asare to present reasons in his Request for Review that would meet a threshold of providing some permitted basis upon which the validity of the Notice of Violation might

be challenged. However, in his correspondence with the Tribunal, Asare has presented only the following information:

(a) That he committed the infraction in bringing in cooked chicken and beef into Canada from another country;

(b) That the importation was unintentional, as he was given the meat by his sister while abroad, that he forgot he had it in his bags and that by the time he realized it, it was too late;

(c) That after he had cleared [primary inspection], a dog discovered the cooked meat, and then [at secondary inspection] the officier inspected his bags and found the cooked chicken and beef;

(d) That he committed an honest error;

(e) That he will ensure never to allow this to happen again;

(f) That he is does not have the money to pay the fine; and

(g) That he requests that his penalty be pardonned.

[10] Asare, in his letter of December 11, 2014, also raises a legal argument to the effect that *[verbatim]:*

> *The word "**import**" suggests a deliberate act to do something and in this case, it suggests that, I deliberately imported the little piece of cooked chicken and little cooked beef into the country. The word "**import**" also suggests that, such importation being deliberate is with the intentions to sell or convert such act into money. I am respectfully submitting that is not the case, considering the evidence in question, I will however state that, these are but a few pieces of boiled chicken I was in the process of eating and due to my lateness to the airport, just threw it into my carry-on luggage. I plead that, my act which I regret is not deliberate and must be considered a human error that can easily happen to anyone. I also plead that, being that, this is my first of such an error, to be issued a warning.*

[11] The AMP Act creates a liability regime that permits few tolerances, as it allows no defence of due diligence or mistake of fact. Section 18 of the AMP Act states:

> **18.** (1) *A person named in a notice of violation does not have a defence by reason that the person*
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> *(a) exercised due diligence to prevent the violation; or*
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> *(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.*

[12] When an administrative monetary penalties provision has been enacted for a particular violation, as is the case for section 40 of the HA Regulations, there is little room for the applicant to mount a defence. Section 18 of the AMP Act excludes many of the common reasons that applicants raise to justify their actions when a Notice of Violation has been issued to them. Given Parliament's clear intention on the issue of prohibited versus permitted defences, the Tribunal finds that none of the reasons given by Asare in his submissions to this Tribunal, as set out in paragraphes 9 and 10 above, are permitted defences under section 18 of the AMP Act. With respect to the last reason in both paragraphs 9 and 10 above that he gives—granting a pardon for the monetary penalty, or changing it to a warning—the Tribunal notes that it is not empowered under its enabling legislation to consider arguments from the parties, based on any grounds including compassionate and humanitarian considerations, which might have the effect of eliminating, reducing, or providing a payment plan for the fine, as set out in a Notice of Violation.

[13] Finally, the arguments Asare raises with respect to the interpretation of the word "import" in section 40 of the HA Regulations cannot be sustained in light of interpretations that have been given for that word by the Federal Court of Appeal and by the operation of the AMP Act in excluding any "intentional", "deliberate" or "mental" element in proving a violation under the AMP Act.

[14] The explanations offered by Asare for his importation is that he forgot to declare the meat, that he had cleared primary inspection, that a detector dog indicated to Agency officials that he might have meat in his bag and that an Agency officer doing a secondary inspection found the meat in question. The Tribunal accepts that, on the basis of the Federal Court of Appeals's decision in *Canada (Attorney General) v. Savoie-Forgeot*, 2014 FCA 26 *(Forgeot)*, Asare had already "imported" the meat products by this point. It was then too late to avoid liability for the unauthorized importation, even if he never intended to import the cooked chicken and beef.

[15] The law as set out in *Forgeot* is now quite clear that a declaration, either by reporting it on the Declaration Card, or orally to an Agency official as soon as possible, is a vital step in avoiding a charge under the AMP Act and AMP Regulations. Where individuals declare and make available for inspection those products which might be subject to seizure because they could endanger human, animal or plant life in Canada, such individuals ought not to be found to have violated section 40 of the HA Regulations. As the Court states in *Forgeot* at paragraph 18, "Even if upon inspection they are found to have in their possession animal by-products that do not fall within the exceptions enumerated in Part IV of the Regulations, they have not yet completed the process of importing these by-products into Canada." But conversely, where the individual fails to declare and present such products before secondary inspection, even if they do not deliberately fail to declare their products due to forgetfulness, they will have, unfortunately, contravened section 40 of the HA Regulations.

[16] Therefore, in the Tribunal's view, the current circumstances provide the Tribunal with little other alternative than to hold that the Request for Review by Asare is

inadmissible, and the Tribunal so holds. Consequently, by operation of subsection 9(3) of the AMP Act, Asare is deemed to have committed the violation particularized in Notice of Violation #4971-14-1009 dated October 7, 2014. Subsection 9(3) of the AMP Act provides as follows:

> *(3) Where a person who is served with a notice of violation that sets out a penalty does not pay the penalty in the prescribed time and manner or, where applicable, the lesser amount that may be paid in lieu of the penalty, and does not exercise any right referred to in subsection (2) in the prescribed time and manner, the person is deemed to have committed the violation identified in the notice.*

[17] The Tribunal has considered these matters in light of the provisions of the AMP Act, the AMP Regulations, the Tribunal Rules, applicable jurisprudence and fairness, plus the information provided by parties. The Tribunal notes that the information from Asare in his Request for Review, and subsequent submissions, provides no basis to challenge the validity of the Notice of Violation in question.

[18] The Tribunal wishes to inform Asare that this violation is not a criminal offence. After five years, Asare will be entitled to apply to the Minister to have the violation removed from the records, in accordance with section 23 of the AMP Act:

> **23.** *(1) Any notation of a violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from*
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> *(a) where the notice of violation contained a warning, the date the notice was served, or*
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> *(b) in any other case, the payment of any debt referred to in subsection 15(1),*
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> *unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.*

Dated at Ottawa, Ontario, this 17th day of December, 2014.

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Dr. Don Buckingham, Chairperson