



Citation: *Ajibowu v. Canada (Canada Border Services Agency)*, 2014 CART 38

Date: 20141219

Docket: CART/CRAC-1799

**BETWEEN:**

**Stephen Ajibowu, Applicant**

**- and -**

**Canada Border Services Agency, Respondent**

**BEFORE: Chairperson Donald Buckingham**

**WITH: Stephen Ajibowu, 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 subsection 16(1) of the *Health of Animals Act* alleged by the respondent.

#### **DECISION ON ADMISSIBILITY**

**The Canada Agricultural Review Tribunal ORDERS that the application for a review of Notice of Violation #7011-14-0613 dated September 4, 2014, requested by the applicant, Mr. Stephen Ajibowu, 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 Mr. Ajibowu violated subsection 16(1) of the *Health of Animals Act*, IS INADMISSIBLE and, pursuant to this order, IS HEREBY DISMISSED.**

By written submissions only,  
made between September 23 and December 18, 2014.

## **Reasons for Decision on Inadmissibility**

[1] In Notice of Violation #7011-14-0613 dated September 4, 2014, the Canada Border Services Agency (Agency) alleges that, on that date at Airport 7011 (Calgary International Airport) in Alberta, the applicant, Mr. Stephen Ajibowu (Ajibowu) [*verbatim*] “committed a violation, namely: fail to present an animal or thing, to wit: Steak, meat on bones. Contrary to section 16(1) of the *Health of Animals Act*”. The Agency served the Notice of Violation with Penalty on Ajibowu on September 4, 2014. In the Notice of Violation, Ajibowu 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 “very serious violation” under section 4 of the AMP Regulations, for which the mandated penalty is \$1,300.00.

[2] In an undated letter sent by courier on September 23, 2014, and received by the Canada Agricultural Review Tribunal (Tribunal) on September 29, 2014, Ajibowu requested a review by the Tribunal (Request for Review). The letter consisted of a one-page typed document bearing his name and a copy of the Notice of Violation in question, in which Ajibowu stated the following [*verbatim*]:

*...I am writing this letter based on the event which occurred on September 04, 2014 at the point of entry (POE) 7011 in Calgary, Alberta, in which a border service officer served me a **NOTICE OF VIOLATION** on the grounds that she believed I committed a violation.*

*I am asking CART to please review the facts of the violation and the penalty imposed on me based on the following reasons:*

*1. One of the items confiscated was not clearly defined in the CBSA immigration document issued. It was a grey area for me and as a result I did not declare that item.*

*2. Lastly am not a frequent international flyer, I have never undertaken such a trip back home since I arrived Canada in 2006 and I wasn't too clear about the items that are not accepted into Canada.*

*For future trips am assuring that I will adhere and comply with the declaration procedure. Thanks...*

[3] On September 29, 2014, Ms. Lise Sabourin (Sabourin), Administration, Finance and Registry Services Coordinator of the Tribunal, communicated to Ajibowu and to the Agency, via letter, requesting that Ajibowu provide fuller reasons for his Request for Review. This letter explained to Ajibowu 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 September 4, 2014, **on or before October 20, 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] By email dated October 28, 2014, Ajibowu filed a "Request for a review pursuant to the *Agriculture and Agri-Food Administrative Monetary Penalties Act*" form, duly completed; and a one-page typed letter dated October 27, 2014, restating his request and reasons. His October 27, 2014 letter read as follows [*verbatim*]:

*...I would like to have my Notice of Violation (#7011-14-0613 dated September 4<sup>th</sup>, 2014) reviewed by the Tribunal. I am asking CART to review the facts of the violation and the penalty imposed based on the following reasons:*

- 1. All of the items confiscated but one were not clearly defined in the CBSA immigration declaration document issued. As a result I didn't declare them.*
- 2. Lastly am not a frequent international flyer, I have not undertaken such a trip since 2009 and I wasn't too clear about the items that are not accepted into Canada...*

[5] On November 6, 2014, Sabourin communicated again with Ajibowu and the Agency, via letter, requesting that Ajibowu provide fuller reasons for his Request for Review. This letter explained to the parties that [*verbatim*]:

*...On September 29, 2014, the Canada Agricultural Review Tribunal (Tribunal) received the applicant's initial request for a review by Registered Mail. On the same date, the Tribunal sent a letter to the parties, inviting the applicant to provide reasons for the request, but the applicant did not elaborate on the incidents of September 4, 2014.*

*If the Tribunal does not receive further specific details regarding point 1 in his letters of October 27 and September 29, 2014 (copies attached), the Tribunal will be inclined to make a ruling on inadmissibility of this request for review. Any additional information must be submitted on or before **November 28, 2014, 5:00 p.m. EDT.***

[6] No response was received from Ajibowu on or before the November 28, 2014 deadline. So, a third follow-up letter from Sabourin was sent to Ajibowu via email on December 5, 2014, to provide a final opportunity to Ajibowu to submit any additional information concerning the events of September 4, 2014, to the Tribunal on or before December 17, 2014.

[7] On December 18, 2014, Ajibowu sent to the Tribunal an email with a letter dated December 17, 2014, attached, setting out further reasons in support of his request as follows [*verbatim*]:

*...This letter serves to give an explanation of the event that took place at Calgary (POE 7011) on September 4, 2014, in which I was served a notice of violation (#7011-14-0613, CART/CRAC-1799).*

*On the above date, a Canadian border officer served me notice on the grounds that I committed a violation by not declaring that I had meat (Steak and Meat) on me.*

*The reasons for this request is because I did not properly understand the details of the declaration card because of my reading and learning disability (Dyslexia). I would like to say that I acted in all honesty during the event that took place on that day. One final reason was because the product was not pure beef (95% flour and 5% meat baked together).*

*In conclusion, I urge the tribunal to act fairly on this issue and either cancel the fine and issue a warning or reduce the fine....*

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

...

*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.*

...

[9] 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.

[10] 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, *Salim v. Canada (Canada Border Services Agency)*, 2014 CART 18, and *Asare v. Canada (Canada Border Services Agency)*, 2014 CART 37. 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.*

[11] In the present case, the Tribunal has attempted, on at least three occasions, to encourage Ajibowu 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, Ajibowu has presented only the following information:

- (a) That he imported a meat product and did not declare it;
- (b) That one, or more, of the items confiscated was not clearly defined in Agency documentation as one that needed to be declared upon importation and it was for this reason that he did not declare it;
- (c) That due to his reading and learning disability, he did not properly understand the details of the declaration card;
- (d) That he is not a frequent flyer, and as such, was not clear about which products could be imported into Canada;
- (e) That he acted in all honesty during the events that took place on September 4, 2014;
- (f) That in the future, he will adhere to and comply with the Agency's declaration procedure; and
- (g) That the Tribunal, either cancel the fine and issue a warning, or reduce the fine in this case.

[12] 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*

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

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

[13] When an administrative monetary penalties provision has been enacted for a particular violation, as is the case for subsection 16(1) of the HA Act, 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 Ajibowu in his

submissions to this Tribunal, as set out in paragraph 11 above, are permitted defences under section 18 of the AMP Act. Even Ajibowu's assertion that he acted in all honesty or that his reading and learning disability were responsible for his misreading of the declaration card would not be valid defences given the ambit of section 18 of the AMP Act.

[14] Other explanations offered by Ajibowu for his importation of products without declaring or presenting them to an Agency official—such as his uncertainty about which products had to be declared upon importation—do not negate that he did not declare his meat products to a primary inspection Agency officer or that an Agency officer performing a secondary inspection did find meat in his luggage. 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*), Ajibowu had already "imported" the meat products by this point. It was then too late to avoid liability for the unauthorized importation, even if he did not know, or failed to understand, that he was obliged to declare his imported meat to Agency officials.

[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 the 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 the HA Act and the HA Regulations provisions. 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 that person does not deliberately fail to declare the products, he or she will have, unfortunately, contravened the HA Act or HA Regulations.

[16] With respect to Ajibowu's request, as set out in the last point listed in paragraph 11 above—that the Tribunal, either cancel the fine and issue a warning, or reduce the fine in this case—the Tribunal notes that it is not empowered under its enabling legislation to grant relief to parties based on compassionate and humanitarian considerations, or to change the administrative choice of penalties or warnings as selected in the discretion of the Agency official issuing a particular Notice of Violation. There is little, if any, room for the Tribunal to eliminate, reduce, substitute, or even to provide for a payment plan, other than what has been set out in the Notice of Violation in question.

[17] Therefore, in the Tribunal's view, the current circumstances provide the Tribunal with few alternatives other than to hold that the Request for Review by Ajibowu is inadmissible, and the Tribunal so holds. Consequently, by operation of subsection 9(3) of the AMP Act, Ajibowu is deemed to have committed the violation particularized in Notice of Violation #7011-14-0613 dated September 4, 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.*

[18] 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 Ajibowu in his Request for Review and subsequent submissions provides no credible basis to challenge the validity of the Notice of Violation in question.

[19] The Tribunal wishes to inform Ajibowu that this violation is not a criminal offence. After five years, Ajibowu 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*

*(a) where the notice of violation contained a warning, the date the notice was served, or*

*(b) in any other case, the payment of any debt referred to in subsection 15(1),*

*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 19<sup>th</sup> day of December, 2014.

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Dr. Don Buckingham, Chairperson