



Citation: *Pelletier v. Canada (Minister of Public Safety and Emergency Preparedness)*,
2015 CART 26

Date: 20151207
Dossier: CART/CRAC-1869

BETWEEN:

Martin Pelletier, Applicant

- and -

Minister of Public Safety and Emergency Preparedness, Respondent

[Translation of the official version in French]

BEFORE: Chairperson Donald Buckingham

**WITH: Martin Pelletier, self-represented
Melanie A. Charbonneau, representative for the respondent**

In the matter of an application 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-75790 dated September 28, 2015, holding that the applicant has violated section 34 of the *Health of Animals Regulations*.

DECISION

The Canada Agricultural Review Tribunal ORDERS that the request for a review of decision CS-75790 of the Minister of Public Safety and Emergency Preparedness dated September 28, 2015, filed by the applicant 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] Martin Pelletier (Pelletier) has requested that the Canada Agricultural Review Tribunal (Tribunal) review and set aside decision CS-75790 of the Minister of Public Safety and Emergency Preparedness (Minister's decision). The Minister's decision held that Pelletier had imported two bags containing dairy products from Peru, without complying with the statutory requirements for that type of import, and as a result, the Canada Border Services Agency (Agency) validly issued a Notice of Violation with a penalty of \$800 to Pelletier.

[2] For this request to be admissible, Pelletier 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 Regulations* (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 Pelletier has met this admissibility threshold.

REASONS FOR DECISION ON INADMISSIBILITY

Background

[4] The Agency issued a Notice of Violation 3125-15-0073 to Pelletier for allegedly importing dairy products into Canada, without complying with the statutory requirements for that type of import.

[5] Pelletier 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 28, 2015, upholding the Agency's issuance of the Notice of Violation, and communicated that result to Pelletier.

[7] On October 9, 2015, the Tribunal received a letter from Pelletier by regular mail requesting that the Tribunal review the Minister's decision.

[8] In emails dated October 20 and 21, 2015, and November 20, 2015, Pelletier provided the Tribunal with additional information. Pelletier also sent additional information to the Tribunal by registered mail on November 13, 2015.

[9] In an email dated October 26, 2015, the Agency provided the Tribunal with evidence that the Minister's decision had been served on Pelletier on October 2, 2015, and informed the Tribunal that the \$800 penalty payable by Pelletier under the Notice of Violation had not been paid.

Issue

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

Analysis

[11] 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.

[12] 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, Pelletier's Request for Review fails on the second ground.

[13] 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.

[14] The Federal Court of Appeal (FCA) has interpreted these provisions very strictly. First of all, it has held unequivocally that regular mail is not a permitted mode of delivery for the filing of a request for review of a Minister's decision before the Tribunal (see Reference re section 14 of the Agriculture and Agri-Food Administrative Monetary Penalties Regulations, 2012 FCA 130 (Reference re section 14), at paragraphs 22 to 25).

[15] Second, the Tribunal does not have the jurisdiction to extend the deadlines prescribed in the AMP Act and Regulations for filing a request for review (see *Clare v. Canada (Attorney General)*, 2013 FCA 265 (*Clare*)). The FCA held in *Clare* that "[t]hus 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).

[16] This scenario is precisely the situation that Pelletier is in with respect to the filing of a Request for Review to the Tribunal to review the Minister’s decision. The statutory deadline for Pelletier to deliver a request for review by a permitted method was 15 days after the date of service of the Minister’s decision. Pelletier was served on October 2, 2015. Therefore, the last day on which Pelletier 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 Saturday, October 17, 2015, which deadline is extended to the next business day, Monday, October 19, 2015.

[17] The first communication received by the Tribunal from Pelletier, while within the required 15-day limit for filing a request for review, was unfortunately sent by regular mail. That letter was undated, but was received by the Tribunal on October 9, 2015. According to the law set out in the *Reference re section 14* case, 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.

[18] The subsequent communications from Pelletier, sent by email on October 20 and 21, 2015, and November 20, 2015, and by registered mail on November 13, 2015 (all permitted modes of delivery for filing a request), do not constitute a valid filing of a request for review either, because they were not sent within the 15-day limit to file a request.

[19] Therefore, while it may appear harsh and even unfair, given the strict interpretation of the applicable rules by the FCA, Pelletier’s Request for Review is not admissible, as it was not filed within the required statutory period by a permitted mode of delivery.

[20] Consequently, because the first letter from Pelletier was not delivered by one of the permitted modes of delivery and the subsequent communications were not filed within the required period, the Tribunal did not receive a valid filing of a request for review. Unfortunately, Pelletier failed to comply with the deadline or mode of delivery required by the AMP Act and AMP Regulations. This is a failure which cannot now be remedied either by the Tribunal or by Pelletier, given the interpretation advanced by the FCA in the *Reference re section 14* case, cited above.

Disposition

[21] The Tribunal therefore orders that Pelletier’s Request for Review of the Minister’s Decision CS-75790 is inadmissible. By law then, Pelletier is deemed to have committed the violation indicated in Notice of Violation 3125-15-0073, 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.

[22] 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 and AMP Regulations might be a fairer, more compassionate and kinder measure than a notice of violation combined with a penalty.

[23] However, the Tribunal's role is not to review the procedure or the 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.

[24] The Tribunal wishes to inform Pelletier that this violation is not a criminal offence. After five years, Pelletier 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 7th day of December, 2015.

Dr Don Buckingham, Chairperson