



Citation: *Ngueyo v. Canada (Minister of Public Safety and Emergency Preparedness)*,
2015 CART 14

Date: 20150728
Docket: CART/CRAC-1836

BETWEEN:

Éric Ngueyo, Applicant

- and -

Minister of Public Safety and Emergency Preparedness, Respondent

BEFORE: Chairperson Donald Buckingham

**WITH: Éric Ngueyo, self-represented; and
Melanie A. Charbonneau, representative for the respondent**

In the matter of an application made by the applicant, pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review by the Tribunal of a Minister's decision dated June 5, 2015, holding that the applicant violated section 40 of the *Health of Animals Regulations*.

DECISION ON ADMISSIBILITY

The Canada Agricultural Review Tribunal ORDERS that the applicant's request of June 19, 2015, made pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of the Minister's Decision CS-75181 dated June 5, 2015, IS INADMISSIBLE and is, pursuant to this order, DISMISSED.

By written submissions only.

Reasons for Inadmissibility

[1] This case involves the importation of pork sausage by Éric Ngueyo (Nguemo) on December 3, 2014. When officers of the Canada Border Services Agency (Agency) discovered the sausages in Ngueyo's luggage at the Pierre-Elliott-Trudeau International Airport in Dorval, Quebec, the Agency issued Notice of Violation 3961-14-1381 with a penalty of \$800 to Ngueyo. The Notice of Violation was issued under the authority of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act), and the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AMP Regulations) and was served on Ngueyo on the same day.

[2] Ngueyo challenged the validity of Notice of Violation 3961-14-1381 alleging that Ngueyo committed a violation by importing an animal by-product into Canada on that date, without meeting the prescribed requirements, contrary to section 40 of the *Health of Animals Regulations* (HA Regulations), by requesting that the Minister of Public Safety and Emergency Preparedness (Minister), or his delegate, complete a review of the facts of the violation.

[3] On June 5, 2015, J.M. Dupuis (Dupuis), Manager, Appeals Division, Recourse Directorate for the Minister, issued a decision on behalf of the Minister (Minister's Decision), after concluding a review pursuant to subsection 13(1) of the AMP Act. Dupuis concluded [TRANSLATION] : "*...that the facts as presented confirm that a violation of Section 40 of the Health of Animals Regulations was committed and the Notice of Violation with Penalty issued pursuant to Section 7(1) of the Act remains in effect. The amount of the penalty in the amount of \$800 is now owing to the Receiver General for Canada.*"

[4] The Agency served the Minister's decision on Ngueyo June 19, 2015. On that same day, by regular mail, Ngueyo sent a letter to the Canada Agricultural Review Tribunal (Tribunal) asking it to review and set aside the Minister's Decision, a request permitted by paragraph 13(2)(b) of the AMP Act. Ngueyo's letter contained no electronic or fax coordinates.

[5] Using the only contact information provided by Ngueyo, the Tribunal by regular mail, sent a letter to him and to the Agency on June 26, 2015 requesting information on or before July 13, 2015, as required by sections 46 and 47 of the *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)* (the Tribunal New Rules) to determine admissibility of Ngueyo's request.

[6] By email dated June 30, 2015, the Agency provided additional information indicating the date of service of Minister's Decision on Ngueyo.

[7] Ngueyo forwarded no additional information to the Tribunal before the July 13, 2015 deadline. However, on July 21, 2015, the Tribunal received a letter dated July 12, 2015, sent by ordinary mail from Ngueyo. That letter set out information required by section 47 of the Tribunal New Rules.

Analysis and Applicable Law

[8] The AMP Act establishes a possibly unique, if not somewhat perplexing, two-pronged procedure for challenging a notice of violation issued pursuant to it. Under the AMP Act, a person served with a notice of violation may choose one of two preliminary routes to contest its validity—a request for review to the Minister of Agriculture and Agri-Food, or the Minister of Health, or the Minister of Public Safety and Emergency Preparedness, as the case may be (subsection 8(1) and paragraph 9(2)(b) of the AMP Act) or a request for review to this Tribunal (subsection 8(1) and paragraph 9(2)(c) of the AMP Act).

[9] In both cases, the review, which takes place, is an administrative review of an enforcement agency's exercise of discretion to issue a Notice of Violation with Warning or a Notice of Violation with Penalty. During this review, the reviewer—either the Minister or the Tribunal, as chosen by the applicant—receives evidence from the parties, considers applicable law, applies the facts of the case to the applicable law and then determines whether or not the person requesting the review committed the violation. This exercise, in either case, leads to a “first-instance” administrative adjudicative decision on the matter.

[10] Ngueyo chose to follow the “first-instance” administrative adjudication with the Minister. After receiving the Minister's Decision, Ngueyo then attempted to exercise his rights to request a review of the Minister's Decision be carried out by the Tribunal, pursuant to paragraph 13(2)(b) of the AMP Act.

[11] In reviewing a Minister's decision, the Tribunal may confirm it, vary it or set it aside (paragraph 14(1)(a) of the AMP Act) and as such, performs a function, not as a decision-maker of first instance but rather as a body reviewing a decision of first instance. The Tribunal is subject to, and guided by, Canadian administrative law and procedure in reviewing a Minister's decision. Of course, parties who are in turn dissatisfied with the Tribunal's decision on a review of a Minister's decision have yet again the opportunity to seek judicial review of that decision before the Federal Court of Appeal.

[12] The AMP Act, the AMP Regulations and the Tribunal's New Rules require that the Tribunal, before it proceeds to a full hearing of a matter, make a decision on the admissibility of an applicant's request for the review of a Minister's decision. Absolute bars to admissibility arise when the applicant has already paid the penalty attached to the Notice of Violation or has failed to file his Request for Review within the prescribed time and manner set out in the AMP Act and AMP Regulations.

[13] Section 13 and subsection 14(1) of the AMP Regulations outline the required statutory period and the permitted modes of delivery for the filing of a request for review of a Minister's decision before the Tribunal:

13. *Where, after concluding a review requested pursuant to subsection 8(1) or 9(2) of the Act, the Minister notifies a person that it is the Minister's decision that the person committed the violation, the person may*

(a) request, in writing, within 15 days after the day on which the notice is served, a review of the Minister's decision by the Tribunal; or

(b) where the review is in respect of a penalty, and the decision maintains the penalty or corrects the amount of the penalty, pay the penalty or the corrected amount, within 15 days after the day on which the notice is served.

14. *(1) A person may make a request referred to in section 11, 12 or 13 by delivering it by hand or by sending it by registered mail, courier, fax or other electronic means to a person and place authorized by the Minister.*

[14] The Federal Court of Appeal has interpreted these provisions very strictly. In *Re: Section 14 of the AMP Regulations, SOR/2000-187*, 2012 FCA 130, the Court held as follows:

[22] In my view, section 14 cannot be construed as authorizing regular mail as a means of communicating a request. Subsection 9(2) of the Act provides that a person may request a review by the Tribunal "in the prescribed time and manner". Section 14 of the Regulations simply does not prescribe regular mail as a manner of requesting a review by the Tribunal.

[23] The common thread that appears to run through section 14 is that the question whether a request has been filed within the time allowed for doing so can either be assessed independently by the Tribunal based on the time when a request is actually "delivered" or "received" by hand or by electronic transmission pursuant to paragraphs 14(2)(a) or (c), or by reference to independent third party evidence as to when a request has been "sent" when registered mail or courier service are resorted to as a mode of transmission. In such a case, paragraph 14(2)(b) provides that the request is considered to have been made on the earlier of the date on which the request is received or the date indicated on the receipt issued by the postal or courier service.

[24] In contrast, regular mail if read into section 14 would allow for no independent means of establishing whether and when the mailed request was sent in the event that it does not reach its proper destination. This problem could have been resolved by deeming such a request to have been made on the date indicated on the postmark stamped on the envelope as was done with respect to the payment of reduced penalties pursuant to section 10 (see in particular paragraph 10(4)(b)). However, this approach was not adopted and the drafters of the

Regulations did not prescribe anything in that respect at subsection 14(2). The Court would have to engage in an improper exercise of legal drafting if it was to read into section 14 the approach set out in section 10 (compare Canada (Attorney General) v. Mowat, 2009 FCA 309 at paras. 97 to 99).

[25] I therefore conclude that section 14 cannot be construed as including regular mail as an authorized mode of transmission. ...

[15] This scenario is precisely the situation that Nguayo finds himself with respect to the filing of his Request for Review with the Tribunal to challenge the Minister's decision. The only communication received by the Tribunal from Nguayo on time was his letter sent by regular mail dated June 19, 2015, and received by the Tribunal on June 24, 2015. The statutory deadline in this case for receiving a request for review by a permitted method was 15 days after the date of service of the Minister's decision. Nguayo was served on June 19, 2015. Therefore, the last day on which he could file his Request for Review with the Tribunal would be the first business day on or after July 4, 2015, which is July 6, 2015. Nguayo's second communication dated July 12, also sent by regular mail, arrived at the Tribunal only on July 21, 2015.

[16] Unfortunately, while Nguayo's letter requesting a review was received by the Tribunal on June 24, 2015, it was not sent by one of the permitted modes of transmission. It was sent by regular mail. Had it been sent by fax, by electronic means, by registered mail, by courier or by hand, the Request for Review would not have run afoul of the rules for admissibility under the AMP Act and AMP Regulations. Nguayo's second letter is also of no assistance to him in meeting the prescribed time and manner of filing requirements under the AMP Act and AMP regulations, as that letter was both late and not filed by one of the permitted modes of delivery. As it is, the strict rules, as interpreted by the Federal Court of Appeal and the Tribunal apply and the Tribunal finds that Nguayo's Request for Review is not admissible, as it was not filed within the required statutory period by a permitted mode of delivery.

[17] As a result of this finding of inadmissibility of his Request for Review to the Tribunal, Nguayo is deemed to have committed the violation indicated in Notice of Violation 3961-14-1381 dated December 3, 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 New Rules, applicable jurisprudence, and all submissions provided by the parties.

[19] 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.

[20] 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, or a Minister's decision, for humanitarian, compassionate, or financial reasons. However, Ngueyo 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.

[21] The Tribunal wishes to inform Mr. Ngueyo that this violation is not a criminal offence. After five years, he 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 28th day of July, 2015.

Don Buckingham, Chairperson