



Citation: *Ousmane-Daba v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 CART 15

Date: 20181107
Docket: CART/CRAC-1951

BETWEEN:

Muhammad Ousmane-Daba,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Muhammad Ousmane-Daba, representing himself ; and
Michèle Hobbs, representating the Respondent**

In the matter of 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 of a decision by the Minister of Public Safety and Emergency Preparedness, decision #16-02413, dated March 31, 2017, holding that the Applicant violated section 7 of the [Plant Protection Act](#).

DECISION

Having reviewed all the submissions of the parties, the Canada Agricultural Review Tribunal, by order, CONFIRMS the Minister's decision #16-02413 and holds that, on a balance of probabilities, the Applicant, Muhammad Ousmane-Daba, committed the alleged violation, described in Notice of Violation #3961-16-1027, dated May 30, 2016, and is liable for payment of the penalty in the amount of \$1,300 within 30 days after the day on which notice of this decision is served.

The hearing was held in Montreal, QC,,

On Tuesday, February 20, 2018.

REASONS FOR DECISION	2
I. CONTEXT.....	2
II. POWERS AND JURISDICTION.....	3
III. ISSUES	4
IV. ANALYSIS	4
Issue 1: Has the Minister erred in concluding that the Agency proved each of the elements of a violation under section 7 of the <i>PP Act</i> ?	4
Issue 2: Has the Applicant established a permissible defence?	6
V. ORDER.....	7

REASONS FOR DECISION

I. CONTEXT

[1] This case is about a traveller's failure to declare the importation of roots at the Pierre-Elliott Trudeau International Airport in Montreal on May 30, 2016. The roots were discovered by an officer of the Canada Border Services Agency (Agency) in the belongings of Mr. Muhammad Ousmane-Daba during a luggage inspection in the customs secondary area when he returned from Chad. Mr. Daba had come to pick up the luggage, which had been delayed. The border services officer issued Notice of Violation #3961-16-1027 and a penalty of \$1,300 to the Applicant for an alleged violation of section 7 of the [Plant Protection Act](#) (*PP Act*).

[2] Mr. Daba requested a review of the notice of violation by the Minister of Public Safety and Emergency Preparedness (Minister), who upheld the Notice of Violation on March 31, 2017, in his decision #16-02413. On April 18, 2017, Mr. Daba requested a review of the Minister's decision by the Canada Agricultural Review Tribunal (Tribunal).

[3] On January 11, 2018, the parties participated in a case management conference in preparation for the hearing. On February 14, 2018, the Tribunal issued an order dismissing Mr. Daba's motion to present new documentary evidence and testimony at the hearing.

II. POWERS AND JURISDICTION

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

[5] The [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAMP Act) provides in subsection 13(2) that the Tribunal can review a first instance decision made by the Minister.

[6] The powers given to the Tribunal by Parliament in conducting this exercise are set out in paragraph 14(1)(a) of the [AAMP Act](#): *“After concluding a review requested under this Act, the Tribunal shall, by order, as the case may be, confirm, vary or set aside any decision of the Minister ...”*. As such, the Tribunal performs a function not as a first instance decision-maker or as a court conducting a judicial review, but rather as a specialized or appellate administrative tribunal reviewing an administrative decision of first instance.

[7] Although the [AAMP 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 [AAMP Act](#), see [Hachey Livestock Transport Ltd. v. Canada \(Minister of Agriculture and Agri-Food\)](#), 2015 CART 19, at paragraphs 28 to 50.

[8] 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 and reasoning in the Minister’s decision of March 31, 2017.

[9] A “*de novo*” examination of the facts does not require the Tribunal to ask the parties to present a new evidence in this case. The Tribunal must apply the appropriate law to the factual findings of the case and determine whether the decision of the Minister should be confirmed, varied or set aside.

III. ISSUES

[10] This matter raises two issues:

- i. Has the Minister erred in concluding that the Agency proved each of the elements of a violation under section 7 of the [PP Act](#)?
- ii. Has the Applicant established a permissible defence?

IV. ANALYSIS

Issue 1: Has the Minister erred in concluding that the Agency proved each of the elements of a violation under section 7 of the [PP Act](#)?

[11] The courts have conducted detailed examinations on violations arising from the [AAMP Act](#) and the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (*AAMP Regulations*), particularly given that these violations are of absolute liability ([Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152 ([Doyon](#)), at paragraphs 11 and 27).

[12] Furthermore, the Federal Court of Appeal has confirmed that enforcement agencies have the burden of proving each of the essential elements of an alleged violation issued under the administrative monetary penalty system to make it possible to conclude that the accused has committed a violation ([Doyon](#), at paragraph 42).

[13] Determining the essential elements of a particular violation requires the Tribunal to apply the [Doyon](#) approach of parsing out the required elements from the statutory language of the provision that establishes the violation ([Doyon](#), at paragraph 41).

[14] Section 7 of the [PP Act](#) reads as follows:

7. No person shall import or admit into Canada or export from Canada any thing that is a pest, that is or could be infested with a pest or that constitutes or could constitute a biological obstacle to the control of a pest, unless

(a) the person has produced to an inspector all permits, certificates and other documentation required by the regulations;

(b) the thing is or has been presented to an inspector — if required by the regulations or an inspector — in the manner and under the conditions specified by the inspector and at a place designated by the regulations or an inspector; and

(c) the thing is imported or exported in accordance with any other requirements of the regulations.

[15] In [*Nesbeth v. Canada \(Canada Border Services Agency\)*, 2016 CART 5](#), the Tribunal outlined five essential elements that the Agency must demonstrate, on a balance of probabilities:

- Element 1 – The applicant is the person who committed the violation;
- Element 2 – The applicant imported a plant product into Canada;
- Element 3 – The plant product that the applicant imported was a pest, was or could be infested or constituted or could have constituted a biological obstacle to the control of a pest;
- Element 4 – The applicant failed to present the plant product to a border officer upon arrival in Canada;
- Element 5 – The applicant produced no permits or certificates to justify his importation.

[16] If the Agency discharges the burden of proving these elements on a balance of probabilities, the Applicant must be held liable for the violation under the agriculture and agri-food administrative monetary penalty system. It is therefore my responsibility to review each of the items in light of the evidence before the Minister.

[17] Mr. Daba admits to having imported roots. Mr. Daba's identity was confirmed by the Agency with a copy of his driver's licence, and the border services officer confirmed that the baggage in question was the Applicant's. In addition, the presence of roots is supported by photographs taken during the secondary inspection of Mr. Daba's baggage. Elements 1 and 2 have therefore been established.

[18] Mr. Daba pointed out that there was no evidence that the imported roots contained pests. On the other hand, section 7 of the [*PP Act*](#) does not necessarily require the presence of pests in the roots. In fact, the mere fact that a plant product could be infested with a pest is sufficient. Thus, the Agency does not have to prove that the imported plant products were infested with a pest.

[19] The Agency provided an extract from the Automated Import Reference System (AIRS), which indicates that tuberous roots from Chad must be accompanied by a phytosanitary certificate and an import permit from the Plant Protection Division. In addition, the roots must be certified as being free from soil pests. This shows that roots from Chad are considered to be at least likely to be infested with pests. Element 3 has therefore been established.

[20] Element 4 has also been established by the Agency, since Mr. Daba had the opportunity to declare and present the plant product to a border services officer upon arrival in Canada, but did not do so. Indeed, Mr. Daba checked “no” in response to the question on plants or wood and any parts, products or by-products thereof in his Delayed Baggage Report, and avoided answering the questions from the border services officer at the secondary inspection. It was only during the baggage search that the officer found the aforementioned roots.

[21] Element 5 has been established since Mr. Daba did not present any permits or certificates justifying the importation of the plant product into Canada.

[22] Accordingly, I fully agree with the Minister’s conclusions that the Agency has established, on a balance of probabilities, that Mr. Daba committed a violation of section 7 of the [*PP Act*](#).

Issue 2: Has the Applicant established a permissible defence?

[23] Mr. Daba argues that the border services officer’s conduct was unacceptable, and that the violation was applied unfairly. It appears that the Agency addressed this aspect of Mr. Daba’s request as required in a letter dated July 4, 2016. In light of the facts of the case, I am of the opinion that the actions of the border services officer do not suggest that the file was dealt with unfairly. In addition, it is not the Commission’s role to rule on this subject.

V. ORDER

[24] I am of the opinion that the evidence submitted on file by the Agency shows that Mr. Daba imported a plant product without presenting it to an inspector contrary to section 7 of the [PP Act](#). Therefore, I **CONFIRM** the Minister's decision #16-02413, which upholds Notice of Violation # 3961-16-1027, dated May 30, 2016.

[25] I also **CONFIRM** that the amount of the penalty is correct under the [AAMP Regulations](#).

[26] I **ORDER** Mr. Daba to pay the Agency the sum of \$1,300 within 30 days after the day on which notice of the Tribunal's decision is served, as provided in section 15(3) of the [AAMP Regulations](#).

[27] Mr. Daba argued that the sanction is unreasonable because of the presence of the violation in his file for a period of five years. According to subsection 23(1) of the [AAMP Act](#), any notation of a violation may not be removed from the record until five years after the date of payment of the penalty. I am not authorized to change the duration of this notation in the file.

[28] I would like to inform Mr. Daba that this violation is not a criminal offence. In five years, Mr. Daba is entitled to apply to the Minister of Agriculture and Agri-Food to have the violation removed from his record, pursuant to section 23 of the [AAMP Act](#).

Dated at Ottawa, Ontario, on this 7th day of November 2018.

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal