



Citation: *Olalojule v. Canada (Canada Border Services Agency)*, 2017 CART 7

Date: 20170302  
Dockets: CART/CRAC-1937

**BETWEEN:**

**Bosede Olalojule,**

**APPLICANT**

**- and -**

**Canada Border Services Agency,**

**RESPONDENT**

**BEFORE: Chairperson Donald Buckingham**

**WITH: Bosede Olalojule, self-represented; and  
Sherri-Lynn Foran and Michèle Hobbs, representing 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 relating to 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 7011-16-0715, dated December 2, 2016, requested by the applicant, Bosede Olalojule, 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] Bosede Olalojule (Mrs. Olalojule) 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 a package of dried meat jerky cubes that she imported into Canada.

[2] For her request to be admissible, Mrs. Olalojule must meet an admissibility threshold by offering some permissible basis on which she might succeed in the matter before the Tribunal.

[3] For the reasons that follow, I find Mrs. Olalojule has failed to meet this admissibility threshold.

## **REASONS FOR INADMISSIBILITY OF REQUEST**

### **Background**

[4] The Agency issued Notice of Violation 7011-16-0715, dated December 2, 2016, to Mrs. Olalojule for “fail[ing] to present an animal or thing, to wit: 1 package of dried beef/buffalo jerky cubes”, an action that 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 sanction is a warning or a \$1,300 penalty.

[5] On December 2, 2016, the Agency served Mrs. Olalojule in person with the Notice of Violation with a \$1,300 penalty.

[6] In an email sent December 3, 2016, and in a handwritten letter dated December 5, 2016, sent by registered mail (Request for Review), Mrs. Olalojule requested that the Tribunal review the facts of the Notice of Violation in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act).

[7] By letter dated December 6, 2016, the Tribunal requested Mrs. Olalojule provide, on or before December 22, 2016, all necessary information as required by the *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)* (Tribunal Rules), to assist the Tribunal in making its determination on admissibility. A copy of the Tribunal Rules was attached to that letter.

[8] On January 11, 2017, the Tribunal requested a second time that Mrs. Olalojule provide, this time on or before January 26, 2017, further details of the December 2, 2016 incident, that gave rise to the issuance of the Notice of Violation in question to fulfill the requirements of subsection 31(d) of the Tribunal Rules. The Tribunal informed

Mrs. Olalojule that if she did not provide such information, her Request for Review risked being found inadmissible resulting in an order from Tribunal dismissing it.

[9] Despite telephone and email communications with Tribunal registry staff in which she was encouraged to submit additional documents to support her Request for Review, Mrs. Olalojule did not provide the Tribunal with further documentation.

### **Issue**

[10] There is only one issue in this case: Did Mrs. Olalojule meet the Tribunal's admissibility threshold by offering some permissible basis upon which she might succeed in this matter?

### **Analysis and Applicable Law**

[11] A request for review is a right which Parliament has extended to applicants which allows them, for a very limited expenditure of time and money, to have their notice of violation 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 AMP Regulations and the Tribunal Rules, the Tribunal may rule that the applicant's request for review is inadmissible.

[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 for the Tribunal to review the Agency's decision.

[13] 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.

[14] 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).

[15] In the present case, the Tribunal has received from Mrs. Olalojule sparse explanations as to why she believes she was justified in failing to present to Agency officials the package of dried meat jerky cubes that she imported upon her arrival into Canada.

[16] Mrs. Olalojule has provided the Tribunal with the following reasons for her Request for Review:

- (a) she failed to present the package of dried cow beef that was found in her luggage because it was included in a package that was sent to and meant for a family friend in Canada, and she was not aware that the dried beef was included in the package; and
- (b) if she had been aware of the presence of the dried beef, she would have declared it.

[17] Neither of the reasons provided reveals a basis on which Mrs. Olalojule could possibly succeed in her request to have the Tribunal rule that the alleged violation was not committed.

[18] Grounds (a) and (b) offered by Mrs. Olalojule 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 her best not to commit the violation).

[19] Essentially, the justification raised by Mrs. Olalojule was that she did not know the meat was in her luggage, so she could not have declared it until found by Agency officers. The issue of claiming not to have known the contents of one's luggage as an excuse to the importation of undeclared food items has been held by the Federal Court of Appeal not to be a permissible reason to invalidate a notice of violation (see *Canada Border Services Agency v. Castillo*, 2013 FCA 271, at paragraph 24). The violation in question is one of absolute liability.

[20] That said, Agency officers are charged with protecting 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 these duties must be exercised responsibly. The Tribunal is aware that the Agency has its own procedure for reviewing complaints from Canadians against its actions or officers, as set out in the Agency's website, in its page entitled "Contact Us: Compliments, Comments and Complaints".

### **Disposition**

[21] The Tribunal therefore orders that Mrs. Olalojule's Request for Review of Notice of Violation 7011-16-0715 is inadmissible. Furthermore, by operation of subsection 9(3) of the AMP Act, Mrs. Olalojule is deemed to have committed the violation indicated in the Notice of Violation with Penalty, and thus, the penalty of \$1,300 is due to the Agency.

[22] Mrs. Olalojule may wish to contact the Agency's representatives to inquire whether they would agree to a payment schedule for the penalty amount.

[23] These violations are not criminal offences. After five years, Mrs. Olalojule 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 2<sup>nd</sup> day of March, 2017.

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Dr. Don Buckingham, Chairperson