



Citation: *TransVol Ltée v. Canada (Minister of Agriculture and Agri-Food)*, 2016 CART 7

Date: 20160308
Docket: CART/CRAC-1833

Between:

TransVol Ltée, Applicant

- and -

Minister of Agriculture and Agri-Food, Respondent

[Translation from the official version in French]

Before: Chairperson Donald Buckingham

**With: Mr. Yvan Cloutier, representative for the applicant; and
Ms. Pascale-Catherine Guay, counsel 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 the Minister's decision dated May 27, 2015, upholding Notice of Violation 1213QC0031 issued by the Canadian Food Inspection Agency for a violation committed by the applicant of subsection 140(1) of the *Health of Animals Regulations*.

DECISION

Following a review of the decision of the Minister of Agriculture and Agri-Food and the reasons for that decision issued May 27, 2015, and following an oral hearing and a review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal, by order, CONFIRMS the decision of the Minister. As a result, the monetary penalty of \$7,800 is payable by TransVol Ltée to the Canadian Food Inspection Agency under Notice of Violation 1213QC0031 within thirty (30) days after the day on which this decision is served.

Hearing held in Quebec City, QC,
on Wednesday, December 2, 2015.

OVERVIEW

[1] This case is about whether the Canada Agricultural Review Tribunal (Tribunal) should confirm, vary or set aside a decision of the Minister of Agriculture and Agri-Food Canada (Minister's Decision) dated May 27, 2015, finding against TransVol Ltée (TransVol).

[2] The Minister's Decision holds that on the basis of Canadian Food Inspection Agency (Agency) officials finding one cage containing 20 chickens in a truckload of 748 cages holding a total of 7,480 chickens, TransVol, the loader of the cages, contravened subsection 140(1) of the *Health of Animals Regulations* (HA Regulations) and was validly issued a Notice of Violation with Penalty of \$7,800.

[3] TransVol does not contest the fact that the cage was found on a truck, but rather it alleges that the particular cage in question was not filled or loaded onto the truck by its employees.

[4] A violation of the subsection 140(1) of the HA Regulations requires that the Minister be convinced that the Agency has proved each of the elements of the violation, on the balance of probabilities. TransVol must have loaded the cage of 20 chickens and done so in such a manner which was likely to cause the chickens undue suffering.

[5] The sole issue in this case is whether on the record before the Tribunal, the Minister erred in his finding that the Agency has proven all the necessary elements of the violation and, as a result, sustained the Notice of Violation with Penalty.

REASONS

1. Background

[6] TransVol operates a chicken catching service in Québec.

[7] On March 8 and 9, 2012, employees of TransVol attended the Dion Aviculture inc. (Dion) farm in St-Raymond, Quebec and loaded chickens from that farm onto trucks owned by L. Bilodeau & Fils Ltée. (Bilodeau), a third party. Once loaded onto the trucks, TransVol had not further interaction with the chickens. It was the employees of Bilodeau who delivered the chickens to the Exceldor slaughter house in St-Anselme, Quebec, a voyage taking a little more than an hour.

[8] TransVol employees caught the chickens from the Dion farm. They placed them into cages which were then loaded onto the trucks for transport to the slaughter house. One load of chickens loaded by TransVol employees on March 8 and 9, 2012, was recorded as consisting of 7,340 birds loaded into 734 cages filled with 10 birds each and 14 additional cages on the truckload left empty.

[9] As the chickens were being unloaded, employees of Exceldor found 48 dead chickens among the load of 7,340 birds. Most curiously though, Exceldor found one of the 734 cages filled with 20 chickens rather than 10. The evidence on the record shows that the state of health of chickens in this cage was not good. Among the 20 chickens, 6 were dead and several others were in poor health. The mystery of this case is who filled this cage and who loaded it onto the truck for transport.

[10] Finding the dead chickens, employees of Exceldor called Agency inspectors to investigate, and after completing their investigation, the Agency issued TransVol a Notice of Violation, alleging that on March 9, 2012, at St-Raymond, Quebec, TransVol was responsible for the following action: *[TRANSLATION]* “Overloaded or caused to be overloaded a vehicle contrary to section 140(1) of the *Health of Animals Regulations*”. The Notice of Violation 1213QC0031 was dated June 3, 2013, and was deemed served on TransVol on June 13, 2013. The Notice of Violation indicated that this was a serious violation with a penalty of \$7,800.

[11] By letter dated June 12, 2013, TransVol challenged the validity of the Notice of Violation by requesting a review of it to be completed by the Minister of Agriculture and Agri-Food (Minister) pursuant to paragraph 9(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act). To protect its rights to file a request for review, TransVol did not pay the assessed penalty.

[12] On May 27, 2015, the Minister, pursuant to subsection 13(1) of the AMP Act, issued his decision upholding the violation. The Minister’s Decision was deemed served on TransVol on June 14, 2015.

[13] By letter sent to the Tribunal by courier on June 15, 2015 (Request for Review of the Minister’s Decision), TransVol challenged the Minister’s Decision as it is permitted to do under the provisions of the 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).

[14] The Tribunal is now tasked with whether it should confirm, vary or set aside the Minister’s Decision of May 27, 2015.

2. Applicable Law and Standard of Review

[15] The Tribunal is an expert and independent body constituted by Parliament pursuant to the *Canada Agricultural Products Act*, R.S.C., 1985, c. 20 (4th Supp.) (CAP Act) and its jurisdiction consists of responding to requests to review matters arising from the issuance of agriculture and agri-food administrative monetary penalties. (*Hachey Livestock Transport Ltd. v. Minister of Agriculture and Agri-Food*, 2015 CART 19, at paragraphs 12 to 16).

First-Instance Reviews of Notices of Violations

[16] The AMP Act establishes a dual track procedure for challenging a notice of violation—either to the Minister (subsection 8(1) and paragraph 9(2)(b) of the AMP Act) or to the Tribunal (subsection 8(1) and paragraph 9(2)(c) of the AMP Act).

[17] In subsection 13(1) and paragraph 14(1)(b) of the AMP Act, Parliament uses the same language for both the Minister and the Tribunal with respect to conducting a first-instance review.

[18] The AMP Act does not detail the process by which the Minister or the Tribunal is to review the facts of the violation. Parliament requires, however, that in either case, the Minister or the Tribunal be guided by section 19 of the AMP Act as follows:

19. In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice.

[19] Furthermore in *Doyon v. Canada (Attorney General)*, 2009 FCA 152 (*Doyon*), the Federal Court of Appeal held that, in addition to establishing the identity of the person committing the violation, the Minister must prove all essential elements of the violation in order for a notice of violation to be sustained. While the alleged violation under examination, in that case, was not the same one as under examination in this case, the principle of “essential elements” is equally applicable to all violations enforced under the AMP Act (*Doyon* at paragraph 42).

Tribunal’s Review of a Minister’s Decision

[20] The AMP Act provides for an administrative or appellate review to the Tribunal of a first-instance decision made by the Minister (subsection 12(2) and paragraph 13(2)(b) of the AMP Act).

[21] Powers given to the Tribunal by Parliament in conducting this exercise are set out in paragraph 14(1)(a) of the AMP Act, “*After concluding a review requested under this Act, the Tribunal shall, by order, as the case may be, (a) confirm, vary or set aside any decision of the Minister ...*”. As such, the Tribunal performs a function not as a decision-maker of first instance or as a court conducting a judicial review, but rather as a specialized or appellate administrative tribunal reviewing an administrative decision of first instance.

[22] Although the AMP Act provides for a review, as well as possible remedies, it does not specify the type of review to be conducted by the Tribunal. This Tribunal has held that relevant legislation and jurisprudence favours that the Tribunal apply a “*de novo*” type of administrative appellate review of a minister’s decision under the AMP Act (see *Hachey* at paragraphs 28 to 50).

[23] The appropriate type of review for the Tribunal to employ is to complete a *de novo* examination of the facts and draw its own factual and legal conclusions with little or no required deference to the findings, reasoning and conclusion as contained in the Minister's Decision of May 27, 2015.

[24] A *de novo* examination of the facts does not require the Tribunal to ask the parties to present anew the evidence in this case. It does, however, require the Tribunal to fully examine and consider the evidence presented, its relevance and weight, the factual findings made by the Minister and additional factual findings, if any, that are required to be made for the resolution of the case. The Tribunal must also apply the appropriate law to the factual findings of the case to determine if the decision of the Minister should be confirmed, varied or set aside.

3. Analysis

[25] The evidence provided by the parties, with respect to most aspects of the factual record, was not in dispute.

[26] The parties agree on the following facts:

- On March 8 and 9, 2012, employees of TransVol attended the Dion farm. TransVol employees caught chickens at the Dion farm by hand. They placed them into cages, and then loaded the cages onto trucks owned and operated by Bilodeau for transport to the slaughter house.
- One of the truckloads of chickens, loaded by TransVol employees, was recorded as consisting of 7,340 birds loaded into 734 full cages (with 10 birds in each) and 14 empty cages.
- Once loaded onto the trucks, TransVol had not further interaction with the chickens as employees of Bilodeau then delivered the chickens to the Exceldor slaughter house.
- When the chickens were unloaded, employees of Exceldor found 48 dead chickens among the load's 7,340 birds. The load was found to have one cage containing 20 chickens, rather than 10 as recorded on the load's bill of lading or as requested by the slaughter house Exceldor. The evidence on the record also shows that the state of health of the chickens in the cage of 20 was not good. Among the 20 chickens, 6 were dead and several others were in poor condition.
- The evidence was not in dispute that industry standards for the type of cage used and the type of weather occurring during the loading and transport of the this load of chickens would permit a maximum of 12 birds per cage to avoid overcrowding. The parties, in essence, do not dispute that having 20 chickens in

one crate would constitute overcrowding and would endanger the health of the birds contained therein.

[27] The Minister made similar findings of fact (paragraphs 7 to 12 of the Minister's Decision).

[28] Where the Minister's and TransVol's interpretation of the facts differ, is concerning the questions of who was responsible for placing the cage with 20 birds onto the truck at the Dion farm and how such persons did so.

[29] TransVol relies on certain facts that point to the one cage of 20 birds not being loaded by TransVol employees:

- there were 14 empty cages on the truck;
- there was only 1 cage that was overloaded;
- the overloaded cage was near the back of the load and would therefore have been loaded at the very end of loading;
- it is impossible to cram 20 chickens weighing 2.37 kg into the type of cage used in this case and some of the chickens must have been culled and weighed far less than 2.37 kg; and
- some of the dead chickens in the cage of 20 showed signs that they had been dead prior to when the loading occurred.

[30] Arguments cited by TransVol to support its theory that the cage of 20 chickens was not loaded by employees of TransVol are:

- TransVol employees are trained and strictly instructed never to exceed cage loading limit guidelines;
- TransVol employees would refuse to load underweight cull chickens or dead chickens into a cage for transport to the slaughter house;
- it is not in the economic interests of TransVol to overload chickens or to load dead chickens as TransVol only receives payment for live chickens delivered to the slaughter house;
- it is not in the economic interests of TransVol employees to overload chickens or to load dead chickens as to do so would jeopardize their receiving TransVol's performance bonuses for failing to meet the company's weekly quality standards bonuses; and

- it would, however, be in the economic interest of the producer to overload chickens or to load dead chickens because once they are on the truck, the producer gets paid for the chickens dead or alive.

[31] The Minister found that there was insufficient, if any, evidence to support a finding that someone other than TransVol employees loaded the entire load of chickens in question, including the one cage which contained 20 chickens. The Minister considered the evidence and arguments of TransVol and rejected the TransVol argument that someone other than their employees loaded the cage of 20 chickens (paragraphs 13 to 19 of the Minister's Decision).

[32] Having reviewed all the evidence, I agree with the Minister's conclusion.

[33] The clear evidence is that TransVol had the contractual obligation to fill and load the chickens from the Dion farm into the Bilodeau trucks. Its employees did so.

[34] There is very little evidence, only conjecture, speculation and hunches, that anyone other than TransVol employees filled and loaded the cage of 20 chickens onto the load destined for Exceldor slaughter house on March 9, 2012. There is insufficient, if any, evidence that other persons were present during the loading of the chickens, that other persons filled and loaded the cages, or even that other persons were communicating with TransVol employees or the Bilodeau driver during the night in question. Like the Minister, I find that on a balance of probabilities, the Agency has proven that it was more probable that the employees of TransVol, rather than someone else, filled and loaded the entire load of chickens from the Dion farm, including the one cage of 20 chickens.

[35] Given this particular provision of the HA Regulations, the Minister was required to prove the animals on this load were "likely" to be injured or unduly suffer because of overcrowding. The Tribunal is satisfied that the Agency has produced sufficient evidence to prove this assertion. The evidence of TransVol is insufficient to rebut this assertion even though the arguments of TransVol do raise some doubts as to why TransVol employees would overload cages.

[36] With respect to the amount of the penalty assessed by the Minister in this case, I find that the base amount and the augmentation to \$7,800 are justified in law and should not be varied.

4. Conclusion

[37] The Minister's Decision of May 27, 2015, is confirmed as the Minister:

- i. made findings of fact necessary to determine that TransVol committed the violation;

- ii. properly applied the law with respect to defining the elements necessary to substantiate a violation of paragraph 140(1) of the HA Regulations; and
- iii. assessed the penalty appropriately in this matter.

[38] Therefore, as the Tribunal confirms the decision of the Minister, the monetary penalty of \$7,800 is now payable by TransVol Ltée to the Canadian Food Inspection Agency under Notice of Violation 1213QC0031 within thirty (30) days after the day on which this decision is served.

[39] This violation is not a criminal offence. After five years, TransVol 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 8th day of March, 2016.

Dr. Donald Buckingham, Chairperson