Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: *Seepaul v. Canada (Canada Border Services Agency), 2015 CART 13*

Date: 20150727
Docket: CART/CRAC-1829

BETWEEN:

Praimdassie Seepaul, Applicant

- and -

Canada Border Services Agency, Respondent

BEFORE: **Chairperson Donald Buckingham**

WITH: **Praimdassie Seepaul, self-represented; and**
Melanie A. Charbonneau, 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 the facts 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 4974-15-0322 dated May 13, 2015, requested by the applicant, Praimdassie Seepaul, pursuant to paragraph 9(2)*(c)* of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, in relation to the Canada Border Services Agency alleging that the applicant violated section 40 of the *Health of Animals Regulations*, IS INADMISSIBLE and is, pursuant to this order, DISMISSED.

By written submissions only.

Reasons for Inadmissibility

[1] In the Notice of Violation 4974-15-0322, dated May 13, 2015, the Canada Border Services Agency of Canada (Agency) alleges that on that date, at airport 4974 (Pearson International Airport) in Toronto, Ontario, the applicant, Praimdassie Seepaul (Seepaul) committed a violation, namely importing an animal by-product in the form of chicken, without meeting the prescribed requirements, contrary to section 40 of the *Health of Animals Regulations* (HA Regulations). On May 13, 2015, the Agency served Seepaul in person with the Notice of Violation.

[2] In the Notice of Violation, Seepaul is advised that the alleged facts constitute 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 Regulations, for which the mandated penalty is $800.

[3] In a letter dated May 19, 2015, sent by registered mail on June 1, 2015, and received by the Canada Agricultural Review Tribunal (Tribunal) on June 3, 2015, Seepaul filed a request for review (Request for Review) asking the Tribunal to review the facts of her Notice of Violation, a request permitted by paragraph 9(2)(*c*) of the AMP Act. In order to maintain her rights under the AMP Act, Seepaul did not pay the assessed penalty.

[4] Seepaul's Request for Review consisted of a one-page letter, the copy of Notice of Violation 4974-15-0322, and a document entitled "Non-Monetary General Receipt - No. B100968". Seepaul's one-page letter read as follows *[verbatim]*:

> *May19, 2015*
>
> *Hi,*
>
> *I would like to review of facts of a violation. I enclose all documents given to me.*
>
> *Praimdassie Seepaul*

...

[5] By letter dated June 5, 2015, the Tribunal indicated to the Agency and to Seepaul as follows *[verbatim]*:

...

> *As you may be aware, on May 8, 2015, the* Rules of the Tribunal (Agriculture and Agri-Food) *SOR/99-451 (the Old Rules) were repealed and replaced by the*

> Rules of the Review Tribunal (Canada Agricultural Review Tribunal) *(the New Rules), of which a copy from the* Canada Gazette *are attached.*
>
> *As required by the Tribunal under section 29 of the New Rules, the Tribunal hereby acknowledges receipt of the request for review by the applicant (Notice of Violation number was not provided by the applicant). Attached is a copy of the request for review as received from the applicant.*
>
> *Therefore, the Tribunal hereby requests the following:*
>
> 1. *that the Canada Border Services Agency (the Agency) or its representative or legal counsel, provide the necessary information to fully comply with section 30 of the New Rules on or before **Monday, June 22, 2015**, which is 15 days after the day on which this letter is sent; and*
>
> 2. *that P. Seepaul (the Applicant) or his representative or legal counsel, provide the necessary information to fully comply with section 31 of the New Rules on or before **Monday, June 22, 2015**, which is 15 days after the day on which this letter is sent.*
>
> *Then, pursuant to section 32 of the New Rules, and on the basis of the information submitted to the Tribunal, the Tribunal will make a determination on the admissibility of this request, within 60 days after the day on which this letter is sent and will send that decision to the parties in writing without delay.*

…

[6] By emails dated June 18 and 25, 2015, the Agency forwarded information required by section 30 of the Tribunal's New Rules. The Tribunal received no documentation from Seepaul before the June 22, 2015 deadline.

[7] Therefore, by letter dated June 25, 2015, the Tribunal sent a second letter to Seepaul indicating as follows *[verbatim]*:

…

> *On June 3, 2015, the Canada Agricultural Review Tribunal (Tribunal) received your initial request for review by registered mail. On June 5, 2015, the Tribunal sent a letter to the parties, inviting you, the applicant, to comply with section 31 and the Agency to comply with section 30.*

…

> *In this regard, this is a final opportunity for you to provide further details of the May 13, 2015 incident, to support your claim of the invalidity of the Notice of Violation. Failing receipt of any such information, your request for review will*

> *be found to be inadmissible and may result in an order from the Tribunal dismissing it. Therefore, you must comply with section 31 of the New Rules, on or before **Thursday, July 16, 2015**.*

...

[8] The Tribunal received no documentation from Seepaul before the July 16, 2015 deadline. However, Seepaul did send a letter by regular mail dated July 12, 2015, that the Tribunal received on July 21, 2015. The one-page letter set out some additional personal and contact information but unfortunately, did not set out any reasons in support of the Request for Review.

Analysis and Applicable Law

[9] Where the applicant does not meet the requirements of the AMP Act, the AMP Regulations and the Tribunal rules of procedure, the Tribunal may decide that the applicant's Request for Review is inadmissible.

[10] The Tribunal has, on several occasions under its Old Rules, addressed admissibility issues, for instance in *Wilson v. Canada (Canadian Food Inspection Agency)*, 2013 CART 25 (*Wilson*), where at paragraph 10 of the Tribunal writes:

> *[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] Admissibility was also discussed by the Tribunal in similar terms in *Soares v. Canada (Canada Border Services Agency)*, 2013 CART 39, *Salim v. Canada (Canada Border Services Agency)*, 2014 CART 18, *Asare v. Canada (Canada Border Services Agency)*, 2014 CART 37, *Ajibowu v. Canada (Canada Border Services Agency)*, 2014 CART 38, *Wen v. Canada (Canada Border Services Agency)*, 2014 CART 39.

[12] Under the Tribunal's New Rules, which came into force on May 8, 2015, the Tribunal is now required, before it proceeds to a full hearing of a matter, to issue a written decision on the admissibility of a request for the review of a facts underlying a Notice of Violation pursuant to section 32 of the Tribunal's New Rules.

[13] In coming to its decision on admissibility, the Tribunal will consider, among other things, the sufficiency of the reasons advanced by the applicant for the request. However, the Tribunal cannot consider defences that are not allowed under subsection 18(1) of the AMP Act. If there are no reasons, from the materials filed by the parties pursuant to sections 30 and 31 of the Tribunal's New Rules, upon which the applicant could possibly succeed, then the Tribunal will declare the request for review inadmissible. The Tribunal made such a finding most recently with respect to a request for review of a Minister's Decision in *Stracinski v. (Minister of Public Safety and Emergency Preparedness)*, 2015 CART 11, and with respect to a request for review of a notice of violation in *Steele v. Canada Border Services Agency*, 2015 CART 12.

[14] In the present case, the Tribunal has, on at least two occasions, explained to Seepaul that she must present reasons in her 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. Seepaul was also informed of the consequences should she fail to provide details as to why she claimed the Notice of Violation was invalid. However, in her sparse correspondence with the Tribunal, Seepaul presented no information or reasons in support of her request.

[15] Where a violation of section 40 of the HA Regulations is alleged as the basis for the issuance of a Notice of Violation under the AMP Act and AMP Regulations, only two essential elements must be proved by the Agency, on the balance of probabilities:

- Element #1 - Seepaul is the person who committed the violation; and

- Element #2 – Seepaul imported an animal by-product (chicken) into Canada.

[16] There is evidence from the record suggesting that both elements can be substantiated. Moreover, on the record before the Tribunal, Seepaul contests neither of these elements. In essence, Seepaul fails to provide any reasons in her submissions to point to facts other than those that would support the issuance of a Notice of Violation in this case.

[17] The AMP Act creates a liability regime that permits few tolerances. Seepaul has advanced no facts that assist her. She has also failed to advance any defences permitted by section 18 of the AMP Act, which states that:

> **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.*

[18] When an AMP provision has been enacted for a particular violation, as is the case for section 40 of the HA Regulations, the applicant has little room 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 no reasons have been given by Seepaul that would amount to a permitted defence under section 18 of the AMP Act.

[19] Hence, the Tribunal declares Seepaul's Request for Review of the Notice of Violation 4974-15-0322 inadmissible, as from the materials filed by the parties pursuant to sections 30 and 31 of the Tribunal's New Rules, no reasons are presented upon which Seepaul could possibly succeed to substantiate her claim that the Notice of Violation dated May 13, 2015, is unproven.

[20] Therefore, Seepaul is deemed to have committed the violation indicated in Notice of Violation 4974-15-0322 served on her on May 13, 2015. 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.*

[21] The Tribunal has considered these matters in light of the provisions of the AMP Act, the AMP Regulations, the Tribunal New Rules, applicable jurisprudence, and the submissions provided by the parties.

[22] Agency officers are charged with protecting Canadians, the food chain and agricultural production in Canada from the risks posed by biological threats to plants, animals and humans. There is no doubt that these duties must be exercised responsibly. The Tribunal is aware that the Agency has its own procedure for reviewing traveller complaints against inspectors who have allegedly conducted themselves improperly towards travellers.

[23] As well, Agency officers have the discretion in how they handle travellers who have undeclared products in their possession. Agency officers, when they discover undeclared products, may issue the travellers an oral warning, a written Notice of Violation with Warning or a written Notice of Violation with Penalty under the AMP Act. However, it is not the Tribunal's role to revisit the procedure and civil remedy chosen by the Agency against an alleged violator.

[24] The very strict AMP system established by Parliament, and set out in the AMP Act, protects Canada's agricultural and food systems against contamination and disease. The penalties set out in the AMP Act, as in this case, can nonetheless have important

repercussions for Canadians, especially someone like Seepaul. The Tribunal's ability to grant relief comes only from its enabling statutes. According to these laws, the Tribunal has neither the mandate, nor the jurisdiction, to set aside or dismiss a notice of violation for humanitarian, compassionate, or financial reasons. However, Seepaul may wish to approach Agency representatives to inquire whether a schedule of payments or some other arrangement to pay the fine would be acceptable to the Agency.

[25] The Tribunal wishes to inform Ms. Seepaul that this violation is not a criminal offence. After five years, she 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 which states:

> **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, on this 27th day of July, 2015.

Don Buckingham, Chairperson