

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: *Azeb v. Canada (Canada Border Services Agency)*, 2015 CART 27

Date: 20151211
Docket: CART/CRAC-1862

BETWEEN:

Bogale Azeb, Applicant

- and -

Canada Border Services Agency, Respondent

BEFORE: Chairperson Donald Buckingham

**WITH: Bogale Azeb, 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 subsection 16(1) of the *Health of Animals Act*, alleged by the respondent.

DECISION

The Canada Agricultural Review Tribunal ORDERS that the application for a review of Notice of Violation 7011-15-0419 dated September 5, 2015, requested by the applicant, Bogale Azeb, 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 subsection 16(1) of the *Health of Animals Act*, IS INADMISSIBLE and, pursuant to this order, IS DISMISSED.

By written submissions only.

OVERVIEW

[1] Bogale Azeb (Ms. Azeb) has requested that the Canada Agricultural Review Tribunal (Tribunal) review the facts surrounding the issuance of a notice of violation with a penalty of \$1,300 by the Canada Border Services Agency (Agency) because she allegedly failed to present to Agency officials some chicken that she imported upon her arrival into Canada.

[2] For her request to be admissible, Ms. Azeb must meet the admissibility threshold of offering some permissible basis on which she might succeed in this matter before the Tribunal.

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

REASONS FOR INADMISSIBILITY OF REQUEST

Background

[4] The Agency issued Notice of Violation 7011-15-0419, dated September 5, 2015, to Ms. Azeb for failing to present to Agency officials upon her arrival into Canada some chicken and spices that she imported, an action that the Agency alleges is contrary to subsection 16(1) of the *Health of Animals Act* (HA Act). The alleged violation is classified as a “very serious violation” under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AMP Regulations), for which the mandated penalty is \$1,300.

[5] On September 5, 2015, the Agency served Ms. Azeb in person with the Notice of Violation.

[6] In a one-page letter dated September 27, 2015, sent by registered mail on September 28, 2015, Ms. Azeb requested that the Tribunal review the facts of the Notice of Violation (Request for Review). In order to maintain her rights to launch a Request for Review under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act), Ms. Azeb did not pay the assessed penalty.

[7] By letter dated September 30, 2015, the Tribunal requested that Ms. Azeb provide, on or before October 15, 2015, all necessary information as required by section 31 of the *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)* (Tribunal Rules), to assist the Tribunal in making its determination of the admissibility of Ms. Azeb’s Request for Review. A copy of the Tribunal Rules was attached to the letter.

[8] The Tribunal received no additional materials from Ms. Azeb by the October 15, 2015 date. Therefore, on November 20, 2015, the Tribunal sent Ms. Azeb a second letter asking her to provide further details of the September 5, 2015 incident to support her claim for the invalidity of the Notice of Violation that she is challenging. The

Tribunal informed Ms. Azeb in that letter that if she failed to file any additional information on or before November 26, 2015, that her Request for Review risked being found inadmissible and would be dismissed by the Tribunal.

[9] The Tribunal received no additional documentation from Ms. Azeb before the November 26, 2015 deadline and has received nothing from her since that date.

Issue

[10] There is only one issue in this case: Did Ms. Azeb meet the Tribunal's admissibility threshold of offering some permissible basis on which she might succeed in this matter?

Analysis and Applicable Law

[11] The AMP Act, the AMP Regulations and the Tribunal 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 Review. 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; (3) has failed to provide any permissible reason for the Tribunal to review the Agency's decision.

[12] Permissible reasons would include any information provided by the applicant that the alleged violation did not occur or that the person named in the notice of violation is not the person who committed the violation.

[13] Non-permissible defences include those specifically excluded under the AMP Act: that the applicant tried not to commit the violation (due diligence); or, that the applicant was mistaken about the facts that led to committing the violation (mistake of fact).

[14] In the present case, the Tribunal has, on at least two occasions, explained to Ms. Azeb 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. Ms. Azeb was also informed of the consequences should she fail to provide details as to why she claimed the Notice of Violation was unproven.

[15] However, in her sparse correspondence with the Tribunal, Ms. Azeb has provided the Tribunal with the following reasons for her request for review: (1) she did bring back traditional foods from "home" into Canada on the trip in question; (2) she noted that this trip had been a most difficult time for her as she had just lost her mother a few days before her departure; (3) her mother-in-law had packed her luggage; (4) she didn't know she had any food in her luggage; (5) she sincerely apologizes for causing the Agency any extra work; and (6) she requests that the Tribunal drop all the charges because she is a mother of two kids and she does not have money to pay the fine.

[16] Providing no reasons to support one's request has been held by this Tribunal as a bar to admissibility (see *Wilson v. Canada (Canadian Food Inspection Agency)*, 2013 CART 25 (*Wilson*), at paragraph 12). To permit a request for review to proceed to a full hearing without any reasons, or only on the basis of non-permissible reasons, would run counter to the objectives of fairness and efficiency of the AMP system (*Wilson*, at paragraph 10).

[17] When the reasons provided by the applicant for a request for review do not reveal any possible basis on which the applicant could succeed, then the Tribunal will declare the request for review inadmissible (see *Steele v. Canada (Canada Border Services Agency)*, 2015 CART 12, at paragraph 14).

[18] While Ms. Azeb has provided some information in her correspondence to the Tribunal, none of that information reveals a basis on which she could possibly succeed in her request to have the Tribunal rule that the alleged violation was not committed.

[19] When the Agency alleges a violation of subsection 16(1) of the HA Act, it must prove three essential elements, each on a balance of probabilities:

- Element 1 – Ms. Azeb is the person who committed the violation;
- Element 2 – Ms. Azeb imported an animal or thing into Canada; and
- Element 3 – Ms. Azeb failed to present that animal or thing to an Agency officer before secondary inspection;

[20] Where the Agency meets its burden of establishing all the elements of the violation, on a balance of probabilities, the applicant will be held liable for a violation under the AMP system. There is nothing in the submissions from Ms. Azeb to raise any question as to the establishment by the Agency, on a balance of probabilities, of these three elements.

[21] Not knowing that she was importing chicken that she alleges her mother-in-law placed in her luggage is not a permissible reason to invalidate a Notice of Violation (see *Canada Border Services Agency v. Castillo*, 2013 FCA 271, at paragraph 24).

[22] Taking all precautions not to import meat, or not knowing that the product was meat would not be permissible defences. When an AMP provision has been enacted for a particular violation, as is the case for subsection 16(1) of the HA Act, 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 Ms. Azeb that would amount to a permitted defence under section 18 of the AMP Act.

[23] Hence, the Tribunal declares Ms. Azeb's Request for Review of the Notice of Violation 7011-15-0419 inadmissible, as from the materials filed by the parties pursuant to sections 30 and 31 of the Tribunal Rules, no reasons are presented upon which Ms. Azeb could possibly succeed to substantiate her request.

[24] Ms. Azeb specifically asked that the Tribunal to "drop all the charges". Violations under the HA Act are listed in Schedule 1, Part 1, Division 1 of the AMP Regulations. The classification, or severity, to be attributed by enforcement agencies and this Tribunal to a violation of subsection 16(1) of the HA Act is "very serious". Neither the Agency nor the Tribunal has any jurisdiction to choose the classification or the degree of seriousness of a violation. This is dictated by statute, more specifically the AMP Regulations, with respect to each violation. Anyone who at any time or in any circumstance violates subsection 16(1) of the HA Act commits the same violation with the same classification: a very serious one.

[25] Furthermore, the Tribunal cannot vary the penalty imposed in this case based on circumstantial, humanitarian or financial grounds. The Tribunal's power to grant a remedy comes from its enabling statutes. According to these statutes, the Tribunal does not have the mandate to set aside or dismiss a notice of violation on circumstantial, humanitarian or financial grounds, nor is it empowered to do so.

Disposition

[26] The Tribunal therefore orders that Ms. Azeb's Request for Review of Notice of Violation 7011-15-0419 is inadmissible. Furthermore, by operation of subsection 9(3) of the AMP Act, Ms. Azeb is deemed to have committed the violation indicated in the Notice of Violation and the penalty amount of \$1,300 is now due and owing to the Agency.

[27] Undoubtedly, the AMP Act and AMP Regulations that establish the AMP system for agriculture and agri-food violations often call for severe, inflexible consequences that can seem unfair, as in this situation. A penalty of \$1,300 is difficult to face for a mother with two children living on a limited income.

[28] Ms. Azeb could contact the Agency's representatives to find out whether they can agree to set up a payment schedule or another kind of payment agreement to pay the penalty.

[29] 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's 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 measure than a notice of violation combined with a penalty.

[30] However, the Tribunal's role is not to review the procedure or civil 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 at the Agency's website under the title "Compliments, Comments and Complaints" which is available on the Agency's website.

[31] The Tribunal wishes to inform Ms. Azeb that this violation is not a criminal offence. After five years, she 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 11th day of December, 2015.

Dr. Don Buckingham, Chairperson