



Citation: *Webb v. Canada (Canada Border Services Agency)*, 2013 CART 27

Date: 20130905
Docket: CART/CRAC-1681

Between:

Peter Webb, Applicant

- and -

Canada Border Services Agency, Respondent

Before: **Member Bruce La Rochelle**

With: **Peter Webb, self-represented; and
Melanie A. Charbonneau, representative for 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 a violation of section 40 of the *Health of Animals Regulations* alleged by the respondent.

DECISION ON ADMISSIBILITY

[1] The Canada Agricultural Review Tribunal (Tribunal) ORDERS that the application for a review of the Notice of Violation requested by the applicant, Mr. Peter Webb (Mr. Webb), pursuant to subsection 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, in relation to the Canada Border Services Agency (Agency), alleging that the applicant violated section 40 of the *Health of Animals Regulations*, IS INADMISSIBLE and is, pursuant to this order, DISMISSED.

[2] The Tribunal FURTHER ORDERS that service by email of this decision shall be considered to be effective service on Mr. Webb, as of the date of such email.

PROCEDURES IN RELATION TO DECISION ON INADMISSIBILITY

[3] In Notice of Violation YYZ4971-0563, dated November 28, 2012, the Agency alleges that, on that date at "T-1" (taken to mean Terminal 1 of Lester B. Pearson International Airport, Toronto), the applicant, Peter Webb (Mr. Webb) "committed a violation, namely: import an animal by-product to wit: meat, without meeting the prescribed requirements", contrary to section 40 of the *Health of Animals Regulations* (C.R.C., c. 296). The Agency served the Notice of Violation with Penalty personally on Mr. Webb on November 28, 2012. In the Notice of Violation, Mr. Webb is advised that the alleged violation is a serious violation under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (SOR/2000-187), for which the penalty assigned is the amount of \$800.00.

[4] By undated letter, with a return address on the envelope only, sent to the Tribunal by registered mail dated December 21, 2012, Mr. Webb requested a review by the Tribunal (Request for Review). The letter was received by the Tribunal on December 24, 2012. The address on the envelope was different from Mr. Webb's address specified on the Notice of Violation.

[5] Mr. Webb's request for review was forwarded by the Tribunal to the Agency on December 31, 2012, by email scan and regular mail. Pursuant to Rule 36 of the *Rules of the Review Tribunal (Agriculture and Agri-Food)* (SOR 99/451) (Tribunal Rules), the Agency, acting on behalf of the Minister of Agriculture and Agri-Food, was required to submit the Minister's Report (Report) by January 15, 2013.

[6] Under cover of a letter to the Tribunal dated and received on January 15, 2013, Ms. Melanie Charbonneau (Ms. Charbonneau), Senior Litigation Advisor to the Agency, submitted the Report, also advising the Tribunal that a copy of the Report had been forwarded separately to Mr. Webb.

[7] On January 16, 2013, by letter sent via email and regular mail to Mr. Webb and the Agency, the Tribunal acknowledged receipt of the Report, and advised the parties that any additional representations that either party wished to make must be submitted to the Tribunal on or before February 15, 2013, after which submissions would only be accepted with the Tribunal's consent. In the email to Mr. Webb, the Tribunal requested a new mailing address for Mr. Webb, as the correspondence from the Tribunal to Mr. Webb of December 31, 2012, had been returned, indicating that Mr. Webb had moved.

[8] By email from the Tribunal to Mr. Webb, dated February 19, 2013, the Tribunal confirmed a telephone conversation with Mr. Webb, whereby Mr. Webb confirmed that he had moved, and that a new address would be provided to the Tribunal as of February 20, 2013. In this email message, the Tribunal forwarded to Mr. Webb all correspondence that had been forwarded to Mr. Webb, but which had been returned marked "moved/unknown".

[9] On February 28, 2013, the Agency sent an email message to Mr. Webb, copied to the Tribunal, whereby the Agency forwarded by email its Report that had previously been sent to Mr. Webb by regular mail. At that time, the Agency advised Mr. Webb that it had not been able to obtain a new mailing address for Mr. Webb.

[10] On March 14, 2013, the Tribunal requested of Mr. Webb by email, copied to the Agency, that he provide his new address to the Tribunal at his earliest convenience.

[11] On August 23, 2013, the Tribunal, by Order communicated to Mr. Webb and to the Agency via email only, determined as follows (Order reproduced *verbatim*):

...

Following a review of certain procedural issues arising in this matter, the Canada Agricultural Review Tribunal (Tribunal), by Order, requires that the applicant, Mr. Peter Webb (Mr. Webb) submit to the Tribunal by registered mail (and by confirmatory email), no later than 5:00 p.m., on Thursday, August 29, 2013, a notarized copy of an official government-issued document containing Mr. Webb's current mailing address.

Should Mr. Webb not submit the required documentation within the time specified, Mr. Webb's Request for Review in this matter shall be subject to a decision of the Tribunal as to its inadmissibility.

The Tribunal further orders that, service by email of this Order shall be considered to be effective service on Mr. Webb, as of the date of such email.

...

[12] Mr. Webb did not communicate with the Tribunal within the time or in the manner so ordered. He did not communicate with the Tribunal in any manner whatsoever.

REASONS FOR DECISION ON INADMISSIBILITY

[13] Under Rule 10 the Tribunal Rules, Mr. Webb is obliged to notify the Tribunal, without delay, of a change of address. He has not done so. The provisions of Rule 10 are as follows:

10. *A party must notify the Tribunal without delay of a change of address or fax number.*

[14] The Tribunal has a broad discretion to address the consequences of Mr. Webb's inaction. The provisions of Rule 2 of the Tribunal Rules are as follows:

2. If any question of procedure arises during a proceeding that is not covered, or not fully covered, in these Rules, the Tribunal must decide the question in a manner that is consistent with these Rules.

[15] The Tribunal finds that, despite repeated requests, Mr. Webb has not provided his current mailing address. This caused both the Agency and the Tribunal to expend excess resources to attempt to ascertain Mr. Webb's mail coordinates, in order to facilitate procedures in this matter. In the absence of such information, the Tribunal considers that there is a fundamental deficiency of information associated with Mr. Webb's Request for Review.

[16] The Tribunal has recently addressed admissibility issues in *Tom Wilson v. Canada (Canadian Food Inspection Agency)*, 2013 CART 25. As discussed in paragraph 10 of that decision:

[10] 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 Act, the Regulations and the Rules, the Tribunal may rule that the applicant's request for review is inadmissible.

[17] In the Tribunal's view, the current circumstances provide the Tribunal with ample grounds to hold that the Request for Review by Mr. Webb is inadmissible, and the Tribunal so holds. Consequently, by operation of subsection 9(3) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (S.C. 1995, c. 40), Mr. Webb is deemed to have committed the violation particularized in Notice of Violation YYZ4971-0563, issued November 28, 2012. Subsections 9(2) and 9(3) provide, in part, as follows:

9. (2) Instead of paying the penalty set out in a notice of violation or, where applicable, the lesser amount that may be paid in lieu of the penalty, the person named in the notice may, in the prescribed time and manner...

(c) request a review by the Tribunal of the facts of the violation.

(3) Where a person who is served with a notice of violation that sets out a penalty does not pay the penalty in the prescribed time and manner or, where applicable, the lesser amount that may be paid in lieu of the penalty, and does not exercise any right referred to in subsection (2) in the prescribed time and manner, the person is deemed to have committed the violation identified in the notice.

[18] The Tribunal further orders that service by email of this Order shall be considered to be effective service on the Applicant. Due to Mr. Webb's non-compliance, email communication is the only effective method of written communication with him at this time.

[19] The Tribunal has considered these matters in light of the provisions of the *Agriculture and Agri-Food Monetary Penalties Regulations*, the *Rules of the Review Tribunal (Agriculture and Agri-Food)*, applicable jurisprudence and fairness, plus information provided by and the conduct of the respective parties.

[20] The Tribunal is not currently with a legislative mandate to award costs. This is so notwithstanding that the Tribunal is constituted as a court of record, pursuant to section 8 of the *Canada Agricultural Products Act*, R.S.C., 1985, c. 20 (4th Supp.). Specific legislative authorization is required, as discussed by the Supreme Court of Canada in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2011] 3 S.C.R. 451. This decision was recently applied by the Tribunal in *Favel Transportation Inc. v. Canada (Canadian Food Inspection Agency)*, 2013 CART 17. In paragraph 33 of the *Favel Transportation* case, the Tribunal commented as follows:

[33] The question of whether the Tribunal should have the power to award costs is a policy question to be decided by Parliament. It is not for the Tribunal to determine that it has the necessary jurisdiction simply because it may feel that it should award some costs in this specific case. The Supreme Court of Canada recently held that the Canadian Human Rights Tribunal did not have the authority to award costs: Canada (CHRC) v. Canada (AG), [2011] 3 SCR 471. At paragraph 64, the Court stated that it is a significant error in law for a tribunal to pursue "a beneficial policy outcome rather than engage in an interpretative process taking account of the text, context and purpose of the provisions in issue."

[21] In *Favel Transportation*, the Tribunal also relied on the decision of the Federal Court of Appeal in *Reference re National Energy Board Act (Canada)* (1986), 29 DLR (4th) 35, where the National Energy Board was legislatively constituted as a court of record, but where the court held that the power to award costs was not inherent to such court of record status. A specific legislative mandate to award costs was required. As discussed in *Favel Transportation*, at paragraph 14:

[14] Finally, the FCA [Federal Court of Appeal] noted that Parliament was capable of conferring on regulatory tribunals a general power to award costs. Numerous federal and provincial statutes contained the general superior court power to control proceedings, but also included a specific and separate power to award costs (Re NEB at paragraph 15). From this, the FCA determined that the express statutory provision conferring the power to award costs was necessary, because it could not be inferred from the general superior court power.

[22] If the Tribunal were so mandated, the Tribunal would find that the current case is one where the conduct of the applicant merited the awarding of costs against him.

Dated at Ottawa, Ontario, this 5th day of September, 2013.

Dr. Bruce La Rochelle, Member