



Citation: *Aobuli v. Canada (Minister of Public Safety and Emergency Preparedness)*,
2016 CART 9

Date: 20160316
Docket: CART/CRAC-1840

BETWEEN:

Tuniyazi Aobuli, Applicant

- and -

Minister of Public Safety and Emergency Preparedness, Respondent

BEFORE: Chairperson Donald Buckingham

**WITH: Mr. Tuniyazi Aobuli, self-represented; and
Ms. Melanie Charbonneau, representative 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 Canada Agricultural Review Tribunal of the Minister's decision dated June 30, 2015, upholding Notice of Violation 3961-14-M-0069 issued by the Canada Border Services Agency for a violation committed by the applicant of section 40 of the *Health of Animals Regulations*.

DECISION

Following a review of the decision of the Minister of Public Safety and Emergency Preparedness and the reasons for that decision issued June 30, 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 \$800 is payable by Tuniyazi Aobuli to the Canada Border Services Agency under Notice of Violation 3961-14-M-0069 within thirty (30) days after the day on which this decision is served.

Hearing held in Montreal, QC
on Thursday, February 11, 2016.

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 Public Safety and Emergency Preparedness (Minister's Decision) dated June 30, 2015, finding against Tuniyazi Aobuli (Mr. Aobuli).

[2] The Minister's Decision holds that on the basis of Canada Border Services Agency (Agency) officials finding several meat-filled pastries in the luggage of Mr. Aobuli upon his return to Canada in February 2014, Mr. Aobuli contravened section 40 of the *Health of Animals Regulations* (HA Regulations) and was validly issued a Notice of Violation with a penalty of \$800.

[3] Mr. Aobuli does not contest that he imported the meat pastries, that he failed to declare them to Agency officials prior to secondary inspection of his luggage, or that he failed to have certificates or permits which would have allowed the importation. He maintains, however, that he did not understand the obligations imposed on him by Canadian law because he could not understand English or French.

[4] There are two issues raised in this case:

- i. whether, given the record before the Tribunal, the Minister erred in his finding that the Agency has proven all the necessary elements of the violation required to sustain the Notice of Violation with Penalty; and
- ii. whether Mr. Aobuli's language proficiency in either of Canada's official languages was so minimal that he has a defence to the commission of the violation.

REASONS

1. Background

[5] On February 9, 2014, at the Montreal airport, Agency officials inspected Mr. Aobuli's luggage and found four meat-filled pastries. The Agency alleged that Mr. Aobuli did not declare the meat-filled pastries on his Declaration Card. Nor did he orally declare them to the Agency inspector immediately upon disembarking his airplane, or to the Agency secondary inspector officer prior to their discovery during the secondary inspection. The Agency also alleges that Mr. Aobuli did not present any certificates or permits that would have permitted the importation of the meat-filled pastries into Canada.

[6] That same day, on the basis of the discovery of the meat-filled pastries, the Agency issued Mr. Aobuli Notice of Violation 3961-14-M-0069 with a penalty of \$800 for importing undeclared animal by-products, an act which violates section 40 of the HA Regulations.

[7] Two days later, Mr. Aobuli challenged the Notice of Violation by filing a request for review of the facts of the case to the Minister of Public Safety and Emergency Preparedness (Minister).

[8] The Minister, in his decision of June 30, 2015, upheld the Agency's action to issue a Notice of Violation with a penalty of \$800.

[9] Mr. Aobuli requested a review of the Minister's decision to this Tribunal on July 9, 2015.

2. Applicable Law and Standard of Review

[10] The essential elements for the commission of a violation of section 40 of the HA Regulations require that the Minister be convinced, on a balance of probabilities, that the Agency has proved that Mr. Aobuli:

- i. is the person who committed the violation; and
- ii. imported an animal by-product into Canada.

[11] Where the Agency meets its burden of proof, the applicant will be held liable for a violation under the AMP system, unless he can establish a defence or excuse permitted under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act), the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AMP Regulations), or as it pertains to this case, the HA Regulations.

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

[13] 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.

[14] 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).

[15] 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).

[16] 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 contained in the Minister's Decision of June 30, 2015.

[17] 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, to evaluate its relevance and weight, and to review factual findings made by the Minister, including additional factual findings, if any, that may be required 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

Issue #1: Did The Minister Err In His Finding That The Agency Has Proven All The Necessary Elements Of The Violation?

[18] The record shows that the following facts are not in dispute:

- On February 9, 2014, Mr. Aobuli entered Canada at Montreal coming from China via Turkey. He signed and completed the English side of the Agency Declaration Card and did not mark on that card that he was bringing any meat products into Canada.
- There is no evidence of any oral exchange between Mr. Aobuli and the Agency primary inspection officer that examined Mr. Aobuli's Declaration Card.
- Mr. Aobuli was referred to secondary inspection of his luggage. Prior to the inspection of his bags at secondary, Mr. Aobuli was asked if he had meat products and he responded "no". His bags were inspected and four meat-filled pastries were found.
- Mr. Aobuli indicated to the Agency secondary inspection officer, and admits in his submissions to the Minister and to the Tribunal, that he did not think he needed to declare the product as it was such a small amount.
- There is no evidence that Mr. Aobuli offered any certificates or licences to the Agency officials that would have permitted the importation of the meat-filled pastries.

[19] The Minister makes similar findings of fact (pages 1 and 2 of the Minister's Decision).

[20] Mr. Aobuli's representative, Mr. Sylvestre Babos (Mr. Babos) did not appear at the hearing but provided written submissions. However, nothing in those submissions suggest that Mr. Aobuli did not bring the four meat-filled pastries into Canada on February 9, 2014, nor that he failed to declare them before they were found by the Agency officer at secondary inspection.

[21] Therefore, I agree with the conclusion of the Minister with respect to his findings of fact necessary to determine that Mr. Aobuli committed the violation. I also agree that the Minister properly applied the law with respect to defining the elements necessary to substantiate a violation of section 40 of the HA Regulations.

Issue #2: Did Mr. Aobuli's Limited Language Proficiency In Canada's Official Languages Provide A Defence To His Committing The Violation?

[22] Mr. Aobuli alleges that "because of my limited language comprehension I did not fully understand questions asked by CBSA officer" (*verbatim* from Mr. Aobuli's Request for Review to the Tribunal). He suggests that his language comprehension of Canada's official languages is quite limited and that he requires assistance in written and oral communication in both French and English. I also note that in his Request for Review to the Minister, Mr. Aobuli requested interpretation services in the UYGHUR language. Mr. Babos argued that Mr. Aobuli was probably completely illiterate in French and English when he filled out his Declaration Card in February 2014, and likely wrote whatever a fellow passenger on the plane wrote on his Declaration Card. There is however, little, if any, evidence in the record to substantiate either of these claims.

[23] The Agency argues that the evidence does not show that Mr. Aobuli had a complete inability to appreciate the nature and consequences of his acts because of a difficulty in understanding French or English. The Agency also cites the case of *Mohammadian v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, [2001] 4 F.C. 85 for the proposition that, if such had been the case, Mr. Aobuli should have indicated he needed language assistance immediately to the Agency during primary and secondary inspection. He did not and now it is too late for him to raise such an issue.

[24] This Tribunal has considered the issue of an applicant's lack of understanding of an official language of Canada and its possible effect in mounting a defence under subsection 18(2) of the AMP Act (see *Abou-Latif v. Canada (Canada Border Services Agency)*, 2013 CART 35, at paragraphs 34 to 37).

[25] From the record and from listening to Mr. Aobuli at the hearing, I am convinced that his language proficiency in English is a work-in-progress. It is admirable to see new Canadians embracing language learning in order to integrate more fully into Canadian society. Still, the evidence provided by the Agency that Mr. Aobuli had a sufficient

knowledge of English is strong; he filled out his Declaration Card; he answered questions in English at secondary inspection; and presumably he also answered questions at primary inspection on February 9, 2014. There is also evidence given by Mr. Aobuli that he had at least a rudimentary proficiency in English; he submitted documentation to the Minister and to the Tribunal in English, albeit he says with the assistance of people from his community. Mr. Aobuli also provided basic oral submissions in English to the Tribunal on the day of the hearing of this matter.

[26] On the basis of the record and the hearing, I find that Mr. Aobuli's language proficiency in English on February 9, 2014, was not so inadequate as to convince me, on a balance of probabilities, that he has made out any defence to the violation permitted under subsection 18(2) of the AMP Act.

4. Disposition

[27] The Minister's Decision of June 30, 2015:

- i. made findings of fact necessary to determine that Mr. Aobuli committed the violation;
- ii. properly applied the law with respect to defining the elements necessary to substantiate a violation of section 40 of the HA Regulations; and
- iii. assessed the penalty appropriately in this matter.

[28] Therefore, the Tribunal confirms the decision of the Minister. As a result, the monetary penalty of \$800 is payable by Mr. Aobuli to the Canada Border Services Agency under Notice of Violation 3961-14-M-0069 within thirty (30) days after the day on which this decision is served.

[29] This violation is not a criminal offence. After five years, Mr. Aobuli 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 16th day of March, 2016.

Dr. Donald Buckingham, Chairperson