



Citation: *Patterson v. Canada (Minister of Public Safety and Emergency Preparedness)*,  
2017 CART 6

Date: 20170209  
Dockets: CART/CRAC-1932

**BETWEEN:**

**Mark Patterson,**

**APPLICANT**

**- and -**

**Minister of Public Safety and Emergency Preparedness,**

**RESPONDENT**

**BEFORE: Chairperson Donald Buckingham**

**WITH: Mr. Michael Dibua, counsel for the Applicant; and  
Sherri-Lynn Foran and Michèle Hobbs, representatives for the  
Respondent**

In the matter of a request made by the applicant, pursuant to subsection 13(2) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review by the Tribunal of the Minister's Decision 16-01927 dated November 7, 2016, holding that the applicant on April 29, 2016, violated section 40 of the *Health of Animals Regulations*.

**DECISION**

**The Canada Agricultural Review Tribunal ORDERS that the application for a review of the Minister's Decision 16-01927 dated November 7, 2016, requested by the applicant, Mark Patterson, IS INADMISSIBLE and, pursuant to this order, IS DISMISSED.**

By written submissions only.

## **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) finding against Mark Patterson (Mr. Patterson) for importing beef and cheese patties without meeting the requirements to declare them to officers of the Canada Border Services Agency (Agency).

[2] The Minister's Decision, dated November 7, 2016, upholds Notice of Violation 4971-16-0718 issued to Mr. Patterson by the Agency on April 29, 2016, for events taking place on that date which constituted a violation of section 40 of the *Health of Animals Regulations* (HA Regulations).

[3] On November 14, 2016, Mr. Patterson requested that the Tribunal review the Minister's Decision.

[4] Mr. Patterson provided information in his request (Request for Review) why he believed the Minister's Decision of November 7, 2016, should not be confirmed by the Tribunal under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act).

[5] For his request to be admissible, Mr. Patterson must meet an admissibility threshold by offering some permissible basis on which he might succeed in the matter before the Tribunal.

[6] For the reasons that follow, I find Mr. Patterson has failed to meet this admissibility threshold for the Request for Review he has initiated and that the Minister's Decision therefore should be confirmed.

## **REASONS FOR INADMISSIBILITY OF REQUEST**

### **Issue**

[7] There is only one issue in this case: Did Mr. Patterson meet the Tribunal's admissibility threshold by offering some permissible basis upon which he might succeed in this matter?

### **Analysis and Applicable Law**

[8] The Tribunal is an expert and independent body constituted by Parliament pursuant to the *Canada Agricultural Products Act*, R.S.C., 1985, c. 20 (4<sup>th</sup> 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.

[9] 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).

[10] 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...”*.

[11] A Request for Review is a right that Parliament extends to applicants which allows them, for a very limited expenditure of time and money, to have their notices of violation, or Minister’s decisions concerning such notices of violations, reviewed by an independent body. However, when played out to its full conclusion, including the filing of pleadings, the holding of a hearing and the rendering of a decision, considerable time and money from all parties will be expended. For this reason, legislators have placed some basic requirements on applicants that they must meet for their rights to be preserved. Where the applicant does not meet the requirements 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), the Tribunal may rule that the applicant’s Request for Review is inadmissible.

[12] Permissible reasons that an applicant might raise to set aside a Minister’s decision include a finding by the Tribunal 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 or that the person has raised a permissible defence or justification for his actions.

[13] In the present case, Mr. Patterson has communicated the following reasons in his Request for Review dated November 14, 2016, and in a prior letter addressed to the Agency dated May 9, 2016:

- a. Mr. Patterson was returning to Canada from Jamaica and purchased patties in Jamaica believing they contained only cheese;
- b. while it was a huge surprise to him to find out that they contained more than cheese, Mr. Patterson admits that the patties did contain both meat and cheese;
- c. Mr. Patterson states “I told the officer that I had cheese patties, however on the declaration form I had answered No upon being question at Pearson, because I had always believed that it was only meat was barred”;
- d. the value of the patties was less than \$15 CAD;
- e. the items were destroyed;
- f. Mr. Patterson states that “I was actually told by one of the officers that I would be issued a warning as this was my very first violation and in fact, a warning would be consistent with what is done to other first offenders”; and

- g. Mr. Patterson states that “I am a law abiding Canadian citizen and have never violated any of the laws and have been going back and forth Toronto to Jamaica and return for the last 5 years without being charged with any violation. I work as a mechanic, I am not sophisticated, I made a honest mistake and cannot afford to pay the huge fine, I also have two daughters to support. My understanding is that law enforcement is to be tendered with mercy in the overall interest of the public. Please cancel the penalty or reduce it to the value of the patties. I have learnt a huge lesson and the mistake will not happen again.”

[14] Where the Agency meets its burden of proof to prove the elements of the alleged violation, as the Minister has found in this case, the applicant will be held liable for a violation under the AMP system, unless he can establish a defence or excuse permitted under the AMP Act, the AMP Regulations, or as it pertains to these cases, the HA Regulations.

[15] None of the reasons provided reveals a basis on which Mr. Patterson could possibly succeed in his request to have the Tribunal rule that the Minister erred in his finding that the alleged violation was committed.

[16] Grounds (a), (b), and (c) offered by Mr. Patterson are impermissible pursuant to section 18 of the AMP Act (and the Federal Court of Appeal decision in *Doyon v. Canada (Attorney General)*, 2009 FCA 152, at paragraph 11), which prohibits defences of mistake of fact (that is, the applicant was mistaken about the facts that led to committing the violation) and due diligence (that is, the applicant tried his best not to commit the violation).

[17] Grounds (d) and (e) offered by Mr. Patterson are immaterial to the present matter.

[18] Ground (f) offered by Mr. Patterson relates to the discretion of Agency to administer a penalty or a warning. Unless that discretion is administered in bad faith or for an improper purpose, a reviewing tribunal or court is not at liberty to modify the choice selected by the Agency. There is no evidence in this case that the decision to give Mr. Patterson a penalty rather than a warning was based on bad faith or for an improper purpose.

[19] Ground (g) offered by Mr. Patterson relates to a request for a cancellation or a reduction of the penalty. It is clear that the very strict administrative monetary penalties system established by Parliament under the AMP Act and the AMP Regulations can have harsh repercussions for Canadians, especially someone like Mr. Patterson who states he cannot afford to pay the huge fine. Unfortunately, the Tribunal cannot cancel or vary the penalty imposed 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 or a decision of the Minister on circumstantial, humanitarian or financial grounds, nor is it empowered to do so.

[20] On the record before me then, I find that Mr. Patterson has failed to meet the Tribunal's admissibility threshold of offering some permissible basis upon which he might succeed before the Tribunal in this matter.

### **Disposition**

[21] The Tribunal therefore orders that Mr. Patterson's Request for Review of Minister's Decision is inadmissible and therefore dismissed.

[22] As a result, the Minister's Decision 16-01927, dated November 7, 2016, is confirmed.

[23] By operation of subsection 9(3) of the AMP Act, Mr. Patterson is deemed to have committed the violation indicated in Notice of Violation 4971-16-0718 and the penalty of \$800 is due to the Agency within thirty (30) days after the day on which this decision is served.

[24] Mr. Patterson may wish to contact the Agency's representatives directly to inquire whether they would agree to a manageable payment schedule for the penalty amount.

[25] These violations are not criminal offences. After five years, Mr. Patterson 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 9<sup>th</sup> day of February, 2017.

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Dr. Donald Buckingham, Chairperson