



Citation: *Kupenova v. Canada (Minister of Public Safety and Emergency Preparedness)*,
2017 CART 19

Date: 20171116
Docket: CART | CRAC-1970

BETWEEN:

Mariana Kupenova,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,

RESPONDENT

BEFORE: Luc Bélanger
Chairperson

WITH: Ms. Mariana Kupenova for the Applicant; and
Ms. Bria Hearty, representing the Respondent

In the matter of an application made by the Applicant, pursuant to subsection 12(2), of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review by the Tribunal of Minister's Decision 16-04722, dated June 5, 2017, holding that the applicant, on November 17, 2016, violated section 16 of the *Health of Animals Act*.

DECISION ON ADMISSIBILITY

The Canada Agricultural Review Tribunal ORDERS that the application for a review of Minister's Decision 16-04722, dated June 5, 2017, as requested by the Applicant, IS INADMISSIBLE and, pursuant to this order, IS DISMISSED.

By written submissions only.

Table of Contents

REASONS FOR INADMISSIBILITY OF REQUEST	2
I. Overview	2
II. Background	2
III. Issue	3
IV. Analysis	3
V. Disposition	5

REASONS FOR INADMISSIBILITY OF REQUEST

I. Overview

[1] Ms. Mariana Kупenova (the Applicant) has requested that the Canada Agricultural Review Tribunal (Tribunal) review Minister's Decision number 16-04722. The Minister's Decision upheld the issuance of Notice of Violation number 3961-16-2297, with penalty of \$1,300, by the Canada Border Services Agency (Agency), for a violation of section 16 of the [Health of Animals Act](#). The Agency issued the Notice of Violation with penalty to the Applicant, on November 11, 2016, for importing a sausage without declaring it to Agency officers.

[2] 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 violation, reviewed by an independent body. However, legislators have placed some basic requirements on applicants that they must meet in order for their rights to be preserved.

[3] For this request to be admissible, the Applicant must meet the admissibility threshold set out in the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act) the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations) and the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (Tribunal Rules).

[4] The sole issue in the case, then, is whether the Applicant has met this admissibility threshold.

II. Background

[5] On August 25, 2017, the Tribunal received a request for review from the Applicant by ordinary mail in the form of a letter. In this letter, the Applicant asked for a review the issuance Notice of Violation number 3961-16-2297. However, a hand-written note at the

end of this letter acknowledged understanding the reasons why Minister's Decision number 16-04722 upheld the Notice of Violation and requested a payment plan.

[6] In a letter dated September 15, 2017, sent to the Applicant and the Agency (which acts on behalf of the Minister), by email and regular mail, the Tribunal acknowledged receipt of the Applicant's letter and requested that the Applicant and Minister respectively comply with sections 46 and 47 of the Tribunal Rules.

[7] On September 28, 2017, the Agency provided proof that the Minister's Decision had been served on the Applicant on July 11, 2017, and confirmed that the \$1,300 penalty had not been paid. No response was received from the Applicant.

[8] On October 5, 2017, the Tribunal sent a second correspondence by the same means, to the Applicant, requesting that she comply with section 47 of the Tribunal Rules and informing her that the Request for Review needed to be sent by registered mail. Once again, no response was received from the Applicant.

III. Issue

[9] There is only one issue in this case: Did the Applicant meet the admissibility threshold to allow the Tribunal to consider the Request for Review?

IV. Analysis

[10] The Tribunal is an expert and independent body constituted by Parliament pursuant to subsection 4.1(1) of the *Canada Agricultural Products Act* (CAP Act) and its jurisdiction consists of responding to requests for review of matters arising from the issuance of agriculture and agri-food administrative monetary penalties.

[11] The AAAMP Act, the AAAMP Regulations and the Tribunal Rules require that the Tribunal, before it proceeds to a full hearing of a matter, make a decision on the admissibility of an applicant's request for the review. Absolute bars to admissibility arise when the applicant has already paid the penalty attached to the notice of violation, or has failed to file a request for review within the prescribed time and manner, as set out in the AAAMP Act and AAAMP Regulations.

[12] Subsections 13(a) and 14(1) of the AAAMP Regulations outline the required statutory period and the permitted modes of delivery for the filing of a request for review of a Minister's Decision before the Tribunal:

13. If a person is notified that the Minister, having concluded a review, has decided that the person committed a violation

(a) the time within which the person may request a review of the Minister's decision by the Tribunal is 15 days after the day on which the notice is served and the request must be in writing;

...

14. (1) A person may make a request referred to in section 11, 12 or 13 by delivering it by hand or by sending it by registered mail, courier, fax or other electronic means to a person and place authorized by the Minister.

[13] The Federal Court of Appeal (FCA) has interpreted section 14 of the AAAMP Regulations as not allowing the Tribunal to accept the delivery of a request for review by regular mail. In *Re: Section 14 of the AAAMP Regulations*, [2012 FCA 130](#) (*Re: Section 14 of the AAAMP Regulations*), the FCA held as follows:

[22] In my view, section 14 cannot be construed as authorizing regular mail as a means of communicating a request. Subsection 9(2) of the Act provides that a person may request a review by the Tribunal “in the prescribed time and manner”. Section 14 of the Regulations simply does not prescribe regular mail as a manner of requesting a review by the Tribunal.

...

[25] I therefore conclude that section 14 cannot be construed as including regular mail as an authorized mode of transmission...

[14] Likewise, the FCA has confirmed that the time limits for filing a request for review, as set out in the AAAMP Act and AAAMP Regulations, cannot be extended by the Tribunal. This principle was articulated by the FCA in *Clare v. Canada (Attorney General)* [2013 FCA 265](#) (*Clare*), where it stated that:

[29] ... the Tribunal lacks jurisdiction to extend the clear timelines which the AAAMP Act and AAAMP Regulations provide.

[15] The *Clare* and *Re: Section 14 of the AAAMP Regulations* decisions, cited above, apply directly to the Applicant's situation. The statutory deadline for the Applicant to submit a request for Review, using a permitted method of transmission, was 15 days after the date of service of the Minister's Decision.

[16] According to the proof of service provided by the Agency, the Minister's Decision was served on the Applicant July 11, 2017. In accordance with subsection 9(2) of the AAAMP Regulations, the deemed date of service is ten days after the date indicated on the post office receipt. Therefore, the Applicant is deemed to have been served the Minister's Decision on July 21, 2017.

[17] As such, the last day for the Applicant to file the Request for Review with the Tribunal, was on Monday, August 7, 2017.

[18] The first communication from the Applicant was received by the Tribunal on August 25, 2017, which falls well outside the required 15-day time limit for filing the Request for Review. The Applicant's Request for Review is inadmissible on this basis.

[19] Furthermore, this communication was sent by regular mail. According to the law as set out by the FCA in the *Re: Section 14 of the AAAMP Regulations* case, this letter does not

meet the requirements of the AAAMP Act and AAAMP Regulations, and thus, does not constitute a valid method of filing for the Request for Review. The Applicant's Request for Review is also inadmissible on this basis.

[20] Because the Applicant's Request for Review was sent outside of the 15-day statutory timeframe for requests pertaining to Ministers Decisions and since it was not sent by one of the permitted methods of transmission, there is no valid Request for Review from the Applicant before the Tribunal. In both instances, the Applicant has failed to meet the requirements set out in the AAAMP Act and AAAMP Regulations. This failure cannot be remedied either by the Tribunal or by the Applicant, given the strict interpretation advanced by the FCA in the *Clare* and *Re: Section 14 of the AAAMP Regulations* cases cited above.

V. Disposition

[21] The Tribunal therefore orders that the Applicant's Request for Review of Minister's Decision number 16-04722 is inadmissible and is dismissed. Furthermore, by operation of subsection 9(3) of the AAAMP Act, the Applicant is deemed to have committed the violation indicated in Notice of Violation number 3961-16-2297, dated November 17, 2016, and thus the indicated penalty of \$1,300 is due to the Agency.

[22] The Tribunal wishes to inform the Applicant that this violation is not a criminal offence. After five years, the Applicant 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 AAAMP Act.

Dated at Ottawa, Ontario, on this 16th day of November, 2017.

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal