



Citation: *Harika v. Canada* (Canada Border Services Agency), 2018 CART 17

Date: 20181219

Docket: CART/CRAC- CART | CRAC 1960

BETWEEN:

Amal Harika,

APPLICANT

- and -

Canada Border Services Agency,

RESPONDENT

**BEFORE: Marthanne Robson
Part-time Member**

**WITH: Ms. Amal Harika, for the Applicant; and
Mr. Pierre Dastous, for the respondent**

In the matter of an application made by the Applicant to the Canada Agricultural Review Tribunal, pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act), for a review of the facts of a violation of pertaining to an alleged violation of section 29 of the [Plant Protection Regulations](#).

DECISION

The Canada Agricultural Review Tribunal, by ORDER, confirms the settlement agreement reached by the parties.

By written submissions only.

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REASONS FOR DECISION

I. BACKGROUND

[1] On May 29, 2017, it is alleged that the Applicant, Ms. Amal Harika, imported to Canada a thing, namely unknown plants with root systems with soil, without a permit number or without a foreign Phytosanitary Certificate for Re-export, thereby contravening section 29 of the [Plant Protection Regulations](#). Consequently, the Canada Border Services Agency (Agency) issued her a Notice of Violation (NOV) 4312-17-0118 with penalty of \$800 for a “serious” violation of the regulations.

[2] Ms. Harika applied to the Canada Agricultural Review Tribunal (Tribunal) for a review of the facts of the violation pursuant to paragraph 9(2)(c) of the [AAAMP Act](#).

II. OFFER TO SETTLE

[3] On March 21, 2018, the Agency presented an offer to settle the case to Ms. Harika.

[4] Ms. Harika accepted this proposal by way of an email received by the Tribunal on March 27, 2018.

[5] On April 26, 2018, the Agency formally requested that the Tribunal vary the issued NOV 4312-17-0118 with penalty of \$800 to a NOV with warning.

III. THE SETTLEMENT

[6] As established in [Atkinson v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2018 CART 3 (*Atkinson*), although the [AAAMP Act](#) does not explicitly empower the Tribunal to vary a NOV with penalty to a NOV with warning, the Tribunal established its authority to do so using its powers by necessary implication and practical necessity in conjunction with the authority given to it through the [Canada Agricultural Products Act \(CAP Act\)](#) and the [AAAMP Act](#).

[7] This agreement constitutes a settlement between the parties. This is not an order of the Tribunal which can be the subject of a judicial review application pursuant to subsection 12(2) of the [CAP Act](#).

[8] This settlement agreement constitutes a final settlement of the rights of both parties in relation to docket CART | CRAC-1960 and the events which occurred on May 29, 2017.

[9] As described in the Agency's offer to settle, a violation in the name of Ms. Harika will remain in the Agency's records for the next five years.

[10] This settlement should not be cited as a precedent or otherwise relied on except in relation to the current Notice of Violation.

IV. ORDER

[11] As requested by the parties and pursuant to the powers attributed to it by section 8 of the [CAP Act](#), the Tribunal, by ORDER, confirms the settlement agreement.

[12] The Tribunal wishes to inform Ms. Harika that this violation is not a criminal offence. After five years, she 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 19th day of December, 2018.

Marthanne Robson
Part-time Member
Canada Agricultural Review Tribunal