

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: *Adebogun v. Canada (Minister of Public Safety and Emergency Preparedness)*,
2015 CART 24

Date: 20151125
Docket: CART/CRAC-1867

BETWEEN:

Olukayode Adebogun, Applicant

- and -

Minister of Public Safety and Emergency Preparedness, Respondent

BEFORE: Chairperson Donald Buckingham

**WITH: Olukayode Adebogun, self-represented
Melanie A. Charbonneau, representative for the respondent**

In the matter of a request made by the applicant, pursuant to section 13 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review by the Tribunal of the Minister's decision CS-70383 dated September 14, 2015, holding that the applicant violated section 40 of the *Health of Animals Regulations*.

DECISION

The Canada Agricultural Review Tribunal ORDERS that the request for a review of decision CS-70383 of the Minister of Public Safety and Emergency Preparedness dated September 14, 2015, filed by the applicant on October 5, 2015, pursuant to section 13 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, IS INADMISSIBLE, and, pursuant to this order, IS DISMISSED.

By written submissions only.

OVERVIEW

[1] Olukayode Adebogun (Mr. Adebogun) has requested that the Canada Agricultural Review Tribunal (Tribunal) review and set aside decision CS-70383 of the Minister of Public Safety and Emergency Preparedness (Minister's decision). The Minister's decision held that Mr. Adebogun had imported 27 x 90 gram bags of spicy beef snacks from Nigeria without meeting the prescribed legal requirements for such importation and as a result, the Canada Border Services Agency (Agency) validly issued a Notice of Violation with a penalty of \$800 to Mr. Adebogun.

[2] For this request to be admissible Mr. Adebogun must meet the admissibility threshold set out in the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act), the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Regulations) and the *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)* (Tribunal Rules).

[3] The sole issue in the case, then, is whether Mr. Adebogun has met this admissibility threshold.

REASONS FOR INADMISSIBILITY OF REQUEST

Background

[4] The Agency issued Notice of Violation YQR-13-0001 to Mr. Adebogun for allegedly importing meat products into Canada without meeting the prescribed legal requirements for such importation.

[5] Mr. Adebogun challenged this Notice of Violation by asking the Minister to review the facts of the Notice of Violation.

[6] The Minister issued his decision on September 14, 2015, upholding the Agency's issuance of the Notice of Violation, and communicated that result to Mr. Adebogun.

[7] On October 5, 2015, Mr. Adebogun sent a letter by fax to the Tribunal requesting that the Tribunal review and set aside the Minister's decision. Mr. Adebogun couriered the same material to the Tribunal on October 15, 2015.

[8] In an email dated November 3, 2015, the Agency provided proof to the Tribunal that the Minister's decision had been served on Mr. Adebogun on September 17, 2015, and stated that the \$800 penalty payable by Mr. Adebogun under the Notice of Violation had not been paid.

Issue

[9] There is only one issue in this case: Did Mr. Adebogun meet the admissibility threshold to allow the Tribunal to consider his request for review?

Analysis

[10] The AMP Act, the AMP Regulations and the Tribunal Rules require that the Tribunal make a decision on the admissibility of an applicant's request for review before proceeding to a full hearing on the matter.

[11] Bars to admissibility arise where the applicant: (1) has already paid the penalty attached to the Notice of Violation; (2) has failed to file a Request for Review within the prescribed time and manner; or (3) has failed to provide any permissible reason or possible grounds for success for the Tribunal to review a Minister's decision. In this case, Mr. Adebogun's request for review fails on the second ground.

[12] Subsections 13(a) and 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;

...

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 Federal Court of Appeal (FCA) has interpreted these provisions very strictly. For example, it has firmly held that a request for review filed with the Tribunal by regular mail is not a permitted mode of the delivery of a request for review (see *Reference re section 14 of the Agriculture and Agri-Food Administrative Monetary Penalties Regulations, SOR/2000-187*, 2012 FCA 130, at paragraphs 22 to 25).

[14] As well, the time limits for filing a request for review, as set out in the AMP Act and AMP Regulation cannot be extended by the Tribunal (see *Clare v. Canada (Attorney General)* 2013 FCA 265 (*Clare*)). The FCA in that case stated that "... the Tribunal was correct in

deciding that it did not have the jurisdiction to provide relief to soften the strict application of the provisions found in the AAAMP Act and AAAMP Regulations” (at paragraph 24).

[15] This scenario is precisely the situation that Mr. Adebogun finds himself in with respect to the filing of a Request for Review to the Tribunal to review the Minister’s decision. The statutory deadline for Mr. Adebogun to deliver a request for review by a permitted method was 15 days after the date of service of the Minister’s decision. Mr. Adebogun was served on September 17, 2015. Therefore, the last day on which Mr. Adebogun could meet the 15-day limit to file a Request for Review with the Tribunal in time, would be to have filed it on or before Friday, October 2, 2015.

[16] Unfortunately, the first communication received by the Tribunal from Mr. Adebogun was the fax sent by him and received by the Tribunal on October 5, 2015, a day which fell beyond the 15-day limit for filing a request for review, and thus, does not constitute a valid filing of a request for review.

[17] Therefore, while it may appear harsh and even unfair, given the required strict interpretation of the applicable rules, Mr. Adebogun’s Request for Review is not admissible, as it was not filed within the required statutory period. This is a failure which cannot now be remedied either by the Tribunal or by Mr. Adebogun, given the interpretation advanced by the FCA in the *Clare* case, cited above.

Disposition

[18] The Tribunal therefore orders that Mr. Adebogun’s Request for Review of the Minister’s Decision CS-70383 is inadmissible. By law then, Mr. Adebogun is deemed to have committed the violation indicated in Notice of Violation YQR-13-0001 and the penalty amount of \$800 is now due and owing to the Agency. 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.

[19] Agency officers must protect 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 officers must exercise these duties diligently, respectfully and responsibly. Agency officers have some discretion in how they deal with travellers found to have undeclared products in their possession. In some circumstances, a verbal warning or a notice of violation combined with a warning issued under the AMP Act might be a fairer,

kinder and more compassionate measure than a notice of violation combined with a penalty.

[20] However, the Tribunal's role is not to review the procedure or remedy chosen by the Agency against the person who committed the violation. The Tribunal is aware that the Agency has its own procedure for reviewing complaints from Canadians against its actions or officers, as set out under the section entitled "Compliments, Comments and Complaints" on the Agency's website.

[21] The Tribunal wishes to inform Mr. Adebogun that this violation is not a criminal offence. After five years, Mr. Adebogun is 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.

Dated at Ottawa, Ontario, on this 25th day of November, 2015.

Dr. Don Buckingham, Chairperson