



Citation: *Vanee Livestock Ltd. v. Canada (Canadian Food Inspection Agency)*,
2017 CART 8

Date: 20170303
Dockets: CART/CRAC-1941

BETWEEN:

Vanee Livestock Ltd.,

APPLICANT

- and -

Canadian Food Inspection Agency,

RESPONDENT

BEFORE: Chairperson Donald Buckingham

**WITH: Ray Vanee, representing the applicant; and
Sarah Grenier, 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 177(1) of the *Health of Animals Regulations*, alleged by the respondent.

DECISION

The Canada Agricultural Review Tribunal **ORDERS** that the application for a review of Notice of Violation 1617WA0127, dated November 23, 2016, requested by the applicant, Vanee Livestock Ltd., pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, in relation to the Canadian Food Inspection Agency alleging that the applicant violated subsection 177(1) of the *Health of Animals Regulations*, **IS INADMISSIBLE** and, pursuant to this order, **IS DISMISSED**.

By written submissions only.

OVERVIEW

[1] Vanee Livestock Ltd. (Vanee) 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 Canadian Food Inspection Agency (Agency) because Vanee's employee allegedly transported four animals not bearing approved Canadian Cattle Identification Agency (CCIA) ear tags on August 8, 2016.

[2] For the company's request to be admissible, Vanee must meet an admissibility threshold by offering some permissible basis on which it might succeed in the matter before the Tribunal.

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

REASONS FOR INADMISSIBILITY OF REQUEST

Background

[4] The Agency issued Notice of Violation 1617WA0127, dated November 23, 2016, to Vanee for "Transport[ing] or caus...[ing] the transportation of an animal or the carcass of an animal not bearing an approved tag", an action that is contrary to subsection 177(1) of the *Health of Animals Regulations* (HA Regulations). The alleged violation is classified as a "minor 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 when it occurs in the course of business, as is the case here.

[5] On December 4, 2016, Vanee was deemed to have been served by the Agency with the Notice of Violation with \$1,300 penalty.

[6] In a fax sent January 3, 2017, Vanee requested, without stating any reasons for its request, 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 January 11, 2017, the Tribunal requested that Vanee provide, on or before January 26, 2017, 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 on admissibility. A copy of the Tribunal Rules was attached to that letter.

[8] On January 27, 2017, the Tribunal requested a second time that Vanee provide, this time on or before February 16, 2017, further details of the August 8, 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 Vanee that if it did not

provide such information, its Request for Review risked being found inadmissible, resulting in an order from Tribunal dismissing it.

[9] On February 14, 2017, Mr. Ray Vanee, on behalf of Vanee, provided a one-page fax, setting out the company's reasons for the Request for Review.

Issue

[10] There is only one issue in this case: Did Vanee meet the Tribunal's admissibility threshold by offering some permissible basis upon which he 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 Ray Vanee sparse explanations, as to why he believes the company was justified in transporting on August 8, 2016, four cattle, each of which did not bear an approved CCIA ear tag.

[16] Ray Vanee has provided the Tribunal with the following reasons in support of Vanee's Request for Review:

- (a) The producer that raised and then transported the animal to the Auction Market is the one to be responsible to put the tags on that animal;
- (b) The Auction Market operators are to check all animals for proper tags before selling to a new owner, this did not happen in this situation;
- (c) Therefore, it is ultimately the responsibility of the producer, then the Auction Market operators to tag animals and ensure that they are tagged;
- (d) When Vanee picks up animals for transport they are brought to the company trucks in groups of 40 to 50 head. Conditions for loading could be in the dark, rain, snow or extreme cold, and Vanee are not able to get the animals to load one by one to check for tags;
- (e) Vanee believes that it is being held responsible for something that is nearly impossible for it to do; and
- (f) The laws in place for making transporters liable for not having tags on the animals they transport seem to be very unreasonable.

[17] None of the reasons provided reveals a basis on which Vanee could possibly succeed in its request to have the Tribunal rule that the alleged violation was not committed. Nor does Vanee deny that the alleged violation was committed.

[18] Grounds (a), (b) and (c), offered by Vanee, are immaterial to the alleged violation. The matter under consideration is not about what the producer or the Auction Market did or should have done but rather what Vanee did or should have done as it relates to transport of animals completed by the company on August 8, 2016. The HA Regulations permit the Agency to administer monetary penalties to any actor, from producer to slaughter house, who transports or causes to transport animals without approved tags. In this case, the Agency has chosen, in its discretion, to administer a monetary penalty upon the transporter Vanee. 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 Vanee a penalty in this case was based on bad faith or for an improper purpose.

[19] Grounds (d) and (e), offered by Vanee, 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 its best not to commit the violation).

[20] Finally, ground (f) may be a fair statement but it is not a ground that this Tribunal can entertain as a ground on which an alleged violation will be found to be without foundation. Other channels, including political efforts for legislative changes, seem more appropriate to seek the amendment or rescission of “unreasonable” laws. As the law is

currently structured, the violation in question is of absolute liability and Vanee has offered no reasons why the Agency was in error in issuing the violation. Vanee does not challenge that it did indeed transport an untagged animal on August 8, 2016.

[21] 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 "[Statement of Rights and Service for Producers, Consumers and Other Stakeholders](#)", which is available on the Agency's website. Ultimately, 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. Legislative provisions in the *Health of Animals Act* and the HR Regulations with respect to tagging animals are part of the plan that Parliament has enacted for such protection.

Disposition

[22] The Tribunal therefore orders that Vanee's Request for Review of Notice of Violation 1617WA0127 is inadmissible. Furthermore, by operation of subsection 9(3) of the AMP Act, Vanee 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.

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

[24] These violations are not criminal offences. After five years, Vanee is entitled to apply to the Minister of Agriculture and Agri-Food to have the violations removed from the records, in accordance with section 23 of the AMP Act.

Dated at Ottawa, Ontario, on this 3rd day of March, 2017.

Dr. Donald Buckingham, Chairperson