



Citation: *Perez-Murallas v. Canada* (Canada Border Services Agency), 2018 CART 12

Date: 20181023  
Docket: CART/CRAC-1975

**BETWEEN:**

**Donald Perez Muralles,**

**APPLICANT**

**- and -**

**Canada Border Services Agency,**

**RESPONDENT**

[Translation of the official version in French]

**BEFORE: Geneviève Parent  
Member**

**WITH: Donald Ivan Perez Muralles, self represented; and  
Michèle Hobbs, 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 the facts relating to a violation of subsection 16(1) of the *Health of Animals Act*, alleged by the Respondent.

**DECISION**

Following a review of all written submissions of the parties, the Canada Agricultural Review Tribunal, by ORDER, determines that, on a balance of probabilities, the applicant, Donald Ivan Perez Muralles, did commit the alleged violation as set out in Notice of Violation 3961 17 1968, dated October 30, 2017, regarding the events of that day, and is liable for payment of the penalty in the amount of \$1,300 to the Respondent within thirty (30) days after the day on which this decision is notified.

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## **I. BACKGROUND**

[1] This case concerns the importation of fried chicken by a passenger who was returning from a 21-day visit to Guatemala. On October 30, 2017, the Canada Border Services Agency (the Agency) issued Notice of Violation number [3961-17-1968](#) to Donald Ivan Perez-Murales in person. This Notice of Violation, with a monetary penalty of \$1,300, was issued for importing pieces of fried chicken on that same date, in violation of subsection [16\(1\) of the \*Health of Animals Act\* \(HA Act\)](#), which represents a very serious violation of the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations \(AAAMP Regulations\)](#).

[2] The evidence on record, which is not contested by the Applicant, demonstrates that the Applicant did not declare or present the pieces of chicken in his luggage at the time of importation, in violation of subsection 16(1) of the [HA Act](#).

[3] Indeed, the applicant completed and signed an E311 CBSA Declaration Card on which he answered “no” to the questions about bringing any food items back to Canada, particularly any meat or meat by-products (Appendix 2 to Respondent’s Written Submissions).

[4] The evidence also demonstrates that he did not present or declare any animal products or by-products before entering the secondary examination area he was referred to (Appendix 3 to the respondent’s submissions).

[5] During the examination of the Applicant's luggage, the Agency Officer found several food products: cheese, tomato sauce, fruits and pumpkin seeds, as well as 15 packs of MAGGI brand chicken bouillon, 10 packs of MALHER brand chicken/beef bouillon, and 25 pieces of fried chicken (Appendix 3 and photograph from Appendix 5 to the Respondent's Written Submissions).

[6] The evidence on record also demonstrates that in 2015, the Applicant had been issued a Notice of Violation with warning for similar facts (Appendix 3 to Respondent's Written Submissions).

[7] Mr. Perez-Murales requested that the Canada Agricultural Review Tribunal (Tribunal) review the facts surrounding the issue of Notice of Violation 3961-17-1968.

[8] In his written submissions, Mr. Perez-Murales maintains that [TRANSLATION] "*since the 'Pollo Campero' chicken was sold in the departure area of the airport*", he believed that it complied with [TRANSLATION] "*all health and food safety standards for travellers leaving the country*".

## II. JURISDICTION AND POWERS

[9] Under paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AAAMP Act), the Tribunal is the competent authority to hear this request for review.

[10] In reviewing the facts of a case, the Tribunal must weigh the evidence before it and determine whether the Agency has established, on the balance of probabilities, each essential element to establish the violation.

[11] Where the Agency meets its burden of proof, the Applicant will be held liable for a violation under subsection 16(1) of the *HA Act*, unless the Applicant can establish a defence, justification or excuse permitted under the *AAAMP Act*, the *AAAMP Regulations* or, in this case, the *HA Act*.

## III. ISSUES

[12] There are three issues raised by this case:

- i. Has the Agency proven each of the essential elements of a violation of subsection 16(1) of the *HA Act*?
- ii. Did the Applicant, Mr. Perez-Murales, raise a permissible defence that, based on section 18 of the *AAAMP Act*, could justify or excuse his actions on October 30, 2017, which constitute a violation of subsection 16(1) of the *HA Act*?
- iii. Was the monetary penalty of \$1,300 determined in accordance with the regulations applicable in this case?

#### IV. ANALYSIS

[13] For the reasons below, I find that the Agency has proven the essential elements of the violation, that the Applicant did not raise any valid defence, excuse or justification for his actions and that the monetary penalty was established in accordance with the [AAAMP Act](#) and the [AAAMP Regulations](#).

##### **Issue No. 1 – Has the Agency proven each of the elements of a violation of subsection 16(1) of the [HA Act](#)?**

[14] Under section 19 of the [AAAMP Act](#), the Agency must prove each of the essential elements of a violation of paragraph 16(1) of the [HA Act](#) (*Doyon v. Canada (Attorney General)*, 2009 FCA 152 (*Doyon*), at paragraph 42).

[15] Subsection 16(1) of the [HA Act](#) reads as follows:

**16 (1)** *Where a person imports into Canada any animal, animal product, animal byproduct, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.*

*[Emphasis added.]*

[16] Section 2 of the [HA Act](#) reads as follows:

**animal by-product** *includes blood or any of its components, bones, bristles, feathers, flesh, hair, hides, hoofs, horns, offal, skins and wool, and any thing containing any of those things; (sous-produit animal)*

[17] In paragraph 17 of *Cikotic v. Canada (Canada Border Services Agency)*, 2017 CART 11 (*Cikotic*), the Tribunal notes that the following constitute the essential elements of a violation of subsection 16(1) of the [HA Act](#):

1. The Applicant is the person who committed the violation;
2. The Applicant imported an animal product or animal by-product into Canada;
3. The Applicant failed to present the animal product or animal by-product to Agency officers before being referred to the customs secondary examination area for luggage inspection.

[18] The burden of proof therefore lies on the Agency to demonstrate, on a balance of probabilities, the existence of these three essential elements of a violation of subsection 16(1) of the [HA Act](#).

### **Findings concerning element No. 1**

[19] With respect to element No. 1, Mr. Perez-Murales' identity as the perpetrator of the alleged violation is not in dispute.

[20] Mr. Perez-Murales is indeed the person who committed the violation noted in this case by Agency Officer #37297.

[21] This was confirmed by the travel documents which Mr. Perez-Murales presented to complete the E311 Declaration Card, and which he subsequently presented to the Agency Officer who proceeded to check his luggage (Respondent's Written Submissions, particularly Appendices 2 and 3; Applicant's Written Submissions, confirming that he did in fact transport the animal by-products in question).

[22] Mr. Perez-Murales also confirmed that the luggage examined by Agency Officer #37297 did in fact belong to him, that he had personally packed the luggage in question with the help of his wife, and that he was aware of the contents thereof (Respondent's Written Submissions, Appendix 3).

### **Findings concerning elements No. 2 and No. 3**

[23] The evidence on record, which is not in dispute, is that the Applicant completed and signed the E311 CBSA Declaration Card on which he answered "no" to questions about bringing any food items back to Canada, particularly meat or meat by-products (Appendix 2 to the Respondent's Written Submissions).

[24] The evidence also demonstrates that Mr. Perez-Murales did not present or declare any animal products or animal by-products before entering the secondary inspection area he was referred to (Appendix 3 to the Respondent's Written Submissions).

[25] During the examination of the Applicant's luggage, Agency Officer #37297 found several food products: cheese, tomato sauce, fruits, and pumpkin seeds, as well as 15 packs of MAGGI brand chicken bouillon, 10 packs of MALHER brand chicken/beef bouillon, and 25 pieces of fried chicken (Appendix 3 and photograph from Appendix 5 to the Respondent's Written Submissions; Applicant's Written Submissions).

[26] Lastly, the Agency Officer checked the Automated Import Reference System (AIRS) and determined that chicken meat from Guatemala was inadmissible to Canada (Written Submissions, Appendix 4).

[27] Therefore, on a balance of probabilities, I find that on October 30, 2017, Mr. Perez-Murales imported an animal product or animal by-product into Canada.

[28] As the Tribunal noted at paragraph 24 of *Cikotic*:

*In Canada v. Savoie-Forgeot, 2014 FCA 26, the Federal Court of Appeal stated that goods should be made available for inspection, that is they must be declared or presented, at the first contact with Agency officers (paragraph 25). The declaration of goods at the Customs primary control area is generally the end point for the importation process (Savoie-Forgeot, at paragraphs 19 and 25), the moment when a point of finality is reached. Failure to declare or present an animal by-product at this juncture is the act which underlies the issuance of an administrative monetary penalty by the Agency.*

[29] Consequently, I also find, on a balance of probabilities, that Mr. Perez-Murales failed to declare that he was importing animal by-products to border services officers before he was referred to the customs secondary examination area.

[30] I therefore find that the Agency met its burden of proof and was able to prove the three essential elements of a violation of subsection 16(1) of the *HA Act*.

**Issue No. 2 – Did Mr. Perez-Murales raise a permissible line of defence that, based on section 18 of the *AAAMP Act*, could justify or excuse his actions on October 30, 2017?**

[31] In his written submissions, Mr. Perez-Murales defended his actions by stating that [TRANSLATION] “since the ‘Pollo Campero’ chicken was sold in the departure area of the airport we believed that we had complied with all health and food safety standards for travellers leaving the country”.

[32] However, the administrative and monetary penalties regime implemented by the *AAAMP Act* and the *AAAMP Regulations* is one of strict liability (*Doyon*, paragraph 11).

[33] In this context, those who commit a violation of subsection 16(1) of the *HA Act* therefore have very few defences at their disposal, and they cannot present a defence of due diligence or honest and reasonable mistake of fact (*Canada Border Services Agency v. Castillo*, 2013 FCA 271; *Doyon*, paragraph 11; *Mario Côté v. Canada (Attorney General)*, 2017 FCA 36, paragraph 40).

[34] In particular, subsection 18(1) of the *AAAMP Act* provides that the offender cannot raise as a defence the fact that he or she reasonably and honestly believed in the existence of facts that, if true, would exonerate him or her.

[35] Therefore, in light of the foregoing and the evidence on record, I find that Mr. Perez-Murales did not present a permissible defence that would justify the importation of animal by-products without declaring that importation to border services officers before being referred to the customs secondary examination area.

### **Issue No. 3 – Was the monetary penalty of \$1,300 determined in accordance with the regulations applicable in this case?**

[36] Therefore, the only issue that remains to be determined is whether the penalty of \$1,300 is justified based on the [AAAMP Act](#) and the [AAAMP Regulations](#), which apply in this case.

[37] The [AAAMP Regulations](#) establish the parameters that the Agency will use to determine the amount of the administrative and monetary penalty to be imposed in the event of a violation of a provision of the laws under the AAAMP system. At this juncture, it is worth recalling what these parameters are.

[38] Schedule 1 to the [AAAMP Regulations](#) determines the gravity of the sanction, based on the violation in question, and subsequently makes it possible to determine the base amount of the sanction, an amount which is provided in section 5 of the [AAAMP Regulations](#).

[39] In this case, section 2 of Part I to Schedule 1 informs us that a violation under subsection 16(1) of the [HA Act](#) constitutes a “very serious” violation.

[40] Section 5 of the [AAAMP Regulations](#) provides that the amount of the penalty in respect of a very serious violation committed by an individual other than in the course of a business and that is not committed to obtain a financial benefit, as in this case, is \$1,300.

[41] In light of the foregoing, the Tribunal finds that the administrative monetary penalty imposed in this case was established pursuant to the relevant regulations.

[42] As the Tribunal recalls in paragraph 43 of [Cikotic](#): “According to these laws, the Tribunal has neither the mandate, nor the jurisdiction, to set aside or dismiss a notice of violation for humanitarian, compassionate, medical or financial reasons”.

## **V. ORDER**

[43] After reviewing the written submissions of the parties and the evidence on record, the Tribunal determines that:

1. the Agency has proven each of the elements necessary to establish that Mr. Perez-Murales committed the violation described in Notice of Violation 3961-17-1968, issued on October 30, 2017;
2. Mr. Perez-Murales did not raise a permissible defence under the provisions of the applicable legislation that would have justified the importation of animal by-products without declaring the importation thereof to border services officers before being referred to the customs secondary examination area;
3. The administrative monetary penalty applied in this case was established in accordance with the relevant regulations.

[44] Therefore, the Tribunal hereby **ORDERS** Mr. Perez-Murales to pay the Agency the amount of \$1,300 within thirty (30) days after the day on which this decision is notified, as provided in section 15(3) of the [AAAMP Regulations](#).

[45] The Tribunal would like to inform Mr. Perez-Murales that he may wish to contact the Agency's representatives directly to inquire whether they would agree to a manageable payment schedule for the penalty amounts.

[46] The Tribunal would also like to inform Mr. Perez-Murales that this violation is not a criminal offence. After five years, Mr. Perez-Murales can 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 Québec, Quebec, on this 23rd day of October, 2018.

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Geneviève Parent  
Member of the Canada Agricultural Review Tribunal