Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: *Marble Ridge Farms Ltd. v. Canada (Canadian Food Inspection Agency)*, 2015 CART 15

Date: 20150731
Docket: CART/CRAC-1839

**BETWEEN:**

**Marble Ridge Farms Ltd., Applicant**

**- and -**

**Canadian Food Inspection Agency, Respondent**

**BEFORE:** **Chairperson Donald Buckingham**

**WITH:** **David Hofer, representative for the applicant**
**Francesco Maragoni, representative for the respondent**

In the matter of a request 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 paragraph 138(2)(*a*) 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 1516WA0006 dated May 25, 2015, requested by the applicant, Marble Ridge Farms Ltd., pursuant to paragraph 9(2)*(c)* of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, in relation to the Canadian Food Inspection Agency, alleging that the applicant violated paragraph 138(2)(*a*) of the *Health of Animals Regulations*, IS INADMISSIBLE and is, pursuant to this order, DISMISSED.**

By written submissions only.

## Reasons for Inadmissibility

[1] This case involves a pig with a broken leg owned by Marble Ridge Farms Ltd. (Marble Ridge). On December 4, 2014, Marble Ridge loaded the pig in question, which, according to personnel of Marble Ridge, was favouring one leg but walking on all four, for the two-hour trip to Winnipeg, Manitoba to be sold. However, upon arrival in Winnipeg, officers of the Canadian Food Inspection Agency (Agency) inspected the load and discovered that the pig had a broken leg. Due to this discovery, the Agency issued Notice of Violation 1516WA0006 to Marble Ridge on May 25, 2015. The Notice of Violation was deemed served on Marble Ridge, effective June 6, 2015.

[2] In the Notice of Violation, Marble Ridge is advised that the alleged facts violate paragraph 138(2)(*a*) of the *Health of Animals Regulations* and thereby 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 $6,000. In order to maintain its rights under the AMP Act, Marble Ridge did not pay the assessed penalty.

[3] In a letter dated June 26, 2015, sent by regular mail the same day and received by the Canada Agricultural Review Tribunal (Tribunal) on July 3, 2015, Marble Ridge filed a request for review (Request for Review), asking the Tribunal to review the facts of its Notice of Violation, a request permitted by paragraph 9(2)(*c*) of the AMP Act. Marble Ridge's letter contained no electronic or fax coordinates.

[4] Using the only contact information provided by Marble Ridge, the Tribunal, by regular mail, sent a letter to Marble Ridge and to the Agency on July 3, 2015, requesting information on or before July 20, 2015, as required by sections 30 and 31 of the *Rules of the Review Tribunal (Canada Agricultural Review Tribunal) (*Tribunal New Rules), to determine admissibility of Marble Ridge's request. A copy of the Tribunal New Rules was attached to the letter. Later in the day on which this letter was sent, Tribunal staff was able to locate a telephone contact number and email address for Marble Ridge. Tribunal personnel then left a voicemail at the telephone contact, indicating that it was imperative that Marble Ridge file its Request for Review, as soon as possible, electronically or by courier to protect its rights.

[5] By email dated July 9, 2015, the Agency provided additional information, indicating June 6, 2015, as the date of service of the Notice of Violation on Marble Ridge and that the penalty amount of $ 6,000 had not been paid.

[6] The Tribunal received no additional information from Marble Ridge before the July 20, 2015 deadline. On July 21, 2015, the Tribunal sent, by email and regular mail, a second letter to Marble Ridge asking for information to support the Request for Review noting that such requests are required to be sent by registered mail to be admissible. The Tribunal received a second written communication from Marble Ridge on July 23, 2015. This communication from Marble Ridge, providing information required by section 31 of

the Tribunal New Rules, was undated but was post-dated and sent by registered mail on July 17, 2015.

## Analysis and Applicable Law

[7] 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, 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).

[8] In both cases, the review that 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.

[9] Marble Ridge chose to follow the "first-instance" administrative adjudication with the Tribunal. After receiving Notice of Violation 1516WA0006, Marble Ridge then attempted to exercise its rights to request a review of the facts of the violation be carried out by the Tribunal, pursuant to paragraph 9(2)(*c*) of the AMP Act.

[10] In reviewing the facts of the violation, the Tribunal must determine whether or not the person requesting the review committed a violation (paragraph 14(1)(*b*) of the AMP Act). The Tribunal is subject to, and guided by, Canadian administrative law and procedure in reviewing the facts of the violation. Of course, parties who are in turn dissatisfied with the Tribunal's decision have the opportunity to seek judicial review of that decision before the Federal Court of Appeal (FCA).

[11] 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. Absolute bars to admissibility arise when the applicant has already paid the penalty attached to the Notice of Violation or has failed to file its Request for Review within the prescribed time and manner set out in the AMP Act and AMP Regulations.

[12] Subsection 11(2) 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 the facts of a violation before the Tribunal:

> ***11.*** *...(2) Where a person named in a notice of violation that contains a penalty requests, pursuant to subsection 9(2) of the Act, a review of the facts of the violation by the Minister or the Tribunal or, if the penalty is $2,000 or more, to enter into a compliance agreement with the Minister, the request shall be made in writing within 30 days after the day on which the notice is served.*
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> *...*
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> ***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.*

[13] The FCA has interpreted these provisions very strictly as not permitting the delivery of a request for review by regular mail. In *Re: Section 14 of the* AMP Regulations, *SOR/2000-187*, 2012 FCA 130, the FCA 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.*
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> *[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.*
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> *[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. ...*

[14] This scenario is precisely the situation that Marble Ridge finds itself with respect to the filing of its Request for Review to the Tribunal to review the facts of the violation. The statutory deadline for Marble Ridge to deliver its request for review by a permitted method was 30 days after the date of service of the Notice of Violation. Marble Ridge was served on June 6, 2015. Therefore, the last day on which Marble Ridge could meet the 30-day limit to file its Request for Review with the Tribunal in time, would be to have filed it on or before Monday, July 6, 2015.

[15] The first communication received by the Tribunal from Marble Ridge, while within the required 30-day limit for filing a request for review, was unfortunately sent by regular mail. That letter was dated June 26, 2015, and received by the Tribunal on July 3, 2015. According to the law set out in *Re: Section 14 of the* AMP Regulations, *SOR/2000-187*, 2012 FCA 130, this letter does not meet the requirements of the AMP Act and AMP Regulations, and thus, does not constitute a valid filing of a request for review.

[16] Marble Ridge's second communication, although sent by registered mail date-stamped by Canada Post on July 17, 2015, on the other hand, does not constitute a valid filing of a request for review because it is outside the 30-day limit for filing.

[17] This may appear as a harsh and unfair result, but given the strict interpretation of the applicable rules by the FCA, Marble Ridge's Request for Review is not admissible as it was not filed within the required statutory period by a permitted mode of delivery.

[18] Therefore, as Marble Ridge's first letter was not filed by one of the permitted methods of transmission and its second letter was not filed within the permitted deadline, there is no valid request for review from Marble Ridge before the Tribunal. Unfortunately in both instances, Marble Ridge has failed to meet the prescribed time and manner of filing requirements set out the AMP Act and AMP Regulations. This is a failure which cannot now be remedied either by the Tribunal or by Marble Ridge, given the interpretation advanced by the FCA in the case of *Re: Section 14 of the* AMP Regulations, *SOR/2000-187*, 2012 FCA 130 cited above.

[19] As a result, the Tribunal finds Marble Ridge's Request for Review to the Tribunal inadmissible. By law then, Marble Ridge is deemed to have committed the violation indicated in Notice of Violation 1516WA0006 dated December 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.*

[20] 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.

[21] 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 complaints from Canadians against its actions or officers as set out in the Agency's "Statement of Rights and Service for Producers, Consumers and Other Stakeholders", which is available on the Agency's website.

[22] 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, Marble Ridge 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.

[23] The Tribunal wishes to inform Marble Ridge that this violation is not a criminal offence. After five years, Marble Ridge will be entitled to apply to the Minister of Agriculture and Agri-Food 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*
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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, on this 31st day of July, 2015.

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Don Buckingham, Chairperson