



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1R 7Y3

Commission de révision
agricole du Canada

Citation: *Hershkovitz v. Canada Border Services Agency*, 2019 CART 6

Date: 20190507
Docket: CART - 2087

BETWEEN:

Shmuel Hershkovitz,

APPLICANT

- and -

Canada Border Services Agency,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Mr. Antonio Nadaira representing the Applicant; and
Ms. Sandy Kozak representing the Respondent**

This matter arises from the Canada Border Services Agency's (Agency) letter dated February 20, 2019, which informed the Applicant that it could not undertake the review of Notice of Violation # 3961-19-0295 (NOV), because the Applicant had paid the penalty imposed and as such, was deemed to have committed the violation in accordance with section 9 of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act). The Applicant now seeks to have the Canada Agricultural Review Tribunal (Tribunal) review the matter pursuant to subsection 12(2) of the [AAAMP Act](#). For the reasons that follow, the Applicant's request is not admissible.



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REASONS FOR INADMISSIBILITY

1. BACKGROUND

[1] On February 5, 2019, the Applicant was served with Notice of Violation # 3961-19-0295 (NOV) upon his entry at the Pierre-Elliott-Trudeau airport in Montreal, Quebec, for importing “breaded meat”, contrary to section 16(1) of the [Health of Animals Act](#). This NOV was issued with a penalty of \$1300.

[2] The NOV, which was signed by the Applicant, indicates that he chose not to dispute the NOV, acknowledged that he committed the violation and agreed to pay a reduced penalty of \$650 in accordance with subsection 10(2) of the [AAAMP Act](#). Contrary, to this agreement, the Applicant also requested that the Minister of Public Safety and Emergency Preparedness (Minister) undertake a review of the facts of the NOV pursuant to subsection 9(2) of the [AAAMP Act](#).

[3] In a letter dated February 20, 2019, the Agency informed the Applicant that a ministerial review was no longer an option since he chose to pay the penalty. The Agency relied on subsection 9(1) of the [AAAMP Act](#) which provides that when a person pays the penalty set out in a NOV, the person is deemed to have committed the violation and the Minister shall accept that amount, in effect, ending the proceedings.

[4] On March 5, 2019, the Tribunal received the Applicant’s request to review the NOV. In his written representation, the Applicant alleges that he had always intended to request a ministerial review of the NOV. The Applicant further alleges that he was never informed that by paying the reduced amount of the penalty he would forfeit his appeal rights, and thereby he was misled in doing so.

2. CONSIDERATIONS

[5] Section 48 of the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\) \(Tribunal Rules\)](#) requires that the Tribunal render a decision on the admissibility of the Applicant’s request. Bars to the admissibility, include the Tribunal’s jurisdiction and the parties compliance with its enabling statute and [Regulations](#).

[6] Subsection 9(2) of the [AAAMP Act](#) reveals that a dual-track procedure for challenging a notice of violation, with a penalty, exists - either before the Minister or before the Tribunal. There is no ambiguity in the language used to establish these review mechanisms. Both are alternatives to paying the penalty set out in a Notice of Violation:

(2) Instead of paying the penalty set out in a notice of violation or, where applicable, the lesser amount that may be paid in lieu of the penalty, the person named in the notice may, in the prescribed time and manner,

(a) if the penalty is \$2,000 or more, request to enter into a compliance agreement with the Minister that ensures the person's compliance with the agri-food Act or regulation to which the violation relates;

(b) request a review by the Minister of the facts of the violation; or

(c) request a review by the Tribunal of the facts of the violation.

[7] The fact that the Applicant paid the penalty is uncontested. It is unfortunate that the Applicant feels he was misled or never informed of the consequence of agreeing to pay the penalty. The Tribunal, however, fails to find any ambiguity or even misleading information in the NOV. The language used in the section signed by the Applicant is clear. It reads:

I do not wish to dispute this Notice of Violation with penalty and choose to pay the penalty within 15 days of the date of service of this notice. I understand that by agreeing to pay this penalty, I am acknowledging that I have committed the violation noted.

[8] The Tribunal has no jurisdiction to review the facts of the Notice of Violation when the penalty set in it has been paid. The Applicant is deemed to have committed the violation pursuant to subsection 9(1) of the [AAAMP Act](#).

3. ORDER

[9] For the reasons above, I **ORDER** that the Applicant's request to have the Tribunal review the facts of the Notice of Violation, is **not admissible**.

Dated at Ottawa, Ontario, on this 7th day of May 2019.



Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal