



Citation: *Varga v. Canada (Minister of Public Safety and Emergency Preparedness)*,
2018 CART 11

Date: 20181010
Docket: CART/CRAC-1949

BETWEEN:

Nandor Varga,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Mr. Nandor Varga, for the Applicant; and
Ms. Valérie Larocque and Mr. Pierre Dastous, for the Respondent**

In the matter of an appeal heard on January 18, 2018, in Toronto, Ontario, following a request made by the Applicant pursuant to paragraph 13(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) for a review by the Tribunal of the Minister's Decision 16-04536, dated March 27, 2017, holding that the Applicant violated section 40 of the [Health of Animals Regulations](#).

DECISION

The Canada Agricultural Review Tribunal, by ORDER, CONFIRMS the Minister's Decision 16-04536, dated March 27, 2017, and holds that the Applicant, Nandor Varga, is liable for payment of the prescribed monetary penalty of \$800.

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REASONS FOR DECISION

I. Background

[1] This case is about a traveller's undeclared importation of Hungarian beef and pork salami at the Pearson International Airport in Toronto on October 25, 2016. The beef and pork salami was discovered by an officer of the Canada Border Services Agency (Agency) in the belongings of Mr. Nandor Varga during a luggage examination in the customs secondary area. Mr. Varga was issued Notice of Violation number 4971-16-1756 (Notice of Violation), with penalty of \$800, by the Agency Officer for an alleged violation of section 40 of the [*Health of Animals Regulations*](#) (*HA Regulations*).

[2] Mr. Varga requested a review of the Notice of Violation to the Minister of Public Safety and Emergency Preparedness (Minister), who upheld the Notice of Violation on March 27, 2017, in its decision number 16-04536 (Minister's Decision). On April 10, 2017, Mr. Varga requested a review of the Minister's Decision by the Canada Agricultural Review Tribunal.

[3] On January 4, 2018, the parties participated in a case management conference call with the Tribunal in anticipation of the hearing.

II. Issues

[4] This case raises two issues:

- whether the Minister erred in his finding that the Agency has proven all the necessary elements of the violation required to sustain the Notice of Violation; and
- whether Mr. Varga has established a permissible defence.

[5] I have reviewed all the evidence and arguments submitted by each of the parties and have concluded, for the reasons that follow, that the Minister's Decision should be confirmed, that Mr. Varga has committed a violation under section 40 of the [HA Regulations](#) and is liable for payment of the penalty in the amount of \$800.

III. Jurisdiction and Powers

[6] The Tribunal is an expert and independent body constituted by Parliament pursuant to subsection 4.1(1) of the [Canada Agricultural Products 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.

[7] The [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP 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 [AAAMP Act](#)).

[8] Powers given to the Tribunal by Parliament in conducting this exercise are set out in paragraph 14(1)(a) of the [AAAMP 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..."*. As such, the Tribunal performs a function not as a decision maker of first instance or as a court conducting a judicial review, but rather as a specialized or appellate administrative tribunal reviewing an administrative decision of first instance.

[9] Although the [AAAMP Act](#) provides for a review, as well as possible remedies, it does not specify the type of review to be conducted by the Tribunal. This Tribunal has held that relevant legislation and jurisprudence favours that the Tribunal apply a "*de novo*" type of administrative appellate review of a Minister's Decision under the [AAAMP Act](#) (see [Hachey Livestock Transport Ltd. v. Minister of Agriculture and Agri-Food](#), 2015 CART 19, at paragraphs 28 to 50).

[10] The appropriate type of review for the Tribunal to employ is to complete a *de novo* examination of the facts and draw its own factual and legal conclusions with little or no required deference to the findings, reasoning and conclusion as contained in the Minister's Decision of March 27, 2017.

[11] A *de novo* examination of the facts does not require the Tribunal to ask the parties to present anew the evidence in this case. The Tribunal must apply the appropriate law to the factual findings of the case and determine whether the Minister's Decision should be confirmed, varied or set aside.

[12] As well, in considering the possible grounds raised by Mr. Varga to vary or set aside the Minister's Decision, I am mindful of the clear instructions of the Federal Court of Appeal (FCA) in the decision of [Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152 [*Doyon*], at paragraph 11: "*Violations of the Act are absolute liability offences for which, as stipulated in section 18 [of the [AAAMP Act](#)], a defence of due diligence or honest and reasonable mistake of fact is not available.*"

IV. Analysis

Issue 1: Has the Agency proven each of the elements of the violation of section 40 of the [HA Regulations](#)?

[13] Section 19 of the [AAAMP Act](#) establishes that enforcement agencies issuing Notices of Violation have the burden of proof on a balance of probabilities standard. Furthermore, the FCA has confirmed that enforcement agencies have the burden of proving each of the essential elements of an alleged violation ([Doyon](#), at paragraph 42).

[14] Section 40 of the [HA Regulations](#) states the following:

No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part.

[15] The Agency outlined three essential elements that needed to be proven for a violation of section 40 of the [HA Regulations](#), namely:

- Element 1—Mr. Varga is the person who committed the violation;
- Element 2—Mr. Varga imported an animal by-product into Canada; and
- Element 3—Mr. Varga failed to present any certificates, permits, licences or documents that would have permitted the importation.

[16] I am of the view that the essential elements put forth by the Agency, for violations of section 40 of the [HA Regulations](#), are insufficient. A strict interpretation of the three essential elements suggested by the Agency, as their burden of proof, could potentially lead to an absurd result where someone who has properly declared their animal by-product would still be found to have committed a violation of section 40 of the [HA Regulations](#).

[17] In determining the essential elements of a particular violation, the Tribunal is guided by the FCA's approach of parsing out the required elements from the statutory language of the provision that establishes the violation ([Doyon](#), at paragraph 41).

[18] For that reason, in [Campbell v. Canada \(Canada Border Services Agency\)](#) (2018 CART 4), as confirmed in [Fatehibanafshevaragh v. Canada \(Canada Border Services Agency\)](#) (2018 CART 6), the Tribunal set out the elements to be proven for a violation of section 40 of the [HA Regulations](#) as follows:

- Element 1—Mr. Varga is the person who committed the violation;
- Element 2—Mr. Varga imported an animal by-product into Canada;
- Element 3—the animal by-product was not subject to any of the exceptions listed at Part IV of the [HA Regulations](#); and
- Element 4—Mr. Varga failed to declare the animal by-product at first contact with Agency officers and thus did not make it available for inspection.

[19] Element 1 has been established by the Agency with the copy of Mr. Varga's passport provided in their report and Mr. Varga does not dispute this element.

[20] Element 2 is established by the photos in the Agency's Report showing the purported beef and pork salami, without their ingredient list or original wrappings, and Mr. Varga's original admissions at customs secondary.

[21] Element 3 has been established through the Automated Import Reference System (AIRS) printout, which was provided in the Agency's Report, and which states that

pork salami from Hungary may be approved entry, if it is accompanied by a copy of the label or ingredients list.

[22] Finally, Element 4 has been established by the Agency's customs declaration card showing that Mr. Varga declared "no" to the question pertaining to agricultural products. Mr. Varga does not dispute the fact that the beef and pork sausages were not declared on the customs declaration card, but raises that he was not aware of their presence in his luggage, as his mother would have packed them without his knowledge, although he understands that this does not provide him with a valid defence.

[23] Mr. Varga challenges the second element, stating that the salami he imported was made of soy, not beef and pork, and as such he did not import an animal by-product.

[24] According to the Agency's Report, the Agency officer who examined Mr. Varga's luggage found unlabelled salami in the luggage, in addition to soup packages containing dehydrated beef, pork, chicken and fats, fresh peppers, and four packages of pork livers, none of which having been declared. As the pork livers were properly labelled and packaged, they were allowed entry and returned to Mr. Varga. The other items were refused entry in accordance with the instructions from the AIRS.

[25] The Agency officer asked Mr. Varga what type of meat the salami contained, to which Mr. Varga replied that they were probably pork and beef, and that his mother had put them in his luggage. Mr. Varga submits that he was surprised that his mother would pack salami in his luggage, as he has been a vegetarian for years now, a fact his mother was well aware of, although she disagrees with it.

[26] Before filing his appeal with the Minister, Mr. Varga contacted his mother to inform her of the incident. She advised him that the salami she had left in his luggage was purchased at a vegan-vegetarian speciality store in Budapest, Hungary. However, she no longer had the receipt nor the list of ingredients for the salami. Mr. Varga acknowledges that, without the receipt or the list of ingredients, he cannot prove that the salami was made of soy.

[27] From the evidence presented, I find that the Agency has proven each of the required elements of a violation of section 40 of the [HA Regulations](#), as described above, on a balance of probabilities, and that Mr. Varga has not provided compelling evidence to challenge the Agency's finding that Mr. Varga imported an animal by-product, namely beef and pork salami.

[28] Without a list of ingredients on the product, the Agency officer appropriately relied on the information provided by Mr. Varga, in order to determine that the salami contained animal by-products. Mr. Varga has since failed to produce any evidence of the product's contents, such as a product label or ingredient list, which would indicate otherwise. Although the original packaging had been discarded, it would have been possible for Mr. Varga to request the information from the speciality store where the salami was purchased, which would have provided stronger evidence of the ingredients of the salami than Mr. Varga's sole affirmations.

[29] The Tribunal also finds that Mr. Varga's assertion that he is vegetarian is of little consequence to the question whether the salami was made from beef and pork, as he originally stated to the Agency officer, or soy, as he now contends. This is particularly so, considering that Mr. Varga imported other animal by-products. Products may be imported into Canada for various reasons, whether for personal consumption, for gifts, or for commercial distribution, among others.

[30] Considering the above, the Tribunal gives greater weight to Mr. Varga's original admissions to the Agency officer than to his later submissions, and considers that the Agency has met its burden with regards to the second element.

Issue 2: Has Mr. Varga established a permissible defence?

[31] Mr. Varga raises the fact that his mother packed the salami in his luggage without his knowledge.

[32] The FCA's decision in [Doyon](#), at paragraph 11, confirmed that: "*Violations of the Act are absolute liability offences for which, as stipulated in section 18 [of the [AAAMP Act](#)], a defence of due diligence or honest and reasonable mistake of fact is not available...*". As such,

the FCA also stated in [Canada Border Services Agency v. Castillo](#), 2013 FCA 271 at paragraph 24 that, although an applicant may be unaware that an animal by-product is in their luggage, *“this is of no assistance ... given a plain reading of the provisions and the clear intention of Parliament to provide for an absolute liability regime for these types of violations.”*

[33] As Mr. Varga’s defence falls into the category of due diligence and reasonable mistake of fact defences explicitly excluded by subsection 18(1) of the [AAAMP Act](#), as previously confirmed by the FCA, it cannot be considered by this Tribunal.

[34] Mr. Varga has also requested that, should the Minister’s Decision be upheld by the Tribunal, the penalty be reduced or that he be allowed to pay it in instalments, as it is a significant amount.

[35] Unfortunately, as stated in [Li v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2016 CART 11, at paragraph 31, the Tribunal is not empowered by statute to vary or set aside the penalty imposed based on circumstantial, humanitarian or financial grounds, or in this case to provide for a payment plan. I find that the penalty of \$800 is justified in law, as a violation of section 40 of the [HA Regulations](#) is a serious violation, which is subject to a penalty of \$800, as per paragraph 5(1)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#), and cannot not be varied.

V. Order

[36] I find, on a balance of probabilities, that Mr. Varga did commit a violation of section 40 of the [HA Regulations](#), as described in Notice of Violation 4971-16-1756, dated October 25, 2016, and confirmed in Minister’s Decision 16-04536, dated March 27, 2017, and is liable for payment of the penalty in the amount of \$800 to the Agency within thirty (30) days after the day on which this decision is served.

[37] I wish to inform Mr. Varga that this violation is not a criminal offence. After five years, he 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 10th day of October, 2018.

Luc Bélanger

Chairperson

Canada Agricultural Review Tribunal